



# The Planning Inspectorate Yr Arolygiaeth Gynllunio

**The Planning Act 2008**

**North Wales Wind Farms Connection**

**Examining Authority's Report of Findings and Conclusions**

**and**

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

---

**Examining Authority**

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John Lloyd-Jones OBE FRAgS Hon.FLI  
Jo Dowling BA, MPHIL, MRTPI**

**28 April 2016**

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## **Examining authority's findings and conclusions and recommendation in respect of an application by SP Manweb plc for an Order granting Development Consent for the North Wales Wind Farms Connection**

### **File Ref EN020014**

The application, dated 20 March 2015, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 20 March 2015.

The applicant is SP Manweb plc.

The application was accepted for examination on 17 April 2015. The Preliminary Meeting was held on 28 July 2015 and the Examination was completed on 28 January 2016.

The development proposed is to construct, install, operate and maintain a 17.4 kilometre 132,000 volt (132kV) electric line between Clocaenog Forest, Denbighshire, and a point south of the unnamed Groesffordd Marli to Glascoed Road and the B5381 (Glascoed Road) near St Asaph, Denbighshire.

### **Summary of Recommendation:**

The Examining authority recommends that the Secretary of State should make the Order in the form at Appendix E.

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**APPENDIX A: ABBREVIATIONS**

**APPENDIX B: EVENTS IN THE EXAMINATION**

**APPENDIX C: EXAMINATION LIBRARY**

**APPENDIX D: LIST OF OBJECTIONS TO COMPULSORY**

**ACQUISITION OF RIGHTS AND RESTRICTIONS**

**APPENDIX E: RECOMMENDED DEVELOPMENT CONSENT ORDER**

**ERRATA SHEET – North Wales Wind Farm Connection  
Ref. EN020014**

**Examining Authority's Report of Findings and Conclusions and  
Recommendation to the Secretary of State for the Department for  
Business, Energy & Industrial Strategy, dated 28 April 2016**

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

<b>Page No.</b>	<b>Paragraph</b>	<b>Error</b>	<b>Correction</b>
12	2.1.3	Fifth bullet point has an unnecessary 'of' between 'from' and 'the'.	Remove 'of'
24	3.5.12	First sentence, the word 'amend' following '16 August 2012' should be 'amending'.	Change to 'amending'
48	4.5.12	Introductory sentence, 'SO' has been defined and so 'the strategic options report' does not need to be set out.	Change 'strategic options report' to 'SO report'
49	4.5.12	Fifth bullet point on this page includes a space between the letters 'S P'. This should be 'SP' as the applicant is SP Manweb.	Change 'S P' to 'SP'
58/59	4.5.61 and 4.5.66	These paragraphs duplicate each other.	Remove paragraph 4.5.66
84	5.1.99	Bracket needed to close brackets at the end of the paragraph.	Add bracket
85	5.1.103	No full stop at end of paragraph.	Add Full stop
85	5.1.105	Second sentence, error within the brackets. Brackets state '(it its recommended...)'.	Brackets should say '(in its recommended...)'
87	5.2.8	Potential error in the first sentence which states that 'overhead lines and associated infrastructure ...can give rise to adverse <u>and</u> visual effects'. The word 'landscape' appears to be missing after	Add 'landscape' after 'adverse'



Page No.	Paragraph	Error	Correction
		'adverse', based on the wording in EN-5 at paragraph 2.8.2.	
87	5.2.8	Second sentence the words 'and visual impacts' appear to be missing in the sentence 'potential adverse landscape may', based on the wording in EN-5 at paragraph 2.8.2.	Add 'and visual impacts' after 'landscape'
104	5.2.99	No full stop at end of paragraph on the last bullet point.	Add Full stop
107	5.3.5	Missing the letter 's' after 'overhead line' in the first sentence.	Add 's' to the word 'line'
128	5.4.110	'Denbighshire County Council' is set out in full in the final sentence. This is defined elsewhere so 'DCC' can be used.	Replace with 'DCC'
133	5.5.2	A word is incorrectly in italics before the quote. The relevant text is 'the planning <i>process</i> '.	Remove italics of the word 'process'
137	5.5.19	Final bullet point of paragraph 5.5.19 includes the letter 't' incorrectly within the text (between 'development' and 'have').	Remove the letter 't'
181	5.9.46	This paragraph needs to be reviewed and 'sense checked' as the sentence does not make sense.	Add the word, "stated" before "that to...."
222	7.5.1	There is duplication in the word 'identified' which is incorrectly included twice.	Remove the first 'identified'
254	8.12.66	The fourth sentence start with a representation reference [REP5-006 page 4/23] and it is not clear who the representation is made by.	Include the text, "In Mr Davies' representation regarding option B" before [REP5-006 page 4/23].
282	8.18.15	Full stop missing at the end of the last bullet point.	Add full stop to replace the final semi-colon.

# **1 INTRODUCTION**

## **1.1 INTRODUCTION**

- 1.1.1 The application for an order granting development consent for the installation of a 132kV electric line above ground over a 17.4km route in Denbighshire County Council and Conwy County Borough Council areas was submitted to the Planning Inspectorate on 20 March 2015. The application proposed an alignment from a collector substation at Clocaenog Forest, Denbighshire, to a terminal point located to the south of the unnamed Groesffordd Marli to Glascoed Road and the B5381 (Glascoed Road) near St Asaph, Denbighshire. The Secretary of State accepted the application for examination under section 55 of the Planning Act 2008 (as amended) (PA2008) on 17 April 2015 [PD-001].
- 1.1.2 As applied for, the proposed development is a Nationally Significant Infrastructure Project (NSIP) under section 14(1)(b) and section 16 PA2008 as the proposed project is for the installation of a 132kV electric line above ground wholly in Wales and is approximately 17.4 kilometre (km) long. Whilst changes have been made to the application (as discussed below), these changes do not affect the status of the application as a NSIP.
- 1.1.3 The proposed development falls within Schedule 2 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (EIA Regulations 2009). The application was therefore accompanied by an Environmental Statement (ES) [APP-092 to APP-153 and APP-160].
- 1.1.4 Under section 56 PA2008 the Applicant gave notice of the accepted application and, in response to the Applicant's notification, 90 relevant representations (RRs) were received by the Planning Inspectorate [RR-001 to RR-090].
- 1.1.5 In a letter dated 11 September 2015 [OpB-001], the Applicant asked the Panel to accept into the Examination a change to the proposed development known as 'option B'. This option reflects requests for changes to pole locations made by affected landowners.

## **1.2 APPOINTMENT OF EXAMINING AUTHORITY**

- 1.2.1 On 19 June 2015, a panel of Examining Inspectors was appointed by the Secretary of State to examine the above application under section 65 PA2008. Dr Lillian Harrison was appointed lead member of the Panel. The Panel comprises Dr Lillian Harrison, John Lloyd-Jones and Jo Dowling [PD-004 and PD-005].

## **1.3 THE EXAMINATION AND PROCEDURAL DECISIONS**

- 1.3.1 The main events of the Examination and procedural decisions taken during the Examination can be seen at Appendix B of this report.

- 1.3.2 On 2 July 2015, the Panel wrote to all Interested Parties (IPs), Statutory Parties and Other Parties under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) [PD-004 and PD-005]. This letter set out the:
- administrative arrangements for the Preliminary Meeting (PM);
  - agenda for the PM;
  - initial assessment of principal issues;
  - draft timetable for examination of the application;
  - availability of relevant representations (RRs) and application documents;
  - notice of appointment of Examining authority (ExA); and
  - procedural decisions made by the ExA.
- 1.3.3 The Panel's first written questions (FWQ) [PD-010] and procedural decisions were set out in the Rule 8 letter [PD-008 and PD-009] which was issued to all IPs on 4 August 2015.
- 1.3.4 The Panel's second written questions (SWQ) [PD-016 and PD-017] were issued to all IPs on 27 October 2015.
- 1.3.5 The applicant submitted proposed changes to the application on 16 September 2015 which were referred to during the examination as option B [OpB-001-OpB-22]. Amongst other things option B would result in the movement of eight pole positions which would require changes to the order limits which would require the Applicant to acquire more land and as a result the Applicant also applied for a proposed provision for the compulsory acquisition (CA) of additional land under the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 [OpB-001]. The Panel issued a letter including a procedural decision to accept option B into the Examination on 6 October 2015 [PD-012]. Thereafter, the Panel examined option B alongside the original application (option A).
- 1.3.6 The Panel prepared a Report on the Implications for European Sites (RIES) [PD-021] of the proposed development, which was published on 21 December 2015. Comments on the report were requested for deadline 10, 21 January 2016.
- 1.3.7 Further details on all procedural decisions and events in the examination are provided in Appendix B of this report.
- 1.3.8 The Panel held a number of hearings under sections 91 to 93 PA2008 to ensure the thorough examination of various topics. These were:

#### **Issue Specific Hearings (ISHs)**

- principles of development (including assessment approach, costs and policy), construction impacts and decommissioning (ISH on 29 September 2015);
- landscape and visual impact; heritage impacts and biodiversity (ISH on 30 September 2015);

- land use, land take and land management impacts; other operational impacts (including electric and magnetic fields (EMFs) and noise); socio-economic impacts and environmental monitoring and mitigation plans (ISH on 1 October 2015);
- draft Development Consent Order (DCO) (ISH on 2 October 2015);
- principles of development (including costs and policy) and environmental issues including (but not limited to) landscape and visual impacts and land use and land management matters relating to option B, and any outstanding matters regarding option A on the principles of development and environmental issues (ISH on 8 December 2015); and
- draft DCOs for both option B and any remaining matters in relation to option A (ISH on 10 December 2015).

### **Compulsory Acquisition Hearings (CAHs)**

- CAH held on 24 September 2015 to 25 September 2015;
- The proposed provision for rights and the imposition of restrictions over additional land in relation to option B (CAH on 9 December 2015); and
- Compulsory Acquisition of rights and the imposition of restrictions over land in relation to option A (CAH on 9 December 2015).

### **Open Floor Hearings (OFHs)**

- OFH held on 23 September 2015;
- The proposed provision for rights and the imposition of restrictions over additional land in relation to option B (9 December 2015); and
- Second OFH in relation to option A (9 December 2015).

1.3.9 The Panel ensured that facilities were available for IPs to provide oral evidence to the Examination in Welsh. A Welsh to English translation service was provided at every hearing and a number of IPs made representations in Welsh.

1.3.10 On 7 January 2016, the Panel issued its consultation letter in relation to its proposed modifications to the draft Development Consent Order [PD-022], providing Interested Parties (IPs) with an opportunity to comment on it. Comments from IPs were requested for deadline 10, 21 January 2016.

## **1.4 SITE INSPECTIONS**

1.4.1 During the pre-examination period and throughout the course of the Examination the Panel undertook a number of unaccompanied site inspections (USIs). Details of these USIs can be seen in the respective site inspection notes [EV-001, EV-051 and EV-052].

1.4.2 On 22 September and 23 September 2015 the Panel undertook an accompanied site inspection (ASI) along the proposed route; the ASI was undertaken in 4x4 vehicles to the locations to be viewed, then on

foot on public and private land and the details of the ASI can be seen in the respective site inspection notes[EV-004 and EV-005].

## **1.5 STATEMENTS OF COMMON GROUND**

1.5.1 By the end of the Examination the Applicant had submitted signed Statements of Common Ground (SoCG) with the following organisations:

- Snowdonia National Park [REP1-058];
- The Civil Aviation Authority [REP1-057 and REP1-086];
- The Local Health Board of North Wales [REP2-024];
- Conwy County Borough Council [REP9-021];
- Denbighshire County Council [REP9-037];
- The Cefn Group [REP10-014];
- The Ramblers Association [REP10-017];
- RWE Innogy UK Ltd and Brenig Wind Ltd [REP10-018];
- The Welsh Government [REP11-008]; and
- Natural Resources Wales [REP9-019 and REP11-015].

## **1.6 OTHER CONSENTS REQUIRED**

1.6.1 In addition to the consent required under PA2008 (which is the subject of this Recommendation Report) the Applicant would require other consents to construct, operate and maintain the proposed development. As set out by the Applicant in their Other Consents and Licences Report [APP-091] the following remaining consents, licences and permits are expected to be required:

- licences from Natural Resources Wales (NRW) for works affecting European Protected Species pursuant to The Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitat Regulations);
- licence from NRW for works affecting protected species pursuant to the Wildlife and Countryside Act 1981 (as amended)(W&CA);
- licence(s) from NRW to authorise work affecting badgers or interfering with badger setts pursuant to the Protection of Badgers Act 1992;
- registration(s) from NRW pursuant to Regulation 21 of the Hazardous Waste (England and Wales) Regulations 2005 (the Hazardous Regulations);
- consent(s) from NRW pursuant to the Environmental Permitting (England and Wales) Regulations 2010 (the Environmental Permitting Regulations);
- consent(s) from the relevant local planning authority pursuant to section 61 of the Control of Pollution Act 1974;
- permitted development or planning permission from the relevant local planning authority pursuant to the Town and Country Planning (General Permitted Development) Order 1995 and the Town and Country Planning Act 1990 (T&CPA 1990) for the St Asaph substation works and underground cable;

- for the collector substation at Clocaenog Forest planning permission from the relevant local planning authority pursuant to the T&CPA 1990.

## **1.7 REQUESTS TO BECOME OR WITHDRAW FROM BEING AN INTERESTED PARTY (SECTIONS 102A, 102B AND 102(ZA))**

- 1.7.1 The Panel received 90 relevant representations (RR) and a further five were received in response to option B. On 6 August 2015, a request to become an IP was received under section 102(A) PA2008; the request was made by Ms Lynne Porter.
- 1.7.2 Ms Porter identified herself as someone entitled to make a relevant claim if the scheme were to be built, however the land listed by Ms Porter was identified by the Panel as being distant from the application route. She was asked to provide more information to the Panel to support her claim on 10 August 2015; however a response was not received. In the absence of a response the Panel did not provide Ms Porter Interested Party status in the Examination.
- 1.7.3 No requests to withdraw from being an IP were received under section 102(1ZA) PA2008 by the close of the Examination.

## **1.8 STRUCTURE OF REPORT**

- 1.8.1 This report does not contain extensive summaries of all the representations before the Examination although regard has been had to each and every representation made in the conclusions reached by the Panel. The approach taken is to address the key issues and statutory requirements and to reach conclusions applying the statutory tests under section 104 PA2008, taking all relevant matters into account.
- 1.8.2 The contents of this report are set out on pages 2 to 5.
- Chapter 1 introduces the application and provides a summary of the Examination and procedural decisions.
  - Chapter 2 details the main features of the proposed development.
  - Chapter 3 identifies and summarises the policy and legal context applicable to the application.
  - Chapter 4 then sets out the Panel's main findings and conclusions in relation to the main issues and the environmental impact assessment (EIA).
  - Chapter 5 sets out the Panel's main findings and conclusions in relation to the potential impacts of the development including a section which reports the Panel's findings on the route options A and B.
  - Chapter 6 deals with the findings and conclusions in relation to the Habitats Regulations.
  - Chapter 7 provides the Panel's conclusions on the case for development consent, taking into account all application

documents and written and oral representations submitted to the Examination.

- Chapter 8 deals with compulsory acquisition matters.
- Chapter 9 considers the recommended draft DCO, including requirements and any changes which were made to it during the course of the Examination.
- Chapter 10 presents the Panel's overall conclusions and recommendations to the Secretary of State.

1.8.3 Appendix A sets out the abbreviations used in this report. Appendix B lists the main events that occurred during the Examination. Appendix C provides the Examination Library, which allocates a unique identifier for each document, categorised either by document type or by the deadline to which it was submitted. Appendix D, the Compulsory Acquisition Appendix, provides details of the Affected Persons who were objecting to the CA of rights and imposition of restrictions across land at the end of the Examination. Appendix E comprises the Panel's recommended draft DCO.

1.8.4 Where document references are presented in square brackets in the text of this report, that reference can be found in the Examination Library (Appendix C). The Panel issued two rounds of written questions aimed at the Applicant and IPs.

## **2 MAIN FEATURES OF THE PROPOSAL AND SITE**

### **2.1 THE APPLICATION AS MADE**

2.1.1 The Applicant is SP Manweb plc which holds the electricity distribution licence for North and Mid Wales, Merseyside, Cheshire and part of Shropshire. It is part of the Scottish Power group.

2.1.2 The Applicant received connection requests from the following developers:

- RWE Npower Renewables Ltd for the Clocaenog Forest Wind Farm;
- Brenig Wind Ltd for the Brenig Wind Farm;
- Vattenfall UK for the Nant Bach Wind Farm; and
- Tegni Cymru Cyf for the Derwydd Bach Wind Farm.

All proposed wind farms are within the Welsh Government Technical Advice Note 8 (TAN 8) Strategic Search Area A (SSA A) development area and respective connection offers were issued to the wind farm developers as part of SP Manweb's distribution licence obligation.

2.1.3 The proposed development would include the following main elements:

- installation of a 132kV overhead line;
- temporary construction compound and temporary storage or 'laydown areas' along the route;
- access points for pedestrians and vehicles along the route;
- landscape and ecological measures to restore trees, hedgerows and other vegetation that would be removed during construction;
- landscaping to mitigate any adverse effects resulting from the maintenance and operation of the line;
- other works such as site preparation and clearance, earthworks, alteration of existing services, vegetation removal/planting and minor street works.

2.1.4 Associated development is discussed and concluded upon in report Section 9.15.

### **2.2 LOCATION**

2.2.1 The proposed development is in the administrative boundaries of Conwy County Borough Council/Cyngor Bwrdeistref Sirol Conwy (hereafter referred to in this report as CCBC) and Denbighshire County Council/Cyngor Sir Dinbych (hereafter referred to in this report as DCC). A location plan is provided in the Environmental Statement non-technical summary [APP-150].

2.2.2 It is a linear scheme, which, if consented, would form a double wood pole line from Clocaenog Forest, heading roughly north to St Asaph, with the majority of the proposed development located in privately owned arable and grazing farmland. It would also traverse (and



impact upon) some areas of woodland, hedgerows and individual trees and oversail various roads, tracks, minor watercourses and rivers including Afon Elwy and Afon Asa. The southern end of the proposed development is located on relatively high land in Clocaenog Forest at an elevation of over 400m above ordnance datum (AOD), with the land on which the development would be located reducing to an elevation of less than 100m AOD at the northern extent of the Order limits.

2.2.3 The Applicant divided the proposed development into four sections (running from south to north) as follows:

- Clocaenog to Bwlch (Section A);
- Bwlch to Eriviat (Section B);
- Eriviat to Plas Buckley (via Hafod) (Section C); and
- Plas Buckley to Groesffordd Marli (Section D).

2.2.4 An illustrative overview of the four sections of the project is provided by Figure 1.3 in the Planning Statement [APP-157].

## **2.3 THE APPLICATION AT THE CLOSE OF EXAMINATION**

2.3.1 The Applicant submitted proposed changes to the application on 16 September 2015 referred to during the Examination as option B [OpB-001 to OpB-022]. The Applicant requested that the original application (option A) and option B be examined alongside each other.

2.3.2 These changes to the proposed development (option B) included seven pole movements within the existing limits of deviation (LoD); eight pole movements which would result in changes to the order limits which would require the need for the Applicant to acquire additional land; one reduction to the proposed Order limits; and the insertion of four additional pole positions.

2.3.3 As the Applicant would need more land to implement option B, an application for the compulsory acquisition (CA) of additional land under the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 was also submitted [OpB-002]. Individuals who had not previously registered as an interested party were given the opportunity to provide a relevant representation (RR) in relation to option B. A total of five further RRs were received [RR-091 to RR-095] in addition to those who had provided a RR, following the notice of the acceptance of the application under section 56 PA2008.

2.3.4 The Panel issued a letter including a procedural decision to accept option B into the Examination on 6 October 2015 [PD-012]. In reaching this decision, the Panel considered the changes would not result in a materially different project from that which was consulted upon and submitted for Examination.

2.3.5 The Applicant also submitted comparison versions of the draft Development Consent Order (DCO) for both option A and option B. Comparison versions of the option A draft DCO were submitted with

every updated version, highlighting the changes from the previous version of the draft DCO. Comparison versions of the option B draft DCO were submitted from deadline 9, highlighting changes from the option B draft DCO submitted at deadline 6. A comparison version at deadline 9 highlighting changes made from the deadline 6 option B draft DCO [REP9-029]; and another highlighting those changes submitted at deadline 11 from the deadline 9 draft DCO [REP11-019] were submitted into the Examination.

## **2.4 RELEVANT PLANNING HISTORY**

- 2.4.1 The relevant planning history in this case relates to four on-shore wind farm projects which collectively form the north Wales wind farms for which the application was proposed.

### **Clocaenog Forest wind farm**

- 2.4.2 The Clocaenog Forest wind farm proposal was for the construction and operation of a wind farm to be situated in the Clocaenog Forest approximately 13km south of Denbigh and about 10km west of Ruthin with a gross electrical output capacity of up to 96MW. The proposal consisted of up to 32 turbines on concrete foundations incorporating hard standing for cranes; cabling to connect the turbines to an on-site substation; a series of new tracks, improvements to and widening of existing tracks and public roads subject to widening; alternative sites for a substation compound; two anemometry masts; two civil construction compounds; four borrow pits; alternative locations for a temporary electrical compound; and ancillary works comprising the landscape and clearance of vegetation.
- 2.4.3 Development consent was granted on 12 September 2014 for the Clocaenog Forest wind farm by virtue of The Clocaenog Forest Wind Farm Order 2014 (SI 2014, No 2441).
- 2.4.4 The Applicant has confirmed that construction has commenced in relation to Clocaenog Forest wind farm [REP7-008].

### **Brenig wind farm**

- 2.4.5 The Brenig wind farm proposal was for the construction and operation of a wind farm comprised of 16 wind turbines with a maximum tip height not exceeding 100m, along with transformers, access tracks, on-site switchgear and metering building, two anemometry towers and associated construction and operational infrastructure on land east of Llyn Brenig, Nantglyn.
- 2.4.6 On 6 April 2009 DCC granted planning permission for the Brenig wind farm.
- 2.4.7 The Applicant has confirmed that construction has commenced in relation to Brenig wind farm [REP7-008].

- 2.4.8 On the 9 December 2015, a revision to the Brenig wind farm permission was refused by DCC.
- 2.4.9 The revised scheme was for the construction and operation of a wind farm comprised of 16 wind turbines along with transformers, access tracks, on-site switchgear and metering building, two anemometry towers and associated construction and operation infrastructure (revised scheme partially implemented under planning permission reference 25/2007/0565).
- 2.4.10 An appeal was lodged on 27 January 2016 and a decision is pending.

#### **Nant Bach wind farm**

- 2.4.11 The Nant Bach wind farm proposal was for the erection of 11 wind turbines and associated infrastructure on land at Mwdwl Eithin, South of Llanfihangel Glyn Myfyr, Corwen, Conwy.
- 2.4.12 On 3 May 2011 CCBC granted planning permission for the Nant Bach wind farm.
- 2.4.13 On 26 August 2015 the Applicant informed the Panel [AS-007] that Vattenfall Wind Power Limited would no longer be undertaking the development of the proposed Nant Bach wind farm.

#### **Derwydd Bach wind farm**

- 2.4.14 The Derwydd Bach wind farm proposal was for the construction of ten wind turbine generators (up to 120.5m in overall height) c/w electrical control room and compound area, new and improved access tracks, underground cabling, 80m anemometry mast, ancillary works and equipment, temporary construction works, borrow pit and vehicular access from county road.
- 2.4.15 On 15 July 2015 DCC granted planning permission for the Derwydd Bach wind farm.
- 2.4.16 At deadline 7, the Applicant submitted an addendum to its Strategic Options Report [REP7-007]. The report explained that on 12 October 2015, the connection agreement between the Applicant and Tegni Cymru Cyf for the proposed Derwydd Bach wind farm was terminated.

#### **Position at close of Examination**

- 2.4.17 At the close of the Examination the contracted generation capacity for the two remaining wind farms (Clocaenog Forest and Brenig) accounts for 125MW (73.5% of the 170MW originally applied for). The Applicant has confirmed that the network connection in the form submitted would still be required [REP7-002].

### **Clocaenog Forest collector substation**

- 2.4.18 An application for planning permission for the erection of a 132kV electrical substation and associated works at Clocaenog Forest, Saron, Denbigh was submitted to DCC in December 2014. The collector substation would provide the connection point for the north Wales wind farm to the proposed development.
- 2.4.19 On 15 July 2015 DCC refused planning permission for the collector substation for the following reasons:
- (1) It is the opinion of the local planning Authority, the scale, design and height of the proposed substation development would have a detrimental visual impact on this rural location. The development is therefore considered to be contrary to Denbighshire Local Development Plan Policy VOE9 and the advice and guidance contained in Welsh Government Planning Policy Wales Edition 7, and in particular Paragraphs 3.1.4 and 12.8.14.
  - (2) It is the opinion of the Local Planning Authority, the submission documents do not satisfactorily demonstrate that the proposed development would not give rise to an unacceptable cumulative noise effect. The proposed development therefore has the potential to give rise to an unacceptable impact on the residential amenity of neighbouring properties and is considered to be contrary to Denbighshire Local Development Plan Policy VOE9 and the advice and guidance contained in Welsh Government Planning Policy Wales Edition 7 in particular paragraphs 3.1.4 and 3.1.7 and the general advice contained in Technical Advice Note 11 (TAN 11).
- 2.4.20 An appeal was lodged on 13 October 2015 and a Hearing was held on 12 January 2016. A decision on the appeal is pending.

### **Underground cable from the terminal pole at Groesffordd Marli to St Asaph substation and proposed works to St Asaph substation**

- 2.4.21 The Applicant advocated that works for the underground cable between the existing St Asaph substation and the terminal point of the proposed overhead line are permitted development by virtue of the Town and Country Planning (General Permitted Development) Order 1995 [APP-109].
- 2.4.22 The Applicant also advocated that the works to St Asaph substation described below are permitted development under Part 17 Class G of the Town and Country Planning (General Permitted Development) Order 1995 [APP-108].
- 2.4.23 These works would comprise modifications to the layout and infrastructure of St Asaph grid substation including; relocation of the existing Holywell transformer and associated infrastructure to a spare bay within St Asaph grid substation; installation of a 120MVA reactor in the bay currently housing the Holywell transformer; installation of

associated equipment for the 120MVA reactor; diversion of existing cable circuits within the substation compound to facilitate the above changes; and a modification to the existing protection and control infrastructure within the substation's switchrooms.

- 2.4.24 In the signed Statement of Common Ground [REP9-037] between DCC and the Applicant, it was agreed that the works within the perimeter of St Asaph substation and the installation of an underground cable to connect St Asaph substation to the terminal point would be permitted development.

### **3 LEGAL AND POLICY CONTEXT**

#### **3.1 INTRODUCTION**

- 3.1.1 This chapter sets out the legal and policy context for the examination of the application to which the Panel had regard in carrying out its examination and in reaching its findings and making its recommendation to the Secretary of State for Energy and Climate Change.
- 3.1.2 The Applicant has set out the policies that it considers relevant in the Planning Statement [APP-157], the accompanying Technical Appendices [APP-159] and the Environmental Statement Chapter 5 - Planning Considerations [APP-096]. The Local Impact Reports (LIRs) submitted by Conwy County Borough Council/Cyngor Bwrdeistref Sirol Conwy (hereafter referred to in this report as CCBC) [LIR-001 and LIR-001a] and Denbighshire County Council/Cyngor Sir Dinbych (hereafter referred to in this report as DCC) [LIR-002] signpost policy documents to support the analysis of local impacts.

#### **3.2 PLANNING ACT 2008**

- 3.2.1 The application is for a Development Consent Order (DCO) under the Planning Act 2008 (as amended) (PA2008). This application is a Nationally Significant Infrastructure Project (NSIP) as it includes 'the installation of an electric line above ground' (section 14(1) (b) PA2008) and meets the provisions set out in section 16 PA2008.
- 3.2.2 Section 104(1) PA2008 provides that section 104 applies in relation to an application for an order granting development consent if a National Policy Statement has effect in relation to development of the description to which the application relates.
- 3.2.3 As there is a National Policy Statement (NPS) in place for this development it falls to be decided under section 104 PA2008. In deciding the application section 104(2) PA2008 requires the Secretary of State to have regard to:

*'(a) any national policy statement which has effect in relation to development of the description to which the application relates (a "relevant national policy statement"),*

*(aa) the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009,*

*(b) any local impact report (within the meaning given by section 60(3) submitted to the Secretary of State before the deadline specified in a notice under section 60(2),*

*(c) any matters prescribed in relation to development of the description to which the application relates, and*

*(d) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision'.*

- 3.2.4 While the Secretary of State must take the above into account, they must be satisfied that the decision made on the application would not: lead to the United Kingdom being in breach of any of its international obligations; or lead to the Secretary of State being in breach of any duty imposed on her by or under any enactment; or be unlawful by virtue of any enactment. The Secretary of State must also consider whether the adverse impacts of the proposed development outweigh its benefits, and whether any condition prescribed for deciding an application otherwise than in accordance with a NPS is met.
- 3.2.5 This report sets out the Panel's findings, conclusions and recommendations taking these matters fully into account and applying the approach set out in section 104 PA2008.

### **3.3 NATIONAL POLICY STATEMENTS**

- 3.3.1 As this is a project for electricity networks infrastructure there are two relevant NPSs which the Secretary of State is required to take into account:
- NPS EN-1: Overarching National Policy Statement for Energy (EN-1); and
  - NPS EN-5: National Policy Statement for Electricity Networks Infrastructure (EN-5)
- 3.3.2 These NPSs were produced by the Department of Energy and Climate Change (DECC) and received designation by the Secretary of State for Energy and Climate Change on 19 July 2011.
- 3.3.3 Chapter 3.7 of EN-1 sets out the need for new electricity network infrastructure. Paragraph 3.7.10 recognises the urgent need for new electricity transmission and distribution infrastructure (and in particular for new lines of 132kV and above) to be provided.
- 3.3.4 Paragraph 2.3.3 of EN-5 sets out the circumstances in which it is appropriate to consider a networks application separately from related proposals. There must be clear evidence of demand in that:
- The project is wholly or substantially supported by connection agreements or contractual arrangements to provide connection; or
  - The project is based on reasonably anticipated future requirements. This might be because it is located in an area where there is likely to be either significant increased generation or a significant increase in load on the existing network.

### **3.4 WELSH LEGISLATION, POLICY AND GUIDANCE**

- 3.4.1 In addition there is Welsh legislation, policy and guidance which will be important and relevant in the decision. These include:

## **LEGISLATION**

- Planning (Wales) Act 2015
- Government of Wales Act 2006

## **POLICY**

- Wales Spatial Plan (2008)
- Planning Policy Wales (Edition 8, 2016) (PPW 8)
- A Low Carbon Revolution - The Welsh Assembly Government Energy Policy Statement (March, 2010)
- Energy Wales: A Low Carbon Transition (2012)
- The Climate Change Strategy for Wales 2010

## **GUIDANCE**

- Technical Advice Note 5: Nature Conservation and Planning (2009) (TAN 5)
- Technical Advice Note 6: Planning for Sustainable Rural Communities (2010) (TAN 6)
- Technical Advice Note 8: Planning for Renewable Energy (2005) (TAN 8)
- Technical Advice Note 11: Noise (1997) (TAN 11)
- Technical Advice Note 12: Design (2014) (TAN 12)
- Technical Advice Note 13: Tourism (1997) (TAN 13)
- Technical Advice Note 15: Development and Flood Risk (2004) (TAN 15)
- Technical Advice Note 18: Transport (2007) (TAN 18)
- Technical Advice Note 20: Planning and the Welsh Language (2013) (TAN 20)
- Technical Advice Note 21: Waste (2014) (TAN 21)

## **PLANNING (WALES) ACT 2015**

- 3.4.2 The Planning (Wales) Act 2015 provided for a review of the Technical Advice Notes (TANs) which has yet to take place. Therefore the TANs listed above, are the extant Welsh guidance for the consideration of this application.

## **GOVERNMENT OF WALES ACT 2006**

- 3.4.3 The Government of Wales Act 2006 enables the Welsh Government to make legislation which then applies in Wales. The legislation must be within the legislative competence of the Welsh Government, i.e. relate to the devolved matters which are set out as a series of broad headings, or 'subjects' which include:
- environment: matters such as environmental protection, countryside, open spaces, nature conservation, coast habitats and marine environments;
  - local government, including areas of local authorities which include their boundaries of jurisdiction for matters such as development control and enforcement; and



- Town and Country Planning.

3.4.4 Some matters which would otherwise be encompassed by these broad headings are not devolved. Amongst the exceptions contained within the Government of Wales Act 2006, Schedule 7, Paragraph 18, is development consent under PA2008.

### **THE WALES SPATIAL PLAN (2008)**

3.4.5 The Wales Spatial Plan sets out cross-cutting national spatial priorities. These provide the context for the application of national and regional policies for specific sectors, such as health, education, housing and the economy, reflecting the distinctive characteristics of different sub-regions (areas) of Wales and their cross-border relationships. It identifies six sub-regions in Wales without defining hard boundaries, reflecting the different linkages involved in daily activities. The North Wales Wind Farms Connection project is in the North-east Wales Border and Coast region which amongst other things must play its part in mitigating and adapting to the impacts of climate change (paragraph 16.56).

### **PLANNING POLICY WALES**

3.4.6 Planning Policy Wales (Edition 8, 2016) (PPW 8) sets out the land use planning policies of the Welsh Government. Paragraph 12.8.1 indicates that the Welsh Government is committed to playing its part in meeting the UK's required target of 15% of energy being from renewables by 2020. It seeks to deliver an energy programme which contributes to reducing carbon emissions as part of the approach to tackling climate change whilst enhancing the economic, social and environmental well-being of the people and communities of Wales, as outlined in Energy Wales: A Low Carbon Transition.

3.4.7 An integrated approach should be adopted towards planning additional electricity grid network infrastructure and it will be needed to support the Strategic Search Areas (SSAs). TAN 8 identifies areas in Wales which, on the basis of substantial empirical research, are considered to be the most appropriate locations for large-scale wind farm developments; these areas being referred to as SSAs. The proposed connection serves SSA A, Clocaenog Forest.

### **A LOW CARBON REVOLUTION - THE WELSH ASSEMBLY GOVERNMENT ENERGY POLICY STATEMENT (MARCH, 2010)**

3.4.8 As part of the Welsh Government's actions to produce low carbon energy on a large scale, "A Low Carbon Revolution" stated their aims for on-shore installed wind generation capacity in Wales by 2015/17. In order to achieve this they stated that amongst other things they would optimise the use of the existing Strategic Search Areas set out in Technical Advice Note 8: Planning for Renewable Energy (2010) and work closely with grid companies and the regulator to ensure that grid connections are provided sensitively, including seeking that

connections should run underground where they would otherwise impact on protected landscapes.

### **ENERGY WALES: A LOW CARBON TRANSITION (2012)**

- 3.4.9 Energy Wales: A Low Carbon Transition (2012) sets out how the Welsh Government intends to drive the change to a sustainable, low carbon economy for Wales.
- 3.4.10 It recognises that if Wales' energy ambitions are to be achieved, its energy infrastructure requires investment, reinforcement and upgrading.
- 3.4.11 It also identifies that the Welsh Government will continue to set out its expectations of a grid and distribution network that enables the most to be made of on-shore and off-shore natural resources; and a grid with the capacity to transmit generated low carbon energy.

### **THE CLIMATE CHANGE STRATEGY FOR WALES (2010)**

- 3.4.12 The Climate Change Strategy for Wales (CCSW) seeks to reduce greenhouse gas emissions by 3% a year. The focus is principally on improving energy efficiency and the promotion of low-carbon generation.

### **TECHNICAL ADVICE NOTE 8 (TAN 8)**

- 3.4.13 As the proposed connection would serve SSA (A) Clocaenog Forest, TAN 8 is of relevance to this application. TAN 8 relates to the land use planning considerations of renewable energy; however UK and national energy policy provide its context.
- 3.4.14 Paragraph 4.1.5 of NPS EN-1 states that the energy NPSs have taken account of the relevant TANs in Wales.
- 3.4.15 Paragraph 2.13 of TAN 8 Annex C recognises that the re-enforcement of the network in North Wales through the construction of new high voltage distribution and transmission lines is vital to the realisation of any significant additional generating capacity.
- 3.4.16 The other TANs listed in paragraph 3.4.1 are considered in more detail in Chapter 4 of this report.

## **3.5 EUROPEAN REQUIREMENTS AND RELATED UK REGULATIONS**

### **RENEWABLE ENERGY DIRECTIVE 2009**

- 3.5.1 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.

**COUNCIL DIRECTIVE ON THE CONSERVATION OF NATURAL HABITATS AND WILD FAUNA AND FLORA (92/43/EEC) (THE HABITATS DIRECTIVE)**

- 3.5.2 The Habitats Directive (together with the Council Directive on the conservation of wild birds (2009/147/EC) form 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 Habitats 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. It requires designation of such areas as Special Areas of Conservation (SACs).
- 3.5.3 The Applicant submitted a Habitats Regulations Assessment No Significant Effects Report (HRA NSER) to support their application. The Panel is satisfied that the information provided in the NSER and during the Examination is valid for the purposes of the HRA in relation to the proposed option B changes to the project submitted during the Examination by the Applicant.
- 3.5.4 The Habitats Directive and its implications have been taken into account in considering the application, and these are addressed in Chapter 6 of this report.

**COUNCIL DIRECTIVE ON THE CONSERVATION OF WILD BIRDS (2009/147/EC) (THE BIRDS DIRECTIVE)**

- 3.5.5 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 comprising the most suitable territories for these species as Special Protection Areas (SPAs). Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.
- 3.5.6 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.
- 3.5.7 The Birds Directive and its implications have been taken into account in considering the application and these are addressed in Chapter 6 of this report.

### **THE RAMSAR CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE 1971 (AS AMENDED)**

- 3.5.8 The Ramsar Convention on Wetlands of International Importance 1971 (as amended) (the Ramsar Convention) is an international treaty that provides a framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. The Convention applies a broad definition of wetlands, which includes lakes, rivers, aquifers, marshes, wet grasslands and estuaries. Participating nations are expected to designate relevant sites, known as 'Ramsar sites', to be included on the Ramsar List of Wetlands of International Importance, and the UK Government has designated a number of such sites. The Government has chosen to apply, as a matter of policy, the legislative provisions that apply to the consideration of SACs and SPAs to Ramsar sites, even though these are not European sites as a matter of law.
- 3.5.9 The Ramsar Convention and its implications have been taken into account in considering the application, and these are addressed in Chapter 6 of this report.

### **THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010 (AS AMENDED) (THE HABITATS REGULATIONS)**

- 3.5.10 The Habitats Regulations replaced The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) in England and Wales. The Habitats Regulations (which are the principal means by which the Habitats Directive is transposed in England and Wales) updated the legislation and consolidated all the many amendments which have been made to the regulations since they were first made in 1994.
- 3.5.11 The Habitats Regulations apply in the terrestrial environment and in territorial waters out to 12 nautical miles. The Habitats Directive and the Birds Directive are transposed in UK offshore waters by separate regulations: The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (as amended).
- 3.5.12 The Conservation of Habitats and Species (Amendment) Regulations 2012 came into force on 16 August 2012 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 the Habitats Directive and the Birds Directive are transposed clearly.
- 3.5.13 As stated in NPS EN-1, when determining this application the Secretary of State must, in accordance with the Habitats Regulations, consider whether the proposed development may have a significant effect on a European site of nature conservation importance alone or in combination with other plans or projects. The Report on the Implications for European Sites (RIES) [PD-021] complies, documents,

and signposts information provided within the application and subsequent information submitted throughout the Examination by both the Applicant and Interested Parties (IPs), up to 11 December 2015, in relation to potential effects on European sites. The Panel has set out its findings and conclusions in relation to Habitats Regulations assessment in Chapter 6.

### **ESTABLISHING A FRAMEWORK FOR THE COMMUNITY ACTION IN THE FIELD OF WATER POLICY (2000/60/EC) (THE WATER FRAMEWORK DIRECTIVE)**

- 3.5.14 The Water Framework Directive was adopted by the Council on 23 October 2000 and came into force in December 2000. Some amendments have been introduced into the Directive since 2000.
- 3.5.15 To be in compliance with NPS EN-1 the Secretary of State must take the Water Framework Directive into account.

### **3.6 OTHER LEGAL AND POLICY PROVISIONS**

#### **UNITED NATIONS CONVENTION ON BIOLOGICAL DIVERSITY 1992**

- 3.6.1 As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the Panel has had regard to this Convention in considering the likely impacts of the proposed development and appropriate objectives and mechanisms for mitigation and compensation.
- 3.6.2 This Convention is of relevance to biodiversity and ecology which are considered in Section 5.1 of this report.

#### **NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949 (AS AMENDED)**

- 3.6.3 This Act provides the framework for the establishment of National Parks and Areas of Outstanding Natural Beauty (AONBs). It also establishes powers to declare National Nature Reserves (NNRs), to notify Sites of Special Scientific Interest (SSSIs) and for local authorities to establish Local Nature Reserves (LNRs).
- 3.6.4 National Parks and AONBs have statutory protection in order to conserve and enhance the natural beauty of their landscape. National Parks and AONBs are designated for their landscape qualities. The purpose of designating a National Park or 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.
- 3.6.5 Section 5 of the Act requires that:

*"(1) The provisions of this Part of this Act shall have effect for the purpose-*

- (a) *of conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas specified in the next following subsection; and*
- (b) *of promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public."*

3.6.6 The statutory protection of the Clwydian Range and Dee Valley (Bryniau Clwyd a Dyffryn Dyfrdwy) AONB, hereafter referred to as the Clwydian Range and Dee Valley AONB, and Snowdonia National Park (Parc Cenedlaethol Eryri), hereafter referred to as Snowdonia National Park, is considered in Chapter 5 of this report.

### **COUNTRYSIDE AND RIGHTS OF WAY ACT 2000 (AS AMENDED)**

3.6.7 The Countryside and Rights of Way Act 2000 (as amended) brought in new measures to further protect AONBs, with new duties for the boards set up to look after AONBs. These included meeting the demands of recreation, without comprising the original reasons for designation and safeguarding rural industries and local communities.

3.6.8 The role of local authorities was clarified, to include the preparation of management plans to set out how they will manage the AONB asset. There was also a new duty for all public bodies to have regard to the purposes of AONBs. The Act also brought in improved provisions for the protection and management of SSSIs.

3.6.9 This is relevant to the examination of effects on and mitigation in relation to impacts on any AONB affected by the proposed development. The proposed development is approximately 7km to the West of the Clwydian Range and Dee Valley AONB and this is considered in Section 5.2 of this report.

### **THE WILDLIFE AND COUNTRYSIDE ACT 1981 (AS AMENDED)**

3.6.10 The Wildlife and Countryside Act 1981 (as amended) (W&CA) 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 and geological or physiographical features by the countryside conservation bodies (in Wales, Natural Resources Wales commonly known as Cyfoeth Naturiol Cymru or Natural Resources Wales and hereafter referred to in this report as NRW). The Act also contains measures for the protection and management of SSSIs.

3.6.11 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 relating to public rights of way and Part IV relating to miscellaneous provisions. If a species protected under Part I is likely to be affected by development, a protected species licence will be required from NRW.

3.6.12 This Act has relevance to consideration of impacts on SSSIs and on protected species and habitats including European sites. All European

sites on land above the mean low water mark will have previously been notified as SSSIs. There are no statutorily designated European sites within or adjacent to the application site. The nearest SAC is Coedwigoedd Dyffryn Elwy/Elwy Valley Woods), which is about 0.7km from the application site. The nearest SPA is Bae Lerpwl/Liverpool Bay, which is about 8km from the application site. The nearest Ramsar site is the Dee Estuary, which is about 20km from the application site. Potential effects on these European sites are reported in Chapter 6 of this report.

### **PROTECTION OF BADGERS ACT 1992**

- 3.6.13 Under the Protection of Badgers Act (1992) it is an offence to capture, kill or injure a badger, to damage or destroy a sett, to block access to a sett or to disturb a badger in its sett. It is also an offence to treat a badger cruelly, to deliberately send or intentionally allow a dog into a sett or to bait or dig for badgers. Interference with badger setts due to development in Wales should be avoided, but if this is not possible, developers should apply to NRW for a protected species licence for development activities likely to affect badgers.
- 3.6.14 The effect of the proposed development on badgers and their setts is considered in Section 5.1 of this report.

### **NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT (2006)**

- 3.6.15 The Natural Environment and Rural Communities Act (NERC) made provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, SSSIs, National Parks and the Broads. It includes a duty that every public body must have regard, so far as it is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. In complying with this, regard must be given to the United Nations Convention on Biological Diversity of 1992.
- 3.6.16 Under section 42 of the Act, the National Assembly for Wales must publish a list of the living organisms and types of habitat which are of principal importance for the purpose of conserving biodiversity. This list is used by all decision makers in Wales in implementing their duty under section 40 of the Act to have regard to the purpose of conserving biodiversity.
- 3.6.17 How the proposed development would affect biodiversity and ecology and landscape matters is considered in Sections 5.1 and 5.2 of this report.

## **3.7 MADE DEVELOPMENT CONSENT ORDERS**

- 3.7.1 The Applicant has made reference to the grant of development consent for the Clocaenog Forest Wind Farm Order 2014, and that the current application is required in order to provide a new electricity

connection for that development. The need for the proposed development is considered in detail in Chapter 4 of this report.

- 3.7.2 The Applicant has drawn support from development consent orders for electric lines, such as the National Grid (King's Lynn B Power Station Connection) Order 2013 and the National Grid (North London Reinforcement Project) Order 2014.

### **3.8 LISTED BUILDINGS, CONSERVATION AREAS AND SCHEDULED MONUMENTS**

- 3.8.1 When deciding an application which is likely to affect a listed building or its setting, a conservation area, or a scheduled monument or its setting, the decision-maker must comply with the duties set out in Regulation 3 of The Infrastructure Planning (Decisions) Regulations 2010. Matters regarding the historic environment are discussed in Section 5.4 of this report.

### **3.9 OTHER RELEVANT POLICY**

#### **UK RENEWABLE ENERGY STRATEGY (JULY 2009)**

- 3.9.1 This Strategy sets out how the UK proposes to meet the targets above. In paragraph 2.18, it states *"(O)ur lead scenario suggests that by 2020 about 30% or more of all our electricity (about 117 TWh) - both centralised and small-scale generation - could come from renewable sources, compared to around 5.5% today. We expect the majority of this growth to come from wind power, through the deployment of more onshore and offshore wind turbines"*.

### **3.10 LOCAL IMPACT REPORTS**

- 3.10.1 Section 104 PA2008 states that in deciding an application the Secretary of State must have regard to any LIRs within the meaning of section 60(3) PA2008. There is a requirement under section 60(2) PA2008 to give notice in writing to each local authority falling under section 56A inviting them to submit a LIR. Notice in relation to this application was given on 4 August 2015 [PD-008 and PD-009].
- 3.10.2 The relevant local authorities are Conwy County Borough Council (CCBC) and Denbighshire County Council (DCC). LIRs were received from CCBC [LIR-001 and LIR-001a] and DCC [LIR-002]. The principal issues raised in the two LIRs are discussed further in Chapter 4 of this report.

### **3.11 THE DEVELOPMENT PLAN**

- 3.11.1 The application relates to land in the local authority areas of CCBC and DCC. As outlined in the Applicant's Planning Statement [APP-157] and the LIRs provided by both local authorities, the following local planning policy documents are relevant to the consideration of this application:



- the Conwy Local Development Plan 2006 - 2021 (adopted June 2013); and
- the Denbighshire Local Development Plan 2007 - 2022 (adopted October 2013)

3.11.2 As stated in paragraph 4.1.5 of NPS EN-1, if there is any conflict between the above documents and a NPS, the NPS takes precedence due to the national significance of the proposed infrastructure.

### **3.12 THE SECRETARY OF STATE'S POWERS TO MAKE A DEVELOPMENT CONSENT ORDER**

3.12.1 The Panel was aware of the need to consider whether changes to the application meant that the application had changed to the point where it was a different application and whether the Secretary of State would have power therefore under section 114 PA2008 to make a DCO having regard to the development consent applied for.

3.12.2 The Secretary of State will be aware of the March 2015 updated Planning Act 2008: Guidance for the examination of applications for development consent issued by the Department for Communities and Local Government, paragraphs 109 to 115, which provides guidance in relation to changing an application post acceptance.

3.12.3 The view expressed by the Government during the passage of the Localism Act was that section 114(1) places the responsibility for making a DCO on the decision-maker, and does not limit the terms in which it can be made.

3.12.4 In exercising this power the Secretary of State may wish to take into account the following views of the Panel on the proposed changes to the application which are that the Applicant's proposed changes (referred to as option B) constitute a change to the application for development consent but are not so material a change as to constitute a new application. The Panel's procedural decision of 2 October 2015 [PD-013] sets out the reasons for the acceptance of the minor changes to the route alignment.

## **4 FINDINGS AND CONCLUSIONS IN RELATION TO THE MAIN ISSUES, THE PRINCIPLE OF THE DEVELOPMENT AND RELEVANT POLICY**

### **4.1 MAIN ISSUES IN THE EXAMINATION**

- 4.1.1 The Panel's initial assessment of principal issues for the Examination, as required under section 88 of the Planning Act 2008 (as amended) (PA2008) and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010, was made prior to the Preliminary Meeting (PM), which was held on 28 July 2015. In making its initial assessment of principal issues, the Panel had regard to the application documents, the Overarching National Policy Statement for Energy (EN-1), the National Policy Statement for Electricity Networks Infrastructure (EN-5), relevant DCLG Guidance, Planning Policy Wales (Edition 8, January 2016) (PPW 8) and relevant Welsh Government Technical Advice Notes (TANs), as well as relevant representations (RRs) submitted by Interested Parties (IPs) [RR-001 to RR-090].
- 4.1.2 The initial assessment of principal issues was distributed to all IPs as Annex C to the Rule 6 letter dated 2 July 2015. This explained that it was not a comprehensive or exclusive list of relevant matters and that regard would be had to all important and relevant matters in reaching a recommendation after the Examination is concluded. The list of principal issues was not presented in an order of importance. It was explained that a number of the principal issues had an interrelationship and overlap and these were to be reflected in the Examination.
- 4.1.3 Principal issues were identified under 13 main headings. Full details of the matters considered under each of the 13 headings are set out in Annex C of the Rule 6 letter [PD-004]. The main headings are as follows:
- nature of development and relationship with wind farms at Clocaenog; Brenig; Derwydd Bach and Nant Bach as well as the electricity sub-station at St Asaph and the new collector station at Clocaenog Forest;
  - landscape and visual impact;
  - heritage;
  - biodiversity and geological conservation;
  - flood risk;
  - construction phase;
  - operational phase;
  - decommissioning;
  - socio-economic;
  - land use and land-take for the development;
  - content of the draft Development Consent Order (DCO);
  - monitoring, mitigation and management plans; and
  - compulsory acquisition and other land matters.

- 4.1.4 At the PM, the Panel heard a number of representations about the list of principal issues identified in the Rule 6 letter.
- 4.1.5 The Panel's note of the PM [EV-003], recorded the matters that had been discussed at the meeting. In relation to principal issues, these included a request from Mr Hopkinson to add 'costs' to the list of principal issues and Ms Harman questioned the nature of the development and its relationship with Clocaenog wind farm and the other three wind farms, as she considered that they should not be considered in the same context as the wind farms are not yet in operation. Both points were noted by the Panel.
- 4.1.6 The Panel has considered the principal issues that it identified in the Rule 6 letter as well as the additional matters raised by IPs in the PM. The Panel's detailed findings and conclusions on all the relevant and important matters are set out in Chapters 4 and 5 of this report, except for matters relating to Habitats Regulations assessment, compulsory acquisition (CA) and the draft development consent order, which are respectively contained in Chapters 6, 8 and 9. All representations, even if not explicitly mentioned, have been fully considered in reaching the conclusions set out.

#### **ISSUES ARISING FROM WRITTEN SUBMISSIONS**

- 4.1.7 A number of issues were raised in written representations (WRs), nearly all of which fell within the categories of issues identified in the Panel's initial assessment of principal issues, with landscape and visual impact, impacts on the setting of listed buildings, biodiversity, tourism, impacts on farming and land use, health impacts arising from electric and magnetic fields (EMFs), and cumulative impacts of developments at Cefn Meiriadog, being the more frequently mentioned matters. In addition, there were numerous concerns about the CA of rights over land and the planting of trees. A considerable number of IPs stated in their RRs and WRs that the development should be undergrounded. This matter is considered in report Section 4.5.
- 4.1.8 The need for the development was questioned by a few IPs, for example, Mr John Hopkinson [RR-038] stated that the development, in the form proposed, would load unnecessary extra costs onto the electricity consumer. The Panel has taken into account the matters raised in its consideration of the Applicant's need case in Section 4.2 of this report.
- 4.1.9 There was some criticism of the Applicant's pre-application consultation process, with a few IPs saying that they had not been involved in the early stages of the consultation. For example, Mr Hotham [RR-019] stated that, along with five other properties in Cefn Meiriadog, they had not been notified of the project until phase 2 of the pre-application process by which time the preferred route had been all but determined. Despite the submissions that they made prior to the submission of the application they considered that they were unable to have any influence on the selection of the route.

- 4.1.10 The Planning Inspectorate, on behalf of the Secretary of State for Communities and Local Government, decided to accept the application for examination. In reaching the decision to accept the application, the Secretary of State:
- in respect of section 55(3)(e), had regard to the matters set out in section 55(4), and concluded that the Applicant had complied with Chapter 2 of Part 5 PA2008 (pre-application procedure); and
  - in respect of section 55(3) (f), had regard to the extent to which those matters set out in section 55(5A) have either been complied with or followed, and concluded that the application (including accompaniments) is of a satisfactory standard.
- 4.1.11 The Secretary of State took into account the adequacy of consultation responses from the relevant local planning authorities, Conwy County Borough Council (CCBC) and Denbighshire County Council (DCC), as well as Snowdonia National Park Authority and Powys County Council when coming to this decision.
- 4.1.12 The Panel has considered that even if there was a defect in the round one consultation, the IPs that raised the concerns about not being consulted in the early stages of the process had opportunities to provide written representations to the Examination and participate in the hearings. The Panel finds that it is now for it to consider the merits of the application and recommend to the relevant Secretary of State accordingly.

#### **ISSUES ARISING IN LOCAL IMPACT REPORTS**

- 4.1.13 The Local Impact Reports (LIRs) submitted by CCBC [LIR-001 and LIR-001a] and DCC [LIR-002] were submitted at deadline 2.
- 4.1.14 Most of the principal matters raised in the submitted LIRs coincided with the Panel's initial assessment of principal issues.
- 4.1.15 The main issues raised in the CCBC LIR were as follows:
- A development plan constraint in relation to small areas of safeguarded sand and gravel resources to the south of B5382 and in the vicinity of Berain and a small area of safeguarded hard rock resource to the north of Berain.
  - Development plan constraints affecting the surrounding area (the setting of the Elwy and Aled Valley Special Landscape Area (SLA), the Rhyd-y-Foel to Abergele SLA, and the Hiraethog SLA).
  - Other significant constraints including listed buildings, including Grade 2\* listed buildings at Berain; ancient semi-natural woodland; and local wildlife sites (LWSs).
  - Local landscape and visual impacts on Visual and Sensory Aspect Areas (VSAAs) at Afon Elwy Valley (East) and Llanefydd lowlands and the setting of two other VSAAs.
  - Visual impacts from five of the Environmental Statement (ES) viewpoints in Conwy which were assessed as 'significant', in

particular the impact from viewpoint 11 on the A543 which forms a regionally important tourist route into Conwy from the east.

- Impacts on three ancient semi-natural woodlands and impacts on other woodlands, trees and hedgerows.
- Impacts on communities.
- Impacts from highways and traffic.
- The life of the development and decommissioning.

4.1.16 The main issues raised in the DCC LIR were as follows:

- relevant planning history and any associated issues;
- ecology and biodiversity;
- landscape and visual;
- historic environment;
- flood risk and water resources;
- land use and agriculture;
- socio-economics and tourism;
- traffic and transport;
- emissions;
- electric and magnetic fields; and
- geology (mineral safeguarded areas).

4.1.17 The Panel has had full regard to the matters identified in the LIRs and these were further explored and considered during the course of the Examination.

4.1.18 Chapter 5 of this report comprises the Panel's detailed consideration of each of the subject matters identified above in relation to the proposed development. The Panel's findings and conclusions are based on the relevant legal and policy framework, plus consideration of issues arising from the LIRs, written submissions and those made orally at the hearings, as required by section 104 PA2008.

## **4.2 THE PRINCIPLE OF DEVELOPMENT**

4.2.1 The proposed development comprises a new 17.4km 132,000 kilovolt (132kV) overhead electricity distribution connection from the proposed North Wales Wind Farms collector substation near Clocaenog Forest to the existing St Asaph substation. The connection would take the form of a 132kV overhead line which would comprise conductors supported by double wooden poles. Its purpose would be to facilitate the connection of the North Wales Wind Farms to the distribution network. The Applicant considered that the implementation of the proposed development is important to facilitate renewable energy production to achieve the UK target of 15 percent of energy from renewables by 2020 [APP-092].

### **NEED FOR THE DEVELOPMENT**

4.2.2 National Policy Statement EN-1 advocates that electricity meets a significant proportion of our overall energy needs and our reliance on it is likely to increase. It states, at paragraph 3.1.1, that the UK needs all types of energy infrastructure in order to achieve energy

security at the same time as dramatically reducing greenhouse gas emissions. Consequently it indicates that all applications for infrastructure covered by the NPS should be assessed on the basis that the Government has demonstrated that there is a need for those types of infrastructure and that the scale and urgency of that need is as described in Part 3 of EN-1 (paragraph 3.1.3).

- 4.2.3 Section 3.7 of EN-1 deals specifically with the need for new electricity network infrastructure and highlights that particularly for wind farms much of the new electricity infrastructure that is needed will be located in places where there is no existing network infrastructure (paragraph 3.7.1) and may also be in areas that should be protected from such intrusions (paragraph 3.7.7). Paragraph 3.7.10 states that the need for any given proposed new connection has been demonstrated if it represents an efficient and economical means of connecting a new generating station to the distribution network. However, this statement is caveated by recognising that there will be more than one technological approach by which it is possible to make such a connection (for example by overhead line or underground cable) and the costs and benefits of these alternatives should be properly considered as set out in EN-5 before any overhead line proposal is consented.
- 4.2.4 The Applicant's need case is set out in Chapter 1 of the Environmental Statement [APP-092] and is repeated in the Planning Statement [APP-157]. In July 2005 the Welsh Government in support of the EU Renewable Energy Directive published Technical Advice Note 8 'Planning for Renewable Energy' (TAN 8) which identified seven broad 'Strategic Search Areas' (SSAs) for onshore wind farms in Wales. One of these SSAs is Clocaenog Forest (SSA A) where a number of wind farms have been consented, four of which required connections to the distribution network at that time.
- 4.2.5 Under the terms of their transmission licence, SP Manweb (the Applicant) who is the Distribution Network Operator for Mid and North Wales, is obliged to make an offer of a connection in response to each valid application made. Four wind farm developers in SSA A had applied for and agreed terms with the Applicant to provide them with connections to the electricity distribution network. In order to provide this connection the Applicant submitted the current application. Details of the four wind farms that originally required connections to the distribution network are listed in the table below.

Wind Farm	Developer	Number of turbines	Proposed Installed Capacity (MW)	% Share of the application proposed capacity
Clocaenog Forest	RWE Innogy UK	32	96	57
Brenig	Brenig Wind Ltd	16	29	17
Nant Bach	Vattenfall Wind Power Ltd	11	24	14
Derwydd Bach	Tegni Cymru Cyf later changed to Melin Derwydd Limited	10	21	12

- 4.2.6 During the course of the Examination the Applicant advised that two of the wind farm developers – Vattenfall Wind Power Limited [AS-007] and Melin Derwydd Limited [REP7-002] – had terminated their connection agreement with SPM as they were not intending to proceed with Nant Bach wind farm and Derwydd Bach wind farm respectively.
- 4.2.7 As a result a number of IPs questioned whether a 132kV overhead line would be required [REP1-011 and REP1-030]. The Applicant responded to these concerns [REP7-002] and to questions put by the Panel at the Issue Specific Hearings (ISHs) in September [EV-016] and December [EV-032]. They advised that the contracted generation capacity of the two remaining wind farms (Clocaenog Forest and Brenig) accounts for 125MW (74%) of the total 170MW of the original contracted generation and therefore the network connection in the form submitted would still be required.
- 4.2.8 In view of two wind farm developers indicating that they were not proposing to proceed with their consented schemes and the Written Ministerial Statement of the 18 June 2015 regarding on-shore wind subsidies, a number of IPs questioned whether any of the wind farms would proceed [EV-032]. This matter was also raised by the Panel at the ISH in September [EV-016]. In response the Applicant confirmed that development had commenced on both Clocaenog and Brenig wind farms [REP7-008], albeit they acknowledged that the works to date were very limited, and as a result the Applicant was confident that the developments would proceed and the network connection would be required. Furthermore, Clocaenog Forest and Brenig wind farms represent the two largest wind farms of the group with Clocaenog Forest being the largest wind farm with 32 turbines which would contribute 57% of the original total generation. The Applicant also highlighted that they would be unlikely to proceed with the connection if the wind farms were not developed as the wind farm developers were covering the cost of the connection. Therefore unless and until, all the wind farm developers cancel their connection agreements, the Applicant advocated that they must develop and deliver the connection to meet the contractual connection date. Whilst the contract could be varied by the customer, the current contractual delivery date is June 2017. Given its contractual obligations, the Applicant therefore considered that there is sufficient certainty regarding the development of wind farms in North Wales and now is the right time to seek consent.
- 4.2.9 At the close of the Examination the Clocaenog Forest collector substation was the subject of an appeal and therefore the Panel considers that there was a degree of uncertainty as to whether there would be a point to which the proposed development would connect. However, the Panel considers that if the appeal was dismissed, the lack of a connection point would be adequately managed through Requirement 18 of the recommended DCO (Appendix E) which would prevent commencement of the development until a planning

permission under part III of the Town and Country Planning Act 1990 has been granted for the collector substation. As a result the Panel considers that the lack of planning permission for the collector substation would not be a reason to refuse the proposed development.

- 4.2.10 The Panel finds no reason to disagree with the Applicant's conclusion that there is a need to provide an electricity connection for the wind farms and is satisfied that the Applicant's need case is reliable and robust. The proposed development would contribute to meeting the need for new electricity transmission and distribution infrastructure identified in EN-1. The Panel concludes that there is a compelling case for the development to provide an electricity connection for the consented wind farms. Further consideration of the various generic impacts of the project and the question of alternative connections, are considered in Chapters 4 and 5 of this report. However, in terms of the broad matters of principle, the Panel accept that the need for the proposed development has been satisfactorily demonstrated but cannot accept a long term (i.e. in perpetuity) need to retain the overhead line after the consented wind farms are decommissioned as, for the reasons set out in Chapter 5 of this report, in particular in terms of the effect on the historic environment (Section 5.4) and landscape and visual impact (Section 5.2), that indefinite need has not been justified to the satisfaction of the Panel.
- 4.2.11 Finally, TAN 8 (Annex D paragraph 2.13 of TAN 8) highlights that there is currently very restricted capacity for further wind power development in north and mid Wales and the reinforcement of the electricity network through the construction of new high voltage distribution and transmission lines is vital to the realisation of any significant additional generating capacity as well as providing a stronger more reliable network.

## **4.3 LEGISLATION AND POLICY CONTEXT**

### **CONFORMITY WITH NATIONAL POLICY STATEMENTS**

#### **National Policy Statements**

- 4.3.1 Section 104 (3) PA2008 requires that an application for development consent should be decided in accordance with the relevant NPSs, subject to the exceptions set out in sections 104(4) to 104(8) which are:
- Such a determination would lead to the UK being in breach of its international obligations.
  - Such a determination would lead to the Secretary of State to be in breach of any duty imposed on the Secretary of State by or under any enactment.
  - The adverse impact of the proposed development would outweigh its benefits.
  - Any condition prescribed for deciding an application otherwise than in accordance with a NPS is met.



- 4.3.2 As detailed in Chapter 3 of this report, the relevant energy NPSs are EN-1 (Overarching National Policy Statement for Energy) and EN-5 (National Policy Statement for Electricity Networks Infrastructure). They were considered by Parliament and formally designated in July 2011. They provide the primary basis for decision making on this application for development consent.

### **Overarching National Policy Statement for Energy (EN-1)**

- 4.3.3 EN-1 states that it is critical that the UK continues to have secure and reliable supplies of electricity as it makes the transition to a low carbon economy.
- 4.3.4 Part 4 of EN-1 sets out certain general assessment principles against which applications relating to energy infrastructure are to be considered. They do not relate to the need for new energy infrastructure (which is covered by Part 3), or to particular physical impacts of its construction or operation (which are covered by Part 5 of EN-1 and in EN-5).
- 4.3.5 The general assessment principles set out in EN-1 which are relevant to the proposed development deal with environmental statements; habitats and species regulations; consideration of alternatives; good design; climate change adaptation; pollution control and other environmental regulatory regimes; safety; health; common law nuisance and statutory nuisance and national security.
- 4.3.6 The application is accompanied by an Environmental Statement (ES) describing the aspects of the environment likely to be significantly affected by the proposed development. The potential effects of the proposed development have been assessed alone, as well as in combination with other relevant plans and projects. Where necessary relevant mitigation measures have been identified.
- 4.3.7 The Applicant has also produced a Habitats Regulations Assessment report [APP-089] to enable the Panel to assess whether the project is likely to have a significant effect on a European site and whether an appropriate assessment is required. The Applicant concluded that there would be 'no likely significant effect' [APP-089] on any European sites of nature conservation importance.
- 4.3.8 The ES includes information about the alternatives that have been studied. The main reasons for the Applicant's choices are set out in Chapter 3 of the ES [APP-094].
- 4.3.9 The design evolution of the proposed development is also set out in Chapter 3 of the ES [APP-094]. The Applicant contends that, having taken into account the guidance provided by the Holford Rules and the information provided in the LANDMAP datasets the proposed development complies with the principles of good design through routing; alignment; design; and, in order to minimise or to mitigate adverse impacts, the use of wooden poles over a metal lattice tower. The Applicant's design of the overhead line and its resilience to climate

change are outlined in the Flood Consequence Assessment (FCA) [APP-086] and within the relevant individual chapters of the ES [APP-100 and APP-106]. As a result the Applicant states that the FCA is in accordance with Section 4.8 (Climate change adaptation) of EN-1.

- 4.3.10 EN-1 advocates that when considering pollution control the decision maker should work on the assumption that the relevant pollution control regime would be applied and enforced by the relevant regulator and therefore should focus on whether the development itself is an acceptable use of land (paragraph 4.10.3). EN-1 concludes that, regarding pollution control, consent should not be refused on the basis of pollution impacts unless the decision maker has good reason to believe that any relevant necessary operational pollution control permits or licences or other consents will not subsequently be granted.
- 4.3.11 Relevant chapters of the ES have assessed the likely requirement for other environmental permits and other consents, which for the proposed development are very limited, and demonstrated that the Applicant has liaised with the regulatory authorities involved. These include specific chapters in the ES relating to flood risk and water quality [APP-100], emissions [APP-104] and electric and magnetic fields [APP-105].
- 4.3.12 EN-1 recognises that energy distribution may have negative impacts on some people's health (paragraph 4.13.1). Chapter 14 of the ES [APP-105] outlines the approach taken by the Applicant to health and safety issues that might arise from the construction and operation of the infrastructure and indicates the manner in which it is proposed to mitigate and minimise such impacts.
- 4.3.13 Paragraph 4.14.2 of EN-1 highlights that it is very important to consider at the application stage possible sources of nuisance and how they may be mitigated or limited. Rather than dealing with this as a specific issue the Applicant has considered it at the relevant points throughout their application documentation.
- 4.3.14 EN-1, Part 5 sets out generic impacts of energy infrastructure projects which must be considered in the ES which accompanies an application. The generic impacts relevant to the proposed development have been addressed in the ES which has assessed the potential effects arising during pre-construction, construction, operation and decommissioning of the proposed development and the inter-relationship of these effects.

#### **National Policy Statement for Electricity Networks Infrastructure (EN-5)**

- 4.3.15 EN-5 also indicates that the decision maker should start its assessment of an application for infrastructure covered by the NPS on the basis that the need for the project has already been demonstrated.

- 4.3.16 EN-5 does not seek to direct an applicant towards a particular site or route and acknowledges that the general location of electricity network projects will often be determined by the location of a particular generating station in relation to the existing network. However, the NPS acknowledges that the most direct route for a new connection may not be the most appropriate given engineering and environmental considerations.
- 4.3.17 Part 2 of EN-5 provides a framework for assessing such proposals. It suggests, for a number of topic areas, what the applicant's own assessments should address and what principles should be adopted in decision-making. It also indicates the weight that should be given to certain issues and how mitigation measures should be considered, in particular how these could be enforced through requirements or obligations. It also advocates that any assessment should also cover those issues raised in EN-1.
- 4.3.18 The Planning Statement and related technical appendices [APP-157 and APP-159] explain the assessment that the Applicant has made of the alternatives to the preferred connection and assess various aspects of the application in the light of EN-5.

### **Conclusion**

- 4.3.19 The proposed development would provide new electricity network infrastructure. EN-1 recognises this as being a category of development for which there is an urgent need. The Panel is satisfied that the application has taken into account the general principles of assessment that are relevant to the proposed development as set out in EN-1. In later chapters of this report consideration is given to whether the proposed development would achieve compliance with those general principles, and the generic impacts identified in EN-1 Part 5 and EN-5. The particular question of alternatives is considered in Section 4.5 of this report. Whether any serious detriment would be caused through the exercise of the CA powers sought is considered in Chapter 8 and the potential effect of the proposed development on European sites is covered in detail in Chapter 6.

### **CONFORMITY WITH WELSH LEGISLATION, POLICY AND GUIDANCE**

- 4.3.20 In addition to the NPSs the application must be considered against Welsh Government legislation. This includes the Planning (Wales) Act 2015; the Wales Spatial Plan (2008) and PPW 8 which is supplemented by a series of TANs. These along with the Ministerial Interim Planning Policy Statements and Welsh Government Circulars comprise the national planning policy and the Government planning advice for Wales.
- 4.3.21 The key themes of the above documents of relevance to the proposed development are:

- The requirement to achieve a significant reduction in greenhouse gas emissions and create a low carbon economy.
  - The need for new renewable energy infrastructure for both generation and distribution.
  - Promotion of environmental balance and undergrounding.
- 4.3.22 PPW 8 which sets out the land use planning policies of the Welsh Government makes clear the commitment made by the Welsh Government to contribute positively to the UK's energy supply, and the importance of the contribution provided from renewable sources to reducing greenhouse gas emissions. Whilst the proposed development would have no direct impact on the generation of the energy mix aspired to by the Welsh Government, it is would enable the supply of renewable energy, which is key to that energy mix.
- 4.3.23 The Welsh Spatial Plan - People, Places, Futures (2004, updated 2008) (the WSP) provides a broad 20 year vision for Wales which includes amongst other things:
- making sure that decisions are taken with regard to the impact beyond sectorial or administrative boundaries with the core values of sustainable development governing everything that the Welsh Government does; and
  - setting the context for local and community planning.
- 4.3.24 It is a key principle of the WSP that development should be sustainable. It defines sustainable development as improving the wellbeing and the quality of life for residents of Wales by integrating social, economic and environmental objectives in the context of the more efficient use of natural resources.
- 4.3.25 The WSP subdivides Wales into six sub-regions. The proposal would fall within the North East Wales sub-region which, amongst other things, must play its part in mitigating and adapting to the impacts of climate change (paragraph 16.56).
- 4.3.26 Under the Planning (Wales) Act (2015) the Welsh Government is undertaking a review of the TANs. However, no replacement drafts are currently available and until the TANs are reviewed they remain the relevant adopted planning advice for Wales.
- 4.3.27 Technical Advice Note 8: Planning for Renewable Energy (2005) (TAN 8) states that there is currently very restricted capacity for further wind-power developments in North and Mid Wales and the re-enforcement of the network through the construction of new high voltage distribution and transmission lines is vital (Annex C, Paragraph 2.12). TAN 8 does not specify routes or locations for distribution lines and states that the Distribution Network Operator has the responsibility for the routing of electrical cabling onwards from the substation to the nearest suitable point of the electricity distribution network. In paragraph 2.12 it advocates that this connection will be achieved either by a standard 3-wire system on wooden poles or by

underground lines but recognises that the costs of undergrounding are more expensive and therefore would only be justified for limited lengths and/or under special circumstances.

- 4.3.28 In addition to TAN 8 the following TANs are considered relevant to the consideration of the proposed development.
- 4.3.29 TAN 5: Nature conservation and planning (2009) (TAN 5) provides advice on how the land use planning system should contribute to protecting and enhancing biodiversity and geological conservation. Chapter 6 of the ES - Ecology and Biodiversity [APP-097] considers the effect of the proposed development on nature conservation interests (or features). The chapter concluded that subject to appropriate mitigation measures the proposed development would be consistent with TAN 5. The impacts of the proposed development on biodiversity and ecology are considered by the Panel in further detail in Chapters 5 and 6 of this report.
- 4.3.30 TAN 6: Planning for sustainable rural communities (2010) (TAN 6) recognises the need to respond to the challenges posed by climate change, for example by accommodating the need for renewable energy generation and to support living and working rural communities in order that they are economically, socially and environmentally sustainable (paragraph 2.1.1). Assessment of the socio-economic impacts was undertaken by the Applicant and is covered in Chapter 11 of the ES - Socio Economic and Tourism [APP-102] which found that the proposed development would not have any significant socio-economic impacts. The socio-economic impacts and the potential impacts on land use and land management are considered by the Panel in further detail in Sections 5.8 and 5.7 of this report.
- 4.3.31 TAN 11: Noise (1997); TAN 15: Development and flood risk (2004) and TAN 18: Transport (2007) are also relevant in assessing the proposed development in relation to construction impacts and TAN 15 is relevant to the location of one pole (No. 204) within the floodplain of the Afon Elwy/River Elwy (hereafter referred to as Afon Elwy).
- 4.3.32 The Applicant undertook assessments of site-based construction noise and vibration impacts and traffic and transport impacts, the results of which are detailed in Chapter 13 of the ES [APP-104], and the FCA [APP-086] the results of which are presented in Chapter 9 of the ES [APP-100]. The assessments found subject to appropriate mitigation measures that the proposed development would be consistent with TANs 11, 15 and 18. The construction impacts and flood risk and hydrology are considered in further detail by the Panel in Section 5.9 and Section 5.5 of this report, respectively.
- 4.3.33 TAN 12: Design (2014) whilst not specifically referring to overhead lines highlights the Welsh Government's strong commitment to achieving the delivery of good design in the built and natural environment which is fit for purpose and delivers environmental

sustainability, economic development and social inclusion at every scale throughout Wales (paragraph 2.2).

- 4.3.34 The Applicant has set out in the Strategic Options Report [APP-156] and Chapter 3 of the ES [APP-094] the evolution of the design and location of the proposed route. Section 3 of the Planning Statement [APP-157] provides a justification for the proposed route and why the Distribution Network Operator considers the choice of an overhead line would be appropriate. Good design is considered in detail by the Panel in Section 5.3 of this report.
- 4.3.35 TAN 13: Tourism (1997) recognises that tourism comprises a range of different but interdependent activities and that it makes a major contribution to the Welsh economy and therefore the issues that it raises may feature in development control decisions (paragraph 4). The effect of the proposed development on local tourism was a key concern of DCC [REP1-019 and LIR-002]. Assessment of the effects of the proposal on tourism are covered in Chapter 11 of the ES - Socio Economic and Tourism [APP-102] which found that the proposed development would not have a significant effect on tourism. The impact of the development on tourism is considered in detail by the Panel in Section 5.8 of this report.
- 4.3.36 Paragraph 5.1.1 of TAN 20: Planning and the Welsh Language (2013) recognises that signs can have a very visible impact on the character of an area, including its linguistic character. They are also one method of promoting the distinctive culture of Wales, which is of significance both to the identity of individual communities as well as the tourism industry. The outline Construction Environmental Management Plan (CEMP) [REP9-030] proposes that all development signage would be bilingual to be consistent with the requirements of TAN 20. Furthermore, to ensure that all parties could participate fully in the Examination Welsh language translation facilities were made available in all of the hearings, so that IPs could give evidence in either Welsh or English.
- 4.3.37 TAN 21: Waste (2014) provides advice on how the land use planning system should contribute towards sustainable waste management and resource efficiency. The outline CEMP [REP9-030] included embedded mitigation measures including the preparation of a Site Waste Management Plan in order to be consistent with the requirements of TAN 21. The management of waste is considered in detail by the Panel in Section 5.9 of this report.
- 4.3.38 The proposed development would provide new electricity infrastructure, for which the Planning (Wales) Act 2015; the Welsh Spatial Plan and PPW 8 recognise that there is a pressing need. The Panel is satisfied that the application has taken account of Welsh national policy and guidance. Consideration of whether the proposed development would achieve compliance is covered in further detail later on in this report. The particular question of undergrounding is considered in detail in Sections 4.5 (alternatives) 5.4 (historic

environment); 5.7 (land use and land management); 5.2 (landscape and visual impact) and Chapter 7 (the Panel's conclusions on the case for development consent). Construction impacts and flood risk and hydrology are covered in further detail in Sections 5.9 and 5.5.

## **CONFORMITY WITH DEVELOPMENT PLAN POLICIES**

- 4.3.39 Paragraph 4.1.5 of EN-1 confirms that other matters which the Secretary of State may consider both important and relevant to decision-making include Development Plan Documents or other documents in the Local Development Framework. The same paragraph explains, however, that in the event of a conflict, the NPS prevails for the purposes of the Secretary of State's decision-making, given the national significance of the infrastructure.
- 4.3.40 The majority of the proposed development would be within DCC with some development being carried out within the area of jurisdiction of CCBC.
- 4.3.41 The Planning Statement [APP-157], as do individual chapters of the ES, sets out key local plan policy documents and provides an assessment of the proposed development against adopted and saved local planning policies. It concludes that the proposed development would be broadly consistent with the objectives of those plans as regards minimising adverse effects arising from construction and operational activities.
- 4.3.42 The current adopted development plan for DCC is the DCC Local Development Plan 2006-2021 (adopted June 2013) (DCC LDP). DCC considered the proposed development in the context of the policies contained within the DCC LDP in its LIR [LIR-002] and in response to the Panel's first written question (FWQ) FWQ1.3 (b) [REP1-018].
- 4.3.43 The current adopted development plan for CCBC is the Conwy Local Development Plan 2007-2022 (adopted October 2013) (CCBC LDP). The CCBC LDP comprises the statutory development plan for the whole of the County Borough (excluding the Snowdonia National Park). CCBC considered the proposed development in the context of the policies contained within the CCBC LDP in its LIR [LIR-001] and in response to the Panel's FWQ1.3 (b) [REP1-009].
- 4.3.44 In addition to their adopted development plans both Councils jointly produced Supplementary Planning Guidance (SPG): 'Conwy and Denbighshire Landscape Sensitivity and Capacity assessment for wind turbine developments' (referred to as LDP11 by CCBC). The SPG was adopted by DCC in 2013 and CCBC in 2014. Both DCC and CCBC confirmed at the ISH on 30 September 2015 [EV-024] that they had used LDP11 in assessing the effect of the proposed development. CCBC are in the process of producing a further SPG LDP17: Onshore Wind Turbine Development but this has not been formally adopted.
- 4.3.45 For both DCC and CCBC there are no specific local policies applicable to the provision of this type of infrastructure. However, there are

many policies that seek to control impacts of the type that are likely to be generated by the proposed development. Consideration of the relevant Development Plan policies, in the context of the NPS guidance, is given within the relevant sections of report Chapter 5.

- 4.3.46 Finally the Panel is aware of DCC's stated position that the North Wales Wind Farms Connection should be placed underground for its entire length and that as a result DCC has adopted an in principle objection in relation to the proposed development [REP1-019].

#### **4.4 ENVIRONMENTAL STATEMENT**

##### **NEED FOR ENVIRONMENTAL IMPACT ASSESSMENT**

- 4.4.1 EN-1, section 4.2, sets out the considerations to be taken into account in determining the adequacy of the Environmental Statement (ES) accompanying an application for development consent. Prior to submission, the content of the Applicant's ES had been subject to scoping by the Secretary of State, who issued a scoping opinion that was taken into account by the Applicant in preparing the ES, prior to submission of the application.
- 4.4.2 On submission, all of the application documents were reviewed within the statutory period available for Acceptance. The information within the ES was considered adequate. During the course of the Examination, the Panel considered the ES in detail and took into account representations from the Applicant and IPs and requested clarification on various matters and further information in two sets of questions and during the Examination hearings. The Applicant submitted further information in response to the Panel's questions and queries arising from IPs at various deadlines throughout the Examination.
- 4.4.3 Cumulative effects with other projects were considered in the ES in the various chapters and are reported by the Panel, where relevant and important, in Chapter 5 of this report. In response to the Panel's FWQ8.9 [PD-010], the Applicant provided a map showing the locations of other projects which had been considered in relation to cumulative impacts in the ES chapter on landscape and visual impacts [REP1-094].
- 4.4.4 The Applicant prepared a schedule of mitigation that for each ES topic summarised the proposed mitigation and how it would be secured [REP2-026].
- 4.4.5 Option B was accompanied by an Environmental Report in Support of Option B (ERISOB) [OpB-003]. This document was prepared by the Applicant to demonstrate that the provisions of Regulation 17 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) were not engaged. It stated that, in the Applicant's view, the ES was adequate and no new environmental information was required.



- 4.4.6 In its Procedural Decision to accept option B into the Examination [PD-012], the Panel concluded that it was satisfied that the changes that were requested would not result in a materially different project from that which was consulted upon and submitted for Examination. Having reviewed the submitted ERISOB against the original ES, the Panel was satisfied that the environmental effects of the proposed changes lie within the envelope of the original ES.
- 4.4.7 Option B is reported upon and concluded upon by the Panel, in this report in Section 5.15.

#### **CONSIDERATION OF ALTERNATIVES FOR ENVIRONMENTAL IMPACT ASSESSMENT PURPOSES**

- 4.4.8 EN-1, in paragraph 4.4.1 explains that, *"the relevance or otherwise to the decision-making process of the existence (or alleged existence) of alternatives to the proposed development is in the first instance a matter of law, detailed guidance on which falls outside the scope of this NPS. From a policy perspective this NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option."*
- 4.4.9 However, the Applicant was obliged to include, in the ES, information regarding the main alternatives studied (EN-1, paragraph 4.4.2) in order to enable the decision maker to consider alternatives.
- 4.4.10 The ES provided a chapter on alternatives and design evolution [APP-094] and a Design and Construction report [APP-154].
- 4.4.11 The Panel is satisfied that the ES and the Applicant's subsequent documentation adequately addressed alternative sites, routing options and designs. The Panel has reported upon, considered and concluded upon alternatives to the proposed development in report Section 4.5 below.

#### **4.5 CONSIDERATION OF ALTERNATIVES**

##### **ALTERNATIVE TYPES OF DEVELOPMENT SOLUTIONS THAT COULD DELIVER THE CONNECTION**

###### **Introduction**

- 4.5.1 This section of the Panel's report considers and concludes upon the following:
- the strategic options appraisal used by the Applicant as a process to develop the project definition;
  - alternative development solutions that were considered in the ES and during the Examination process including the overhead line that is proposed, underground options, and single pole lines; and
  - IPs requests for the line to be undergrounded, both partially and in its entirety.

## **National policy**

- 4.5.2 Section 4.4 of EN-1, the overarching NPS for energy, explains that there is no general requirement to consider alternatives or to establish whether the proposed project represents the best option. It goes on to state however that applicants are obliged to include in their ES, as a matter of fact, information about the main alternatives they have studied. It also explains that in some circumstances, notably under the Habitats Directive, there are specific legislative requirements for the decision maker to consider alternatives, and that the relevant energy NPS may impose a policy requirement to consider alternatives. It provides that the consideration of alternatives in order to comply with policy requirements should be carried out in a proportionate manner.
- 4.5.3 The Panel notes that the need to consider alternatives in relation to biodiversity impacts from this project arises only under the EIA Regulations. EN-1 imposes such a duty on the decision-maker in relation to Sections 5.1, 5.2 and 5.5 of this report, the sections which respectively relate to biodiversity and geological conservation, flood risk, and landscape and visual impact. As it is concluded in Chapter 6 of this report, in relation to Habitats Regulations Assessment (HRA) that there are no likely significant effects, the need to consider alternatives in relation to HRA does not arise here.
- 4.5.4 EN-1, section 3.7 relates to the need for new electricity network infrastructure. It states, at paragraph 3.7.10, that there is an urgent need for new electricity transmission and distribution infrastructure (and in particular for new lines of 132kV and above) to be provided. It goes on to say that in most cases, however, there will be more than one technological approach by which it is possible to make such a connection or reinforce the network (for example by overhead lines or underground cable) and the costs and benefits of these alternatives should be properly considered as set out in EN-5 (in particular section 2.8) before any overhead line proposal is consented.
- 4.5.5 EN-5, section 2.8 states that wherever the nature or the proposed route of an overhead line proposal makes it likely that its visual impact will be particularly significant, the applicant should have given appropriate consideration to the costs and benefits of other feasible means of connection or reinforcement, including underground and sub-sea cables where appropriate. The ES should set out details of how consideration has been given to undergrounding as a way of mitigating such impacts, including where these have not been adopted on grounds of additional cost how the costs of mitigation have been calculated.
- 4.5.6 EN-5 goes on to say, in paragraph 2.8.8 that where there are serious concerns about the potential adverse landscape and visual effects of a proposed overhead line, the decision maker will have to balance these against other relevant factors, including the need for the proposed infrastructure and the availability and costs of alternative sites and

routes and methods of installation. Further, in paragraph 2.8.9, it states that the decision maker should only refuse consent for overhead line proposals in favour of an underground line if it is satisfied that the benefits from the non-overhead line alternative will clearly outweigh any extra economic, social and environmental impacts and the technical difficulties are surmountable. In this context it should consider the following matters:

- The landscape in which the proposed line will be set (in particular, the impacts on residential areas, and those of natural beauty or historic importance such as National Parks and Areas of Outstanding Natural Beauty (AONBs)).
- The additional cost of any underground cabling including whether it is buried in agricultural land or whether more complex tunnelling and civil engineering through conurbations and major cities is required. Repair costs for underground cables are also significantly higher than for overhead lines.
- For underground cables, the environmental and archaeological consequences, which can disturb sensitive habitats, have an impact on soils and geology, and damage heritage assets, in many cases more than an overhead line would.

### **Welsh policy and guidance**

4.5.7 PPW 8 states, in paragraph 12.8.14, that an integrated approach should be adopted towards planning renewable and low carbon energy developments and additional electricity grid network infrastructure. Additional electricity grid network infrastructure will be required to support the SSAs and local planning authorities should facilitate grid developments when appropriate proposals come forward whether or not the wind farms to be connected are located within their authorities.

4.5.8 Guidance in TAN 8, Annex C, paragraph 2.12 explains that responsibility for the routing of electrical cabling onwards from the sub-station to the nearest suitable point of the electricity distribution network is the responsibility of the District Network Operator. It recognises that undergrounding high voltage cables is more expensive and therefore would only be justified for limited lengths and/or special circumstances.

### **Consideration of alternatives in the Environmental Statement and supporting documents**

#### ***Strategic Options report***

4.5.9 The strategic options (SO) report [APP-156] submitted with the ES explained that since the SO report was originally published in May 2013, the options selection process had been back-checked and reviewed as part of the Applicant's iterative design process. The review had confirmed that the factors that led to the selection of the preferred option remained valid and that no new factors had emerged

in the process which altered the assessment. Therefore the previous conclusions in the May 2013 strategic options report remained unchanged.

4.5.10 Table 1 in the SO report [APP-156] tabulated the north Wales generation status and capacities at 1 December 2014. It identified the four wind farms in TAN 8 SSA A:

- Clocaenog Forest (80MW);
- Llyn Brenig (45MW);
- Nant Bach (22MW); and
- Derwydd Bach (23MW)

as having a total contracted connection capacity of 170MW and for which connections were needed to be made from 2017 onwards.

4.5.11 It explained that the connection to the network would require new electrical infrastructure, since it was not possible to accommodate this amount of additional generation on the existing network.

4.5.12 The options that were considered in the SO report are listed here, together with a summary of the reasoning given in Table 1 of the strategic options report.

- **DN (do nothing)** - This was discounted as it would be a breach of the Applicant's distribution licence statutory obligation;
- **CEN (connect to existing network)** - This was discounted as it would be a breach of the Applicant's distribution licence statutory obligation;
- **GC (grid connection near Corwen)** - The National Grid Deeside/Legacy to Trawsfynydd 400kV circuit passes to the south of SSA A, and if a new grid supply point (GSP) was established on this circuit near Corwen it could accommodate the generation in SSA A. As well as the new GSP, which would be provided by National Grid, the Applicant would also have to establish a Bulk Supply Point (BSP) for such a connection. Although it is a viable option, the cost for a GSP and BSP and the associated costs would be much greater than a 132kV overhead line. The option was not taken forward because of the high cost; since section 9(2) of the Electricity Act 1989 requires the Applicant to develop and maintain an economical system of electricity transmission;
- **BL (132kV connection to Brymbo or Legacy)** - Approximately 35km of 132kV wood pole line would need to be constructed, the route would cross the Clwydian Range AONB which is considered a strategic environmental constraint. Also, if the connection was to Brymbo, it would be necessary to uprate an existing 132kV circuit between Brymbo and Legacy;
- **CQ (132kV connection to Connah's Quay)** - The 132kV substation at Connah's Quay is to the north east of SSA A. Approximately 36km of 132kV wood pole line would be required across the Clwydian Range AONB which was considered a strategic environmental constraint;

- **H (132kV connection to Holywell)** - The 132kV substation at Holywell is north east of SSA A. Approximately 30km of 132kV wood pole line would be required, the route would cross the Clwydian Range AONB which is considered a strategic environmental constraint. It would also be necessary to uprate the existing 132kV circuit between Holywell and Connah's Quay;
- **SA (132kV connection to St Asaph)** - The 132kV substation at St Asaph is to the north of SSA A. Approximately 25km of 132kV wood pole line would need to be constructed. National Grid has recently established a GSP at Bodelwyddan which is adjacent to SP Manweb's BSP at St Asaph. Therefore any subsequent reinforcement of the 132kV network to accommodate the SSA A wind farms is likely to be minimal when compared to the other options;
- **D (132kV connection to Dolgarrog)** - The 132kV substation at Dolgarrog is to the north west of SSA A. Approximately 35km of 132kV wood pole line would need to be constructed. It would also be necessary to reinforce the existing 132kV system at Dolgarrog by establishing a 132kV substation and uprating the 132kV circuit between Dolgarrog and St Asaph;
- **T (132kV connection to Trawsfynydd)** - The 132kV substation at Trawsfynydd is to the west south west of SSA A. Approximately 45km of 132kV wood pole line would be required. Trawsfynydd is situated in Snowdonia National Park which was considered a strategic environmental constraint to an overhead line; and
- **MW (132kV connection to the future mid Wales GSP)** - As part of the development of the mid Wales wind farms (SSAs B, C and D), National Grid was proposing to develop a 400/132kV substation near Bryngwyn, which is to the south of SSA A. Approximately 60km of 132kV wood pole line would need to be constructed. This option would require an additional 35km of 132kV overhead line compared with option SA to St Asaph. S P Manweb considers that this would result in the potential for additional environmental effects due to the longer length of overhead line.

4.5.13 The SO report [APP-156, paragraph 4.23], stated that overall the costs of a fully underground solution were unacceptable to the Applicant and therefore this solution was not taken forward for the proposed development. In progressing the overhead line solution, the methodology that had been selected for the route had the objective of avoiding areas of highest environmental sensitivity wherever possible.

4.5.14 The preferred option was confirmed as the 132kV circuit from SSA A northwards to the St Asaph BSP substation (option SA). This option would be technically capable of accommodating all the contracted generation and had the shortest 132kV route of all of the technically viable options. Shorter options were generally preferred on the basis of minimising both environmental impact and cost. It concluded, in paragraph 4.25 of the SO report, that the benefit of an underground

cable as an alternative to an overhead line in this area would not outweigh any extra economic, social or environmental impacts.

- 4.5.15 The preferred option had the benefit of not affecting either Snowdonia National Park or the Clwydian Range AONB. When considering the other options which avoided these nationally designated areas, the Applicant did not consider that environmental performance was sufficient to justify taking forward an option other than the shortest, lowest cost option. It considered that option D did not provide any additional benefit at an amenity level compared to the preferred option. Options GC, BL, CQ, H, T and MW were all considered technically viable options but were not taken forward for further study due to additional costs and/or environmental concerns such as new infrastructure within nationally designated sites.

## **Environmental Statement chapter on alternatives and design evolution**

### ***Consultation on route options***

- 4.5.16 The ES Chapter 3 [APP-094] on alternatives and design evolution explained that following the identification of the preferred strategic option a number of route corridors were identified, based on the preferred option of the St Asaph (SA) route (from the SO report). The route corridors were areas of land through which a new connection may potentially be routed, usually 1km wide. It stated that the iterative routing process had identified three broad route corridors, red, blue and green with links between these corridors (blue/red and blue/green). The report considered five routes in total:

- red;
- blue;
- green;
- blue/red; and
- blue/green

all of which were considered to be technically feasible. The routes that were considered are shown in the ES figures document [APP-107, Figure 3.1]

- 4.5.17 The alternative and design evolution document [APP-094] explained that the route corridors were appraised against a series of criteria including:

- biodiversity and geological conservation;
- landscape and visual impact;
- historic environment;
- residential amenity;
- flood risk;
- forestry and woodland; and
- cumulative effects.

- 4.5.18 During the selection of the preferred route corridor it was concluded that all of the proposed corridors were technically and environmentally feasible, but the southern ends of the green and red corridors had a greater number of potential effects on residential amenity. The consultation feedback supported this finding and suggested a preference for the southern end of the blue corridor as the preferred corridor.
- 4.5.19 The preferred route corridor was the blue/green link, running between Brenig/Clocaenog North and St Asaph shown in figure 3.2 of the ES figures document [APP-107].
- 4.5.20 During the stage 2 consultation concerns were raised regarding the potential environmental effects on the village of Henllan, including:
- effects on visual amenity;
  - effects on biodiversity;
  - effects on the Henllan Conservation Area; and
  - the high number of people affected by routing in proximity to Henllan.
- 4.5.21 In response to the feedback from the stage 2 consultation, the ES explained that options to take the route further away from Henllan were investigated. Routing to the east of Henllan was not feasible due to the high number of designated features including Special Areas of Conservation (SACs) and Sites of Special Scientific Interest (SSSIs) in the lower Elwy Valley, the settings of parks and gardens (Foxhall and Plas Heaton) and proximity to the eastern edge of the village.
- 4.5.22 Options to the west were investigated and refined resulting in an alternative which deviated from the original blue corridor at Eriviat Park, turning northwest and passing through pastureland in the direction of Hafod Wood, before turning north and re-joining the original blue/green corridor north of Berain at Tyddyn Bartley.
- 4.5.23 The stage 3 statutory consultation on the route alignment was carried out between March 2014 and June 2014. Information on the various consultation stages was included in the consultation report [APP-081].
- 4.5.24 Taking into consideration consultation feedback, environmental and technical factors, the 'Hafod' option was selected as the preferred option. The Applicant submitted a plan to the Examination in response to a request from the Panel at the ISH of 29 September 2015 [REP3-030] regarding the evolution of the preferred route. The amendments to the route following consultation are shown on ES Figure 3.3 [APP-107].
- 4.5.25 In response to the consultation feedback, the Applicant explained that a number of areas were considered in greater detail including:
- Tir Mostyn Ridge (regarding the potential for skylining);
  - Tan-yr-Allt (in relation to the close proximity of poles to this property);

- Pandy Wood (a small/derelict farmstead located close to the proposed route);
- Hafod Farm approach (potential for skylining);
- Berain Farm (proximity to the listed buildings and locally valued setting at Berain);
- Elwy Valley and Cefn Meiriadog (potential skylining); and
- The cable route from the terminal pole (impacts upon a mature hedgerow and mature trees).

4.5.26 The ES explained that further detailed engineering and environmental reviews resulted in the development of the Order limits and limits of deviation (LoD) which were evaluated as part of the EIA process. These are shown on ES Figure 3.3 [APP-107].

### ***Design***

4.5.27 The ES chapter on alternatives and design evolution [APP-094, paragraph 3.7.4] explained that double wood pole lines were considered particularly suited to wind farm connections, which tend to be on higher ground and are subject to more adverse weather conditions.

4.5.28 Chapter 2 of the design and construction report [APP-154, paragraph 2.2.1] explained that when designing the overhead line, there were four main considerations:

- ensuring the mechanical forces exerted from the wind, ice and terrain would not exceed the strength of the structures or other components;
- ensuring that there would be adequate clearances between the conductors and the ground or from others in the vicinity of the line, as well as between the conductors to avoid clashing;
- the requirement, or otherwise, for earthed construction to control rise of earth potential (ROEP); and
- so that the overhead line could be constructed and maintained safely and has minimal visual impact on the surrounding area.

4.5.29 The ES explained that earthed construction is required due to a high ROEP. Measurements taken at the proposed Clocaenog Forest collector substation showed that the resistivity of the ground was extremely high and therefore an earthed overhead line would be required to control ROEP. A single wood pole design does not carry an earth and therefore could not be used for the development.

4.5.30 The ES [APP-094, paragraph 3.7.15] also explained that the wider scheme included a section of underground cable at the northern end of the development, which would take the connection from the St Asaph substation to the terminal point of the development located in a field to the south of Trebanog, Groesffordd Marli (south of Glascoed Road, B5381). The ES Appendix 1.2 [APP-109, paragraph 1.5.5], stated that the underground section of the cable is likely to be permitted



development under the Town and Country Planning (General Permitted Development Order) 1995.

- 4.5.31 Mr Stephen Gendler, representing the Applicant, explained at the ISH of 29 September 2015 [REP3-030, paragraph 3.5], that the reason for the decision to underground the cable in the northern part of the line was due to it being, *"very congested with dwellings and other overhead lines that needed to be crossed such that there are significant technical constraints. The Applicant needed to find a route out of the substation. The closest point to terminate the 132kV Overhead Line was identified and then the line was forced underground due to congestion, rather than mitigation."*

**Consideration of comparative costs (overground/underground)**

- 4.5.32 The Applicant, in response to action points arising from the ISH on 29 September 2015, prepared a costs report for submission to the Examination [REP4-024]. This provided information on the costings for the overhead line compared with the costs associated with the preferred underground cable route from Clocaenog Forest to St Asaph, using net present values.
- 4.5.33 For the purposes of the assessment, the Applicant used a range of values for the lifetime of the connection, as it was not known how long the connection would operate for. The values were as follows:-
- 25 years to reflect the proposed lifetime of the generating assets;
  - 40 years to reflect the physical life expectancy for the connection itself; and
  - 75 and 125 years to provide a more long term comparison, by which time the first full asset replacement cycle would have been completed.
- 4.5.34 The costs report explained (in Chapter 1) that the Applicant's assets are generally replaced before they reach 60 years of age. Therefore extending the lifetime to 125 years would result in a second round of asset replacements at around 120 years. The Applicant's network is not 125 years old so it does not have any direct experience of such aged networks, and would not consider lifetimes of this value in assessments. However 125 years was included for comparison purposes.
- 4.5.35 The costs report explained in Chapter 4 that the minimum technical scheme is a 2.6km 132kV underground cable from the St Asaph substation to a terminal pole in a field to the south of Trebanog, Groesffordd Marli and then a 17km 132kV overhead line to the proposed north Wales wind farms collector substation near Clocaenog Forest.
- 4.5.36 The lengths of the two systems that were compared in the costs report were 24km for the underground option and approximately 17.4km of

overhead line with 2.6km of underground cable for the overhead line that is proposed.

- 4.5.37 Capital costs for the overhead line were estimated at between £280,000 and £340,000 per km. These figures did not include the underground cable capital costs for the northern section, which are described below. The Panel notes that the costs report, in its calculations for the overhead line options, included 2.6km of underground cable. This was necessary to provide comparative costs between the total project cost for the proposed development and the total cost of the alternative underground option.
- 4.5.38 The Applicant estimated the capital costs for an underground cable for the NWWFC to be within a range of £1.1m to £1.6m per km. The Applicant provided details of two examples of underground cable projects which resulted in capital cost equivalents of £1.11m and £1.19m per km. The estimated cost range of between £1.1m to £1.6m per km was therefore considered reasonable.
- 4.5.39 For the purposes of the costs report, the costs of the equipment at the substations at the ends of the interconnection system were excluded.
- 4.5.40 Typical fault repair costs for the overhead line were reported as approximately £30,000 per incident.
- 4.5.41 Faults on underground cables were reported as:
- 50% non-damage faults which cost £2,000 per fault for repairs; and
  - 50% damage faults, of which half (25% of total) are damage faults of limited nature requiring lower cost repair (£25,000 per fault to repair) and the other half (25% of total) are extensive damage faults (£600,000 per fault to repair).
- 4.5.42 The costs report summarised the costs as follows for the low cost range:

Life Time (years)	Overhead line (low cost range) (£)	Cable underground (low cost range) (£)	Ratio
25	16,266,624	32,910,830	2.02
40	17,535,513	33,772,747	1.93
75	17,985,830	37,255,614	2.07
125	18,353,508	37,898,602	2.06

4.5.43 The costs report summaries for the high cost range were as follows:

Life Time (years)	Overhead line (high cost range) (£)	Cable Underground (high cost range) (£)	Ratio
25	18,586,624	44,910,830	2.42
40	19,855,513	45,772,747	2.31
75	20,305,830	49,255,614	2.43
125	20,673,508	49,898,602	2.41

4.5.44 The costs report [REP4-024] concluded that the summary ratio is estimated to be in the range of 1.94 to 2.43 so that the value of life time costs for the underground option was seen to be approximately twice that of the overhead line. It continued that therefore the preferred minimum scheme option of the heavy duty wood pole overhead line was justified, from a cost aspect for the development.

4.5.45 The Applicant confirmed [REP9-023, paragraph 3.15] that whilst the costs report was based on option A, it applies equally to option B or a mix and match scheme.

## **REPRESENTATIONS**

### **Introduction, local planning authorities and the Welsh Government**

4.5.46 A recurring theme that occurred throughout the Examination was whether the development should be undergrounded, in part or in totality. A considerable number of IPs including DCC, CCBC, the Welsh Ministers and many individual IPs all considered that the development should be located underground.

4.5.47 In their WR [REP1-008], CCBC stated that the Council objected to the application on the following grounds:

- (A) significant adverse impact on the setting of the group of listed buildings at Berain; and
- (B) significant adverse effects from the A543 including views towards the Elwy and Aled Valleys Special Landscape Areas.

4.5.48 It went on to explain that it did not object in principal to the remainder of the application, but wished to make comments on specific impacts and requirements. It concluded that:

*"The Council does not object to the DCO proposal in its entirety but has particular concerns over two areas of the proposal. The Examining Authority is requested to critically assess the impacts of the proposal on historic and landscape assets in these areas and to conclude that the case for requiring the partial burial of the connection underground is established."*

4.5.49 In its LIR [LIR-002] DCC state, in paragraph 8.2.3:

*"The Council raises the following matters:*

*1. It is not considered that the SP Manweb statement 'Adverse significant landscape and visual effects that are not over and above that expected for this type of project' is a fair and reasonable justification for not investing in the burial of cables."*

4.5.50 DCC also questioned in their LIR [LIR-002, Section 8.2] why undergrounding of cables was considered the best option for the north end of the scheme, but not appropriate elsewhere. It also stated that a different preferred route may have been considered if the undergrounding option had been taken into consideration for all or part of the route at the earliest stage. In this event, some of the more significant visual and landscape impacts would be reduced in the long term if burial had been considered.

4.5.51 In its WR [REP1-019] DCC gave its stated position, as:

*"At Full Council on 9 September 2014, Members unanimously agreed a notice of Motion put forward by Councillors Joe Welch, Colin Hughes, Geraint Lloyd Williams, Meirick Lloyd Davies and Eryl Williams. The motion was as follows:*

*We would like the support of the Council to have a firm stance to demand that the NW Wind Farms connection is placed underground for its entire length."*

4.5.52 The DCC WR then went on to explain that at a Council Planning Committee on 15 July 2015, it resolved to raise an objection to the principle of overhead lines due to:

- the adverse visual impact;
- the potential health impacts due to the proximity of the proposed overhead lines to residential properties;
- loss of agricultural land;
- adverse impact on tourism; and
- adverse impact on wildlife, if not properly mitigated.

4.5.53 The Welsh Government, in its response to the final round of public consultation (dated 25 June 2014) [contained in REP10-023], stated that, *"You will also wish to note the First Minister's preferred option for undergrounding of cables wherever possible."* That letter also identified the potential issues of impacts upon migratory geese and stated, *"colleagues would also favour undergrounding the power line"*. Impacts upon the migratory geese are discussed in Chapter 6 of this report. The Panel notes that there was no policy basis given for this request.

4.5.54 The Welsh Government's letter to the Applicant, attached to their Statement of Common Ground (SoCG) [REP11-008], stated that they noted DCC's suggestion that all or part of the line should be

undergrounded on the grounds of visual amenity. Any proposal to underground should take full account of the increased nature conservation implications of so doing, including the implications for habitat disruption, not only during construction, but also in later maintenance, repair or renewal.

### **Other representations on undergrounding**

#### ***Partial undergrounding***

- 4.5.55 At the ISH on the draft DCO on 2 October 2015 [EV-29a], CCBC confirmed their request that two parts of the proposed development are undergrounded, namely at the crossing under the A543 and at the area around Berain. CCBC explained that in their opinion, the draft DCO should be amended so that the overhead line excludes these two sections.
- 4.5.56 The Applicant explained at the hearing and confirmed in its post hearing submission [REP3-032, Section 6] that for partial undergrounding to be considered by the Panel, the application would need to include undergrounding at the locations identified by CCBC. In addition:
- the Applicant would need to consider whether an underground cable could be accommodated within the Order limits or whether additional land would be required; and
  - undergrounding these two sections would require additional terminal poles (a set at each end of each undergrounded section, so four additional sets of terminal poles in total), should the Order limits be able to accommodate the cable in these locations, the ES would have to assess the new landscape and visual impacts and land management impacts associated with the additional terminal poles.
- 4.5.57 The Applicant explained that there would need to be an option C put forward by them to cater for any undergrounding of the overhead line in the locations proposed by CCBC. They also reiterated their views that impacts at the two locations would not trigger the need for undergrounding the electric line [REP3-032, paragraph 6.6].
- 4.5.58 The Panel notes that an option C for partial undergrounding was not submitted to the Examination.

#### ***Full undergrounding***

- 4.5.59 The Panel asked questions regarding undergrounding the development at the ISH on 8 December 2015. In relation to the route of the underground option, the Applicant confirmed in its written summary of oral evidence [REP9-023, paragraph 5.3] that the preferred underground route followed the well-established principles of utilising public highway and adjacent footpath and verges where available (due to health and safety, access rights and optimised section lengths). The Applicant explained that principally there would be two sections:

- St Asaph to Denbigh which follows the B5381 and the A525, giving confidence as to deliverability; and
  - Denbigh to Clocaenog which follows a proven route already established by other utilities (BT and an independent connection provider).
- 4.5.60 The Applicant also confirmed that the route for the underground cables was well established and would provide a high degree of confidence that the route would be deliverable. The overhead line can rise and fall in the landscape more readily than underground cable, and so, therefore the underground cables could not follow exactly the proposed overhead line route.
- 4.5.61 The Applicant's costs report explained that the underground cable alternative would consist of three single 1200mm<sup>2</sup> aluminium cross-linked polyethylene insulation cables and one fibre optic cable. The cable trench would be typically 1 to 1.5m wide and 1.2 to 1.5m deep which would vary depending on whether the installation is laid either directly or ducted and if the cables are installed in road, verge or field. The trench would be backfilled and reinstated after the cable has been installed to the appropriate standard. The cables are normally laid at 1.5m depth.
- 4.5.62 In response to a question from the Panel, the Applicant's representative (Mr Alyn Jones) confirmed that laying the underground cable would probably take around a year but this would depend on the number of gangs (installation teams) undertaking the laying of the cables as well as traffic management plans and agreements with authorities [REP9-023, paragraph 5.6].
- 4.5.63 The Panel also asked questions about the high costs of the repairs for the underground cables. Mr Stephen Gendler, for the Applicant explained that for a £600,000 fault that requires an extensive replacement, full excavation, 200m and joint bays, half of the costs would come from labour and the rest from project management. He stated that these were the Applicant's own estimates based on their internal costs and experience in this area. The Applicant confirmed that the data provided is an average estimate [REP9-023, paragraph 5.17].
- 4.5.64 The Panel also asked the Applicant to justify the breakdown of damage faults for underground cables where 50% are considered to be limited damage (averaging £25,000 per fault) and 50% are considered to be extensive damage (averaging £600,000 per fault). The Applicant explained [REP9-023, paragraph 5.19] that a more detailed assessment of the variety of fault types was carried out and an associated estimation of the costs of repairs for each type was made using the Applicant's own historical cost data.
- 4.5.65 In response to the Panel's agenda item 4.1(f) at the ISH on 8 December 2015, regarding the extent to which damage faults can be reclaimed through third party insurance, the Applicant explained that

the recovery of damage costs would be either through the third party that caused the damage or through the Applicant's customer base, via customer's electricity bills. Not all third party damage faults result in immediate cable failure, some faults can take many years to materialise, meaning that the culprit is not always identified and costs are not always capable of being recovered directly, in such cases they are born by the customer base. The Applicant explained that it does not have third party insurance cover and therefore, where the culprit is identifiable, it will also seek to obtain the costs from the person doing the damage [REP9-023 paragraph 5.20 to 5.22]. It provided information on the percentage of damage faults that could be claimed through third party insurance claims [REP9-023, Appendix 3]. It explained that over the last five years it has been able to reclaim loss-adjusted costs for three out of eight third party damage faults.

- 4.5.66 The Applicant's costs report also explained that the underground cable would consist of three single 1200mm<sup>2</sup> aluminium cross-linked polyethylene insulation cables and one fibre optic cable. The cable trench would be typically 1 to 1.5m wide and 1.2 to 1.5m deep which would vary depending on whether the installation is laid either directly or ducted and if the cables are installed in road, verge or field. The trench would be backfilled and reinstated after the cable has been installed to the appropriate standard. The cables are normally laid at 1.5m depth.

***Other representations on undergrounding***

- 4.5.67 Cllr Meirick Davies submitted a letter from Ann Jones AM to the Examination [REP3-024] which stated that she was writing in support of the communities who wish the connection to be undergrounded and notes that the route goes through Cefn Meiriadog in the Elwy Valley and will affect the communities of Cefn Meiriadog and Henllan. She considered it would be sensible to place the cables underground so as to preserve the landscape.
- 4.5.68 Dr James Davies MP [REP10-024] endorsed the representations from various IPs and stated that the area is particularly sensitive in terms of the landscape and both DCC and CCBC have passed motions requesting undergrounding of the cables.
- 4.5.69 Mr Iwan Jones [REP11-004] raised concerns that if the development was given a 30 year lifetime, then the cost of decommissioning the line should be part of the assessment. He considered that the cost difference would be minimal as there would be no need to decommission an underground line after 30 years. He considered that as the public would fund any decommissioning of an overhead line at 30 years, it would not be in the public interest to have the burden and the developers should fund the undergrounding of the line at the start.
- 4.5.70 He also considered that the technology for undergrounding cables is at a fairly mature state with hundreds of kms laid annually and the costs are currently at a twenty year low. He asked the Panel to take into

consideration the Applicant's comments about needing the connection post 30 years, and stated his view that the impacts on the landscape and the listed building setting should be assessed as long term.

- 4.5.71 Mr John Mars Jones submitted to the Examination an SP Manweb works plan (sheet 10) [REP3-020] for the route of the development at Berain, dated March 2015, after having raised it at the ISH on 1 October 2015 and in his post hearing submissions. The key to that plan shows "*potential section of underground cables*" shaded light green. However the Panel notes that the plan itself did not appear to have any of the route shaded green. He stated that the Mars Jones family would prefer only underground cables along the section past Berain Farm, as an overhead line would cause permanent blight on the farm [REP3-016 and REP3-018].
- 4.5.72 Mr John Mars Jones also submitted the results of a questionnaire which had been signed by various landowners and tenants, occupiers or other persons who had an interest in land along the route, agreeing to the voluntary undergrounding of cables across their land [REP3-021a].
- 4.5.73 Mr John Fleet [REP9-009] made the point that he considers that undergrounding is the standard on the continent. He also raised concerns about the countryside being spoilt, and if the whole line could not be undergrounded asked for sympathetic understanding to preserve the views of the Clwydian hills from his meadows.
- 4.5.74 Mr Peris Jones [REP3-025] explained that generally he could accept the cables being laid underground, despite the environmental damage and disturbance during construction. However undergrounding the cables would be out of sight once construction is completed and vegetation re-established. His concerns were because the visual impact of the overhead line would be there forever.

### ***Representations on costing comparisons***

- 4.5.75 Pylon the Pressure Group's (PTPG) representation [REP3-026] contested the Applicant's views that the benefits to landscaping and visual amenity of undergrounding the cable are not outweighed by economic, social and environmental impacts. Its elaboration of evidence presented at the ISH on 9 December [REP9-016] identified that it considered that the value of undergrounding exceeded the additional cost, confirming that the benefits to landscape and visual amenity of underground cabling clearly does outweigh the extra economic, social and environmental impacts. It stated that the Applicant acknowledged that cost of undergrounding is twice that of an overhead line (which is a reduction from their original claim that undergrounding costs "*between five and seven times higher*").
- 4.5.76 PTPG has interpreted advice in TAN 8 as meaning that a price difference of 6-20 times the overhead line costs for undergrounding would be unacceptable, however, in their view, the Applicant has



demonstrated that the cost of undergrounding is, at most, twice as expensive as overhead lines, which is significantly less than this threshold, and therefore would be acceptable in the context of the adverse effects of overhead lines.

- 4.5.77 PTPG [REP3-026] explained that they had conducted a contingent valuation experiment to determine how much households would be willing to pay not to have pylons. 187 people had initially responded to their survey and on average, over the 40 year claimed lifetime, respondents were prepared to pay an additional £2,969 per household (at net present value).
- 4.5.78 PTPG considered that the contingent valuation yielded a willingness to pay of £22.8m (range £18.0m to £32.0m) and £70.2m (range 62.3m to £119.1m) based on compensation, both over 40 years. They considered that the Applicant's differences in the low and high cost range (underground minus overhead) are £16.2m and £25.2m respectively.
- 4.5.79 The PTPG representation [REP9-016], also supplied an Ofgem report that it considered referred to contingent valuation in the context of valuing visual impacts of overhead lines as well as a report commissioned by Ofgem, which noted that, *"If the additional costs, of, say, undergrounding options are well known and what is required is primarily an indicative guide to, whether, for example, visual impacts 'tip the balance' towards these options, then we would only need to know if benefit estimates exceed the 'threshold' of cost or estimate how large willingness to pay would have to be to justify any additional cost (in short, as least as much as the costs)"*.
- 4.5.80 PTPG also referred to cost benefit analysis techniques as used by Nick Handley, and submitted a published paper by him, on cost benefit analysis and environmental policy making in relation to environmental policy and project analysis and the use of contingent valuation [REP9-016].
- 4.5.81 PTPG (at deadline 10) submitted further comments in respect of the SoCG between SP Manweb and CCBC raising concerns that some of the SoCG contents were in direct contradiction to the October 2014 notice of motion stating, *"to demand that as a matter of POLICY all cabling running through Conwy relating to this specific application - North Wales Wind Farms Project connection - be placed underground and NOT via overhead pylons"*. It continued that the elected members had not been allowed to make an informed decision, meaning that in its view, the SoCG had not been subject to due process and is not valid [REP10-005].
- 4.5.82 Mr Robin Barlow's deadline 4 representations [REP4-006] explained that his concerns are about the loss of value of properties in Cefn Meiriadog, with the worst affected being the home-owners on the road past Plas Hafod kennels who would interact with the poles on every journey from their homes. Just taking into consideration two groups

of houses within 500m of the poles, there would be a market value of around £5m and a probably conservative loss of £400,000, which, in his view, would be enough to pay for the undergrounding of the last 1km through Cefn Meiriadog.

- 4.5.83 Mr Iwan Jones [REP5-007] maintained that the costing report still lacked detail. In his view, the cost of undergrounding is justified along the route and in some areas the economic, social and environmental cost of the overhead line is far greater than the cost of undergrounding the cable.

***Representations regarding a single pole system and other alternatives***

- 4.5.84 At the ISH on 29 September 2015 Mr Stephen Gendler (lead electrical engineer for the Applicant) explained that the earthing system is required for ground conditions at the substation. For an overhead line earth wire, the only approved technology for a wooden pole line is the heavy duty wooden pole. The earth wire is to mitigate against electric shock at the substation and in the surrounding areas [REP3-030, paragraph 3.3.3].
- 4.5.85 He continued explaining that while a single pole can be used for the conductors, it cannot be used for the earth wire. The only way that a single pole system could be used is if the earth wire was placed underground, (which is not the preferred approach for the Applicant for safety reasons due to the difficulty in monitoring and maintaining the integrity of a separately routed underground earth conductor). However such a design would require more poles and they would be closer together [REP3-030, paragraph 3.3.5].
- 4.5.86 At the ISH on 29 September, Mr Robin Barlow raised the matter of a Trident single pole scheme which was being proposed by the Applicant for a 132kV overhead line at Loch Urr. He provided details of the August 2015 Loch Urr routing consultation document in his post-hearing representation [REP3-027]. The Applicant, in its appendices to its written summary of oral case (appendix C) put forward at the ISH on 29 September 2015, responding to the actions from the Panel, explained, [REP4-009, action point number 2] that a double wood pole line (or lattice tower) is required due to the need for an earth wire for the project. It explained that the only design approved by SP Manweb for this type of project is an overhead earth conductor. An underground earth conductor is not approved for use on the network for a project of this type.
- 4.5.87 It continued to explain that the Trident wood pole design is a single circuit wood pole line comprising 3 phase conductors. There would be no possibility of carrying an earth wire on Trident between the structures. In any event, a single pole system still requires "H" pole supports (which are effectively double poles) where there are longer spans, acute angles and terminal poles. At higher altitude (over

150m), where prevailing weather patterns demand a more robust structure, H poles are used instead of single poles.

- 4.5.88 It further explained that it was not possible for the Applicant to provide the details of a single pole system that would be technically feasible. It also stated that in the Applicant's opinion there is no safe solution that involves a single pole design for this project, and accordingly it is not a reasonable alternative. It provided some details of the Legacy-Oswestry 132kV single pole line, but explained that that line had no earth wire and was located on land at lower altitudes.
- 4.5.89 At the ISH on 8 December 2015, the Panel asked the Applicant whether it would be possible that for less resistive ground, part way along the route, to change from the double wood pole system to a Trident system. Mr Gendler explained that resistivity had not been measured along the route of the development. Measuring the ROEP across the whole route would be a substantial undertaking and ROEP is site specific. He explained that, given that the Applicant is legally obliged to use solutions that minimise risks and health and safety implications, the ground resistivity along the route had not been tested as this is a substantial undertaking and may not prove in any way beneficial. He reiterated that the only approved solution for providing the safety earth on a wood pole is via the heavy duty wooden pole construction proposed [REP9-023, paragraphs 6.10 to 6.12].
- 4.5.90 During the Examination, Mr Robin Barlow also raised the possibility of the use of thinner cables on the overhead line [REP9-017].

## **REASONING AND CONCLUSIONS**

- 4.5.91 The Panel has considered the survey and technical reports submitted to the Examination by PTPG and all representations from other IPs on these matters. It found the PTPG survey and reports to be informative but does not consider that a survey that assesses the monetising of impacts is directly relevant to Nationally Significant Infrastructure Project (NSIP) decision making. Neither does it consider that cost benefit analysis is an appraisal tool that is directly suited for decision-making for NSIPs, rather it is an appraisal technique which is more relevant to economic efficiency in resource allocation. In the Panel's view, these are techniques which can be used to inform the evidence base, but would not be used as key decision making tools in planning. Nevertheless, the Panel has had regard to the PTPG representations and submitted surveys and documents in coming to a conclusion on these matters.
- 4.5.92 The Panel is satisfied that the Applicant's costing report [REP4-024] included allowances for decommissioning the overhead line in both the 25 and 40 year calculations.
- 4.5.93 The Panel considers that the information provided by the Applicant in relation to comparative costs contains sufficient detail which is realistic

and credible. The costs report identifies that undergrounding would be approximately double the cost of the overhead line. For a 25 year connection this would equate to approximately an additional £16.6m. The Panel also accepts the Applicant's reasoning for the choice of underground route for cables between Clocaenog Forest and St Asaph, and in doing so considers that the underground route, following roads and road verges would not have any unsurmountable environmental, archaeological or social impacts and could be completed in a year.

- 4.5.94 The Panel accepts that undergrounding sections of the development, for example past Berain and under the A543, would require a set of terminal poles at either end of the underground section. The ES did not consider the environmental effects in relation to the additional sets of terminal poles and so they were not part of the proposed development. Undergrounding the development past Berain, or in other locations along the route, cannot therefore be considered in relation to the proposal that is before the Examination.
- 4.5.95 In Section 5.2 of this report, concerning landscape and visual impact matters, the Panel concludes that the Applicant's approach to the Holford Rules and consideration of alternatives is proportionate. The Panel has given consideration to the EN-5 requirement in relation to whether serious concerns had been raised regarding landscape and visual impact. It concludes that serious concerns had been raised by IPs and then went on to consider the need for the development and the effects it would have on landscape and visual receptors against the tests in EN-5. It concludes that the balance of benefits of the underground alternative would not clearly outweigh the extra economic costs. Report Section 5.1 concludes that there are no reasons relating to biodiversity effects from the proposed development that would prevent the DCO from being made, provided the proposed environmental monitoring surveys and mitigation are delivered. In relation to historic environment, the Panel has given specific consideration to the prospect of undergrounding sections of the route in the vicinity of Berain, as well as through the un-designated historic parkland at Eriviat Hall, but reached the conclusion, having regard to various factors, including costs associated with the alternative, that undergrounding would not be justified at these locations.
- 4.5.96 The Panel has borne in mind that from a policy perspective, EN-1 does not consider any general requirement to consider alternatives or to establish whether the proposed development is the best option. The Panel has no doubt that the proposed development represents an efficient and economical means of connecting the remaining wind farms to the electricity transmission and distribution network to assist in supplying current and future levels of demand.
- 4.5.97 The Panel agrees with the Applicant that a single pole system would not be possible for the entire length of the development as it is not suitable for use in the environment of the development, nor it is approved for use in these conditions. The Panel also agrees with the Applicant that a hybrid solution, which would consist of a double wood

pole for the southern parts of the development which have a high ROEP and where topography is over 150m, combined with a single wood pole for the lower areas in the northern sections, would not be justified on the basis of it needing an earthing compound (the size of Denbigh town hall), somewhere over the route, combined with closer spaced poles for the single pole length. The Panel considers that as the earthing compound was not before the Examination as part of the application, it is not an option that the Panel can consider.

- 4.5.98 The Panel has concluded that undergrounding the route as a whole along a different alignment to the proposed development would be feasible and deliverable. It has accepted the Applicant's view, that undergrounding the line along the route of the proposed development, would not be technically feasible due to the topography and nature of the land (that the overhead line would be located within), for example, the need to cross rivers and traverse a steep ravine at Hafod Dingle. Now turning to the alternative underground route that the Applicant described in its costs report [REP4-024], the Panel has considered the additional costs and has had regard to other relevant matters including historic environment, landscape and visual impacts and impacts on biodiversity. The Panel accepts that the alternative underground route would be technically feasible and deliverable, but it is not satisfied that the benefits of such an option would clearly outweigh any extra economic impacts. The Panel concludes that the only reason why the development proposed is not undergrounded is due to the additional costs.
- 4.5.99 The Panel concludes that there are no policy or legal requirements that lead it to recommend that consent be refused for the proposed development in favour of another alternative (partial or full undergrounding).
- 4.5.100 This conclusion applies equally to both option A and option B.

## **5 FINDINGS AND CONCLUSIONS IN RELATION TO THE POTENTIAL IMPACTS OF THE DEVELOPMENT**

### **5.1 BIODIVERSITY, ECOLOGY AND GEOLOGICAL CONSERVATION**

#### **INTRODUCTION AND POLICY CONTEXT**

##### **National Policy Statements**

5.1.1 The relevant National Policy Statements (NPSs) are:

- Overarching National Policy Statement for Energy (EN-1); and
- National Policy Statement for Electricity Networks Infrastructure (EN-5).

5.1.2 The biodiversity, biological environment, ecological and geological conservation matters of importance to this Examination covered in EN-1 policy include:

- internationally designated sites identified through international conventions and European Directives;
- Sites of Special Scientific Interest (SSSIs);
- regional and local sites;
- ancient woodland and veteran<sup>1</sup> trees; and
- wildlife species which receive international and national statutory protection under a range of legislative provisions including the Habitats Regulations and the Wildlife and Countryside Act 1981 (as amended) (W&CA) and species which are protected under their own legislation, for example badgers under the Protection of Badgers Act 1992.

5.1.3 EN-1 also requires other matters to be covered in the Environmental Statement (ES), including mitigation and how the project would take advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.

5.1.4 EN-1 states that as a general principle, development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives. It also requires (in paragraph 5.3.4) the Applicant to show how the project has taken advantage of opportunities to conserve and enhance biological and geological conservation interests. It also directs the decision maker to ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and biodiversity and geological interests in the wider environment.

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<sup>1</sup> A veteran tree is a tree which, because of its great age, size or condition, is of exceptional cultural, landscape or nature conservation interest

- 5.1.5 EN-5 identifies the risks to large birds (such as swans and geese) from colliding with overhead lines associated with power infrastructure, particularly in poor visibility. It advises that particular consideration should be given to feeding and hunting grounds, migration corridors and breeding grounds.

### **Welsh policy and guidance**

- 5.1.6 Planning Policy Wales (Edition 8, January 2016) (PPW 8) explains (paragraph 5.1.2) that the Welsh Government's objectives for the conservation and improvement of the natural heritage are to:
- promote the conservation of landscape and biodiversity, in particular the conservation of native wildlife and habitats;
  - ensure that action in Wales contributes to meeting international responsibilities and obligations for the natural environment;
  - ensure that statutorily designated sites are properly protected and managed;
  - safeguard protected species; and
  - promote the functions and benefits of soils, and in particular their function as a carbon store.
- 5.1.7 Welsh Government Technical Advice Note 5 Nature Conservation and Planning (2009) (TAN 5), provides advice about how the land use planning system should contribute to protecting biodiversity and geological conservation.
- 5.1.8 The Panel has had regard to the policies set out in PPW 8 and the guidance in TAN 5, as well as policy within EN-1 and EN-5 in its consideration of the biodiversity aspects of the proposed development.

### **Organisation of this section of the report**

- 5.1.9 The remainder of this section of the Panel's report includes:
- consideration of the Applicant's ES, including impacts and mitigation provided through the development consent order (DCO) and environmental management plans, including potential impacts from the alternative route, option B;
  - consideration of representations from Interested Parties (IPs) on biodiversity matters; and
  - conclusions from the Panel on statutorily and non-statutorily designated sites, habitats, protected and other species, including mammals, reptiles and birds, and geological conservation sites in relation to both option A and option B.
- 5.1.10 This section of the report does not discuss matters related to the Council Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora (92/43/EEC) (Habitats Directive) and the Council Directive on the conservation of wild birds (2009/147/EC) (Birds Directive), as they are covered in Chapter 6.

- 5.1.11 Option B matters in relation to biodiversity, biological environment, ecology and geological conservation are described, where relevant below.

### **IMPACTS AS ASSESSED IN THE APPLICANT'S ENVIRONMENTAL STATEMENT**

- 5.1.12 As described in Section 4.4 of this report, the Applicant submitted an ES with its application. The ES contained a chapter on ecology and biodiversity [APP-097] together with a number of topic based appendices [APP-123 to APP-131] and plans showing relevant nature conservation sites [APP-068 to APP-071]. This section of the report considers the Applicant's ES in terms of approach to the assessment of impacts and terminology. It then goes on to summarise impacts upon the various habitats and species that could be affected by the proposed development, as described in the ES.
- 5.1.13 The Applicant submitted a request in September 2015 [OpB-001] for changes to the proposed development (referred to as option B) to be considered alongside the original application submitted in March 2015 (referred to as option A). It was accompanied by an Environmental Report in Support of Option B (ERISOB) [OpB-003] which considered whether there were any changes between option A and option B in terms of effects on ecology and biodiversity interests. It stated that the land which falls within the option B Order limits/Order land was within the original study areas for the ecological impact assessment. The Applicant concluded that the option B amendments to the Order limit<sup>2</sup>/Order land<sup>3</sup> would not result in any further nature conservation sites falling within the study area and that the option B Order limits would not result in any changes in the significance of effects on nature conservation interests compared with option A.
- 5.1.14 The Applicant's ES chapter on land-use and agriculture [APP-101] stated that four Geological Conservation Review sites lie within the Coedydd ac Ogofau Elwy a Meirchion (Elwy and Meirchion Woods and Caves, hereafter called the Elwy and Meirchion Woods and Caves) SSSI, which is approximately 700m away from the Order limits. It stated that there would be no effects on the designated site from the development. In addition, no Regionally Important Geological Sites have been identified.

### **Environmental effects**

- 5.1.15 The ES explains that the term "*impact*" is used throughout the chapter on ecology and biodiversity [APP-097] in accordance with professional guidelines. It is often used interchangeably with the word "*effect*". To

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<sup>2</sup> Order limits refer to the limits shown on the works plans within which the development, would be carried out, if the DCO were to be made (the proposed development area)

<sup>3</sup> Order land means the land that is required for, or required to facilitate or is incidental to, or affected by the development shown on the land plans and described in the book of reference



clarify, environmental "*impacts*" and "*effects*" are both considered in this report to be "*environmental effects*".

- 5.1.16 It also stated that indirect impacts through hydrological connections or through pollution were considered unlikely from a development of this kind and only direct impacts from the development were considered in decisions regarding the extent of the buffers used in the desk studies.
- 5.1.17 The ES explained that a variety of desk studies and ecological surveys were undertaken to support the ES in 2012, 2013 and 2014. The surveys undertaken were influenced largely by the desk study and liaison with Natural Resources Wales (NRW).

### **Sites of Special Scientific Interest**

- 5.1.18 The ES identified that there are no SSSIs within the Order limits. There are 13 SSSIs within 10km of the proposed route alignment, the closest of which is the Coedwigoedd Dyffryn Elwy (Dyffryn Elwy Woods, hereafter called Dyffryn Elwy Woods) SSSI, which is approximately 700m away from the Order limits for both option A and option B.

### **Local Wildlife Sites**

- 5.1.19 Non-statutory designated Local Wildlife Sites (LWSs) were identified within a 2km buffer zone around the proposed development area. There were 33 LWSs within 2km, seven of which would be, in part, within the Order limits for both option A and option B. The LWSs which would be, in part, within the Order limits were identified in the ES [APP-097, Table 6.10]:

- Coed y ddol/ Coed y Fadir (grassland);
- Coed Nant-y-ddraig (ancient semi-natural woodland);
- Coed Bont Newydd (ancient semi-natural woodland);
- Hafod Dingle (restored ancient woodland site);
- Coed Mawr/Pandy (plantation on ancient woodland);
- Bryn Foel/ Cefn-Maen-Uchaf (broad-leaved woodland); and
- Coed Wig (plantation on ancient woodland).

- 5.1.20 Six of these LWSs are areas of woodland. Coed-y-ddol/Coed y Fadir LWS is a grassland site and would be subject to a small degree of disturbance as approximately 10m<sup>2</sup> would have the turf removed and replaced. The locations of the LWSs that intersect with the limits of deviation (LoD) (and would therefore be directly impacted by the development) are shown on Figure 6.1 in the ES [APP-097].

### **Other habitats of principal importance**

- 5.1.21 The ES explained that despite the predominance of agricultural habitats of lower ecological importance, other habitat types present were identified and assessed, in particular against section 42 (s42) of the Natural Environment and Rural Communities Act 2006 (NERC Act) list of species and habitats of principal importance; and species and

habitats identified in Conwy and Denbighshire Councils' Local Biodiversity Action Plans (LBAPs).

5.1.22 NERC Act habitats of principal importance that were identified in the proposed development area included:

- broad-leaved woodland/plantation on ancient woodland;
- conifer plantation;
- hedgerows;
- mature trees;
- ponds;
- rivers and streams;
- grass verges;
- scrub;
- buildings and man-made structures; and
- non-native invasive species.

5.1.23 The ES also provided details of habitats identified by the Applicant as 'Valued Ecological Resources' that would potentially be impacted. These included all of the habitats identified above as well as gardens and allotments, arable, and grassland.

### **Species of principal importance**

#### ***Great crested newts***

5.1.24 Great crested newts (GCNs) are protected under The Conservation of Habitats and Species Regulations (the Habitats Regulations) 2010 and the W&CA 1981. They are also NERC Act s42 and LBAP priority species.

5.1.25 The ES explained [APP-097] that out of the 29 ponds within the survey area, six were found to support GCNs, out of which, four were found to support breeding populations. Two of the ponds which had breeding populations were in relatively close proximity to each other but were approximately 1.5km away from the development. The two other ponds which had confirmed breeding GCNs were both within 500m of the development. The two ponds which had a confirmed GCN presence only were within 500m of the Order limits. These were garden ponds and supported a small population; there was no evidence of breeding. The ES considered that there would be potential to impact GCNs at the four closest ponds, which had a peak count of between 1 and 8 GCNs and were between 182m-268m away from the Order limits [REP1-056, response to Q6.18(c)]. These comprise two of the breeding ponds and the two ponds where there was a presence only [APP-097, Table 6.13 and paragraph 6.5.47].

#### ***Dormice***

5.1.26 Dormice are protected under the Habitats Regulations and the W&CA. They are also NERC Act s42 and LBAP priority species.

- 5.1.27 The ES explained [APP-097, paragraph 6.5.53] that evidence of dormice was recorded at four sites, and included nine dormice nests. Wood mice were also found during the survey and in a number of instances these had taken over or damaged dormice nests. The location of the dormice survey sites is shown in Figure 6.2 [APP-097]. Dormice survey sites 1-3 were at the northern end of the proposed development and site eight was at the southern end. There were also other records of dormice between these sites and from the surrounding area. The survey area supported some optimal dormice habitat and there was a high degree of connectivity through the extensive hedgerow and stream valley network. The Applicant considered it likely that dormice are relatively common and widespread around the route corridor.

### **Bats**

- 5.1.28 All bats are protected under the Habitats Regulations and the W&CA. NERC Act s42 and LBAP species of bats were also present.
- 5.1.29 The ES [APP-097, paragraphs 6.5.56 to 6.5.66] explained that during the bat surveys carried out in 2013, bat activity was recorded at all four of the transect locations. Species recorded were all common and widespread species including *Pipistrellus pipistrellus* and *Pipistrellus pygmaeus* (common and soprano pipistrelles), *Nyctalus* species (such as noctule or Leisler's bat) and *Myotis* species (such as Daubenton's). Transect 1 at Afon Elwy had the highest average number of bat passes. Overall a relatively high level of bat activity was recorded, particularly associated with hedgerows connecting other landscape features of ecological importance such as woodland and water bodies.
- 5.1.30 The ES stated that bats typically roost in buildings and other built structures, caves and also trees. It considered that no buildings, other built structures or caves would be impacted, however a number of trees would be felled and so there would be potential to destroy a bat roost.

### **Birds**

- 5.1.31 All breeding birds, their nests, eggs and chicks are protected under the W&CA. Schedule 1 birds are specially protected. NERC Act s42, UKBAP, and LBAP species were also found to be present in the study areas. Various bird surveys were undertaken as part of the environmental impact assessment (EIA) [APP-097].
- 5.1.32 The Applicant's winter bird surveys [APP-127] identified that wildfowl records were restricted to feral/introduced geese (grey lag and Canada), mallard, tufted duck, and coot on Llyn Brenig. There were also a large number of gulls roosting on Llyn Brenig, mainly common gulls, herring gulls, black-backed gulls and lesser black-backed gulls. The only common species of raptors were buzzard, kestrel and sparrowhawk. There were a few flocks of waders recorded, with one flock of 12 curlew in the south, up to 20 lapwing in the Tir Mostyn

wind farm field, and up to 61 lapwings in arable fields to the northeast of the development corridor. Passerines observed in the winter bird surveys included a typical range of common species and those of conservation concern including feeding flocks of starlings, winter thrushes (redwing and fieldfares) and a flock of skylarks near Plas Captain towards the south.

- 5.1.33 Breeding bird surveys identified that wildfowl records were mainly restricted to Llyn Brenig. No breeding black grouse were recorded there. Other than the commoner species of raptors, hobby was recorded in the south on two occasions which suggested that they could be breeding nearby, perhaps in the forestry area to the north of Llyn Brenig. Breeding wader records were restricted to one or two pairs of curlew to the south in moorland near the Llyn Brenig and Gors Maen Llwyd reserve and one or two pairs of lapwing. No snipe were recorded. A range of passerine species were recorded in the breeding bird surveys along the route corridor [APP-097, paragraphs 6.5.79 to 6.5.83].

### ***Otters***

- 5.1.34 Otters are protected under the Habitats Regulations and the W&CA. They are also a NERC Act s42 and LBAP priority species.
- 5.1.35 The ES stated that evidence of otter activity (otter spraint, a footprint and possible lay-ups) was found especially at Afon Elwy. Impacts of the proposed development on otters are discussed in paragraph 5.1.59.

### ***Water voles***

- 5.1.36 Water voles are protected under the Habitats Regulations and W&CA. They are also a NERC Act s42 and LBAP priority species.
- 5.1.37 The ES explained that no direct evidence of water voles was recorded during the surveys. A possible water vole footprint was noted in soft sediment along the bank of Afon Asa as part of the Extended Phase 1 Habitat Survey.

### ***Reptiles***

- 5.1.38 Common reptiles including grass snake are protected against killing or injury via the W&CA. Grass snakes are also a NERC Act s42 and LBAP species.
- 5.1.39 The reptile survey findings identified a good breeding population of common lizard at the southern Clocaenog Forest survey area. No reptiles were found in the northern Coed y Fadir survey area.

### ***Badgers***

- 5.1.40 Badgers are protected under the Protection of Badgers Act 1994.

- 5.1.41 There was significant evidence of badgers using the preferred route corridor. Based on the results it was considered that the proposed route corridor has several badger clan territories within it.

### **Valued Ecological Receptors**

- 5.1.42 The ES stated [APP-097, paragraph 6.5.99] that of the species discussed, only those receptors considered important at the district level and above, that is: district; county; regional; or national, were taken forward as Valued Ecological Receptors. These were:

- Great crested newts (GCNs);
- dormice;
- bats;
- birds;
- otter;
- water vole;
- common lizard; and
- badgers.

### **Tree Preservation Orders**

- 5.1.43 The Applicant confirmed in its response to the Panel's first written questions (FWQ) FWQ4.5(d) [REP1-056] that responses received from Conwy County Borough Council (CCBC) and Denbighshire County Council (DCC), indicated that there were no records of any Tree Preservation Orders contained within the Order limits.

### **Summary of impacts on ecological interests**

#### ***Designated sites and other habitats***

- 5.1.44 The ES stated that there are no statutory nationally designated sites within the Order limits and there were not considered to be any direct or indirect impacts on any such sites.
- 5.1.45 The ES concluded that the proposed development would significantly impact six LWSs, that are considered important at a local level [APP-097]. Habitats which would be affected include semi-natural ancient woodland, plantation on ancient woodland, restored ancient woodland and broad-leaved woodland. The ES [APP-097] explains that a total of 1.1ha of ancient woodland and 0.05ha of broad-leaved woodland in total would be lost from all of the LWSs.
- 5.1.46 The area of ancient woodland that would be lost would represent a negative impact, which the ES considered small in terms of all of the ancient woodland contained within the Order limits. The duration of impact would be long term and permanent.
- 5.1.47 The area of broadleaved woodland that would be lost was considered in the ES to be relatively small and to result in a negative impact, with a duration of medium to long term which was considered to be reversible in this time frame [APP-097, paragraph 6.7.13].

- 5.1.48 A total of 0.67ha of broadleaved woodlands outside the LWSs would have to be felled. The ES considers these effects to be medium to long term in duration but impacts were considered to be reversible [APP-097, paragraph 6.7.18].
- 5.1.49 A total of 80 hedgerows were identified along the final route alignment for option A, which would result in the removal of 400 linear metres (400m) of hedgerow. The ES considered that the length of hedgerow to be impacted would be small and the duration would be short, since most hedgerows would be removed and replaced within 48 hours. The Applicant's response to the Panel's FWQ6.16(g) [REP1-056] tabulated the number and length of non-important hedgerows and important hedgerows<sup>4</sup> that would be impacted by the development both temporarily and on a permanent basis. The length of hedgerow that would be permanently impacted by the development for option A was stated as 12m of important hedgerows and 14m of non-important hedgerows. Impacts on hedgerows in relation to option B are considered later in this report section.
- 5.1.50 In addition, any mature trees which are growing within 6.7m of the Order limits would need to be felled, together with any trees which would be considered to be tall enough to fall across the conductors, plus a 2.5m margin for growth. A total of 110 mature trees would need to be removed [APP-097, paragraph 6.7.30]. The arboricultural survey report submitted with the application [APP-130] did not differentiate between mature and veteran trees.
- 5.1.51 The ES considered this to be a small number of trees that would be lost from a tree dominated landscape, but the felling would be a permanent loss. The timing of felling would also be important as bats may roost in some of the trees and they may be used by breeding birds. The ES explained that the number of trees that would need to be felled did not include 0.49ha of sitka spruce from an area of commercial forestry in Clocaenog Forest, which could amount to between 980-1225 conifers.
- 5.1.52 In addition two standing dead wood trees would need to be felled. These provide a unique habitat for a range of species including fungi and saproxylic<sup>5</sup> invertebrates. There were very few standing dead wood trees noted in the Order limits and so these two trees were considered to represent a significant ecological resource.
- 5.1.53 The Applicant's response to FWQ6.7(a) [REP1-056] explained that as a result of embedded mitigation, including the siting of poles, the substation and the siting of access tracks away from the location of

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<sup>4</sup> Important hedgerows are defined in the Hedgerows Regulations

<sup>5</sup> Saproxylic invertebrates are dependent on dead or decaying wood (or dependent upon other organisms which are themselves dependent on dead wood). They may not be dependent on the wood for their entire life cycle, but at least one stage is dependent on wood, such as the larvae of *Lucanus cervus* (stag beetle)

ponds identified in the ES, it concluded that the development would not have any indirect effect on the ponds identified.

- 5.1.54 Similarly, through embedded mitigation, including the siting of development away from the location of rivers and streams, there would be no direct or indirect effects upon the rivers or streams identified in the ES.

### ***Summary of impacts on protected species***

#### ***Great crested newts***

- 5.1.55 The populations of GCNs in the six ponds were considered to be small and any impact was considered to be unlikely, but the ES identified that habitat loss, injury and death could all occur as a result of the development. The ES stated [APP-097, paragraph 6.7.39], that there were several GCN populations in the St Asaph Business Park area, and that those identified in the ES surveys are not connected but are small, more isolated populations and are therefore more vulnerable to local extinction. The impact of the development was considered to be small since the area of impact, where it falls within 500m of a GCN pond, would be small. Duration of impact would be short. The impacts would be reversible and the timing of construction would be important since GCNs move from terrestrial habitats to freshwater in March/April and are active in terrestrial habitats during mid and late summer. GCNs overwinter in suitable refuges in woodland and dense hedgerows, amongst other habitats, and therefore should not be disturbed at that time.

#### ***Dormice***

- 5.1.56 The ES assumed that dormice could be present in hedgerows, woodland and scrub right across the Order limits. Vegetation disturbance could disturb, injure or kill dormice. Clearance could also lead to fragmentation of habitats. Construction work between October and May could disturb, injure or kill dormice whilst in hibernation. Habitats that are relevant to dormice would include woodland in the LWSs, other woodland, hedgerows and coppiced woodland including young plantation. The development would remove a total of 2.27ha of woodland and 641m of hedgerow, which could be dormouse habitat. The ES considered impacts on dormice to be medium in magnitude with varying durations as the majority of hedgerow removal would be temporary whereas woodland loss would be longer. Impacts were considered reversible as replanted habitat would grow into suitable habitat in a relatively short time.

#### ***Bats***

- 5.1.57 Two mature oak trees, one mature silver birch, a dead oak and a group of mature oak trees were identified in the ES as having features which could be bat roosts. These trees would be lost as a result of the proposed development. Also if the construction compound were to be lit at night it could impact upon some species of bats which avoid

bright lighting. Impacts on bats were considered to be small, since the number of potential roost sites that would be lost is a small percentage of the total number of potential bat roost sites in the area. The ES considered that the duration of the impact would be medium to long term and the impact would be permanent [APP-097, paragraph 6.7.49].

### ***Otters***

- 5.1.58 The ES reported numerous signs of otters along Afon Elwy. Two poles would be constructed in this area, both about 30m from the river bank (in both option A and option B). Pole construction and removal of trees could have an impact on otters. The ES considered the magnitude of the impact to be small, and the duration to be medium to long term [APP-097, paragraph 6.7.55]. A holt site could be lost during tree clearance. If that occurred, it would be a permanent impact.

### ***Farmland birds***

- 5.1.59 The magnitude of impact was considered small due to the relatively small amount of hedgerow that would be disturbed within the Order limits. Hedgerow that would be temporarily removed could result in a short duration impact, whereas hedges which would be permanently removed and replaced would take some time before the replanted hedge could support nesting birds and therefore the duration was considered to be medium term. The ES explained that timing of hedgerow removal would be important, it would have to occur when birds are not nesting [APP-097, paragraph 6.7.57].

### ***Woodland birds***

- 5.1.60 The amount of woodland lost would be a small proportion of the total area of woodland contained in the Order limits and the ES considers that the magnitude of impact upon woodland birds would be small. The impact is considered reversible over the medium term. Timing of works would be important to avoid the bird breeding season.

### ***Badgers***

- 5.1.61 Badgers were found to be widespread throughout the route. The survey identified six setts within 50m of the Order limits. The magnitude of impact from construction upon badgers was considered to be small and over a short duration. Where habitat would be lost, the effects would be reversible as woodland habitats would recover and retain their foraging value [APP-097, paragraph 6.7.59 to 6.7.63].
- 5.1.62 The Applicant confirmed in its responses to FWQ1.11(b) [REP1-056] that it anticipated that one pole location would be in the vicinity of a badger sett and it may require a licence under the Protection of Badgers Act 1992. This matter is discussed and concluded upon in paragraphs 5.1.89 and 5.1.106.



### ***Stages of the development***

- 5.1.63 The impacts upon protected sites and species discussed above primarily relate to the construction phase. However the ES also identified impacts on biodiversity interests during operation and decommissioning.
- 5.1.64 The ES considered that the impact on LWSs would be moderate (that is significant) during operation due to disturbance and damage during the operational phase. The development would intersect seven LWSs and have a significant impact upon six of them.
- 5.1.65 Impacts on biodiversity interests during decommissioning were considered to be similar to construction impacts but typically slightly less. Under the worst case scenario assessed in the ES, 80 hedgerows would have poles in them. The Applicant confirmed, in response to the Panel's first written questions (FWQ6.16) that the total length of hedgerow that would be removed as a result of placement of the poles would be 135.1m, made up of 98.8m of hedgerow and 36.3m of important hedgerow. However much of this loss would be temporary, as many hedges would be replaced.

### ***Invasive species***

- 5.1.66 The Extended Phase 1 Habitat Survey [APP-123, table 4] identified stands of Himalayan balsam along the northern bank of Afon Elwy. This is discussed in report Section 5.7.

### **Impacts arising from option B**

- 5.1.67 The Applicant's ERISOB [OpB-003] explained that the land which falls into the option B Order limits/Order land was within the original study areas for the ecological impact assessment. The option B amendments did not result in any further statutory designated sites falling within the study area. The option B Order limits would not result in any changes to the conclusions for option A on the significance of the effects of the project.
- 5.1.68 The Applicant confirmed in the Issue Specific Hearing (ISH) on 8 December 2015 [REP9-023] that due to the widening of the Order limits to accommodate an additional angle pole near Plas Hafod, a slightly longer piece of hedgerow sits in the Order limits than was the case in option A at this location, increasing the length of hedgerow potentially affected by approximately 10m. As with all of the hedgerows crossed by the overhead line, not all of it would be affected by the development but it was assumed to be all affected for the purposes of environmental assessment and to ensure a realistic worst case scenario was adopted. This hedgerow had been identified on the landscaping plans [APP-050] for hedgerow improvement and reinstatement.

**Mitigation proposed within the Environmental Statement and environmental management plans and how it would be secured in the draft Development Consent Order**

- 5.1.69 The ES [APP-097, paragraph 6.6.1] explained that embedded mitigation had taken into account the following:
- the route would deliberately avoid statutory designated sites and any ponds and where possible, woodlands and mature trees;
  - results from early ecological surveys had fed into ongoing design work;
  - the extensive consultation which had taken place, consultee comments and feedback were considered during the design process; and
  - the location of the construction compound, temporary storage areas and access routes were considered in liaison with ecologists to ensure minimum impact on key habitats and species.
- 5.1.70 Additional survey work and mitigation for effects on protected species would be undertaken prior to construction commencing, including:
- employing an Environmental Clerk of Works for the construction phase (secured through the Outline Construction Environmental Management Plan (CEMP), discussed below);
  - preparation and agreement of a method statement for GCN survey and management;
  - undertaking dormice nest checks prior to construction work, maintaining hedge lines during construction using brash matting if hedge removal would be for more than 48 hours, filling in excavations or covering them overnight, liaison with NRW and the local dormice group and obtaining a European Protected Species Licence for dormice mitigation work;
  - preparation and agreement of a method statement for bats, use of low pressure sodium lamps rather than mercury or metal halide lamps at the construction compound if night-time lighting would be needed, liaison with NRW in relation to obtaining a European Protected Species Licence, if one is required;
  - preparation and agreement of a method statement for common lizard, which would include the clearance of areas of common lizard, discouraging lizards from areas to be impacted by cutting the vegetation short and the relocation of common lizard refuges if necessary;
  - undertaking a badger survey prior to construction commencing, preparation and agreement of a badger method statement, which could require the Applicant to obtain a protected species licence if badger setts are found and it is necessary to exclude the sett; and
  - obtaining a licence from NRW if disturbance to otters could result in a breach of legislation.
- 5.1.71 In the Applicant's final draft DCO for option A [REP11-018] and for option B [REP11-020], Schedule 1(authorised development), works 2A

and 2B would include tree and hedgerow planting and landscaping and ecological measures to replace trees, hedgerows and other vegetation. Works 3A and 3B would be for landscaping to mitigate any adverse effects of the maintenance or use of the development. Requirements 5, 6 and 7 cover landscaping, dying, diseased and damaged planting and replacement planting. Requirement 13 would require the Applicant to agree and submit and have approved an Ecological Management Plan (EMP) which includes method statements for sensitive habitats and species and a hedgerow management plan which must include principles to be followed for hedgerow removal and reinstatement. Requirement 17 would require a decommissioning and restoration plan to include details for ecological management of sensitive habitats.

5.1.72 The final version of the outline CEMP (v4) [REP9-030] included details of the role of the Environmental Clerk of Works, vegetation management, biosecurity matters for minimising the risk of animal disease and threats from other pests and diseases as well as tabulating the key mitigation measures for ecology and biodiversity. The contents of the CEMP (and the environmental management plans that sit under it) would be secured by Requirement 13 of the Applicant's final draft DCO [REP11-018] and [REP11-020].

5.1.73 The outline Hedgerow Management Plan (HMP) and the outline EMP were also updated several times during the Examination. The final submitted version of the outline HMP (version 4) [REP9-032] included the method statement for pre-construction surveys, removal of hedgerow sections and creation of accesses, and reinstatement of hedgerows and their maintenance. The final submitted edition of the outline EMP [REP9-034] included mitigation measures for minimising disturbance to the LWSs including undertaking surveys prior to construction works taking place, micro-siting of poles and coppicing broadleaved trees rather than removal or lopping. It also contained a method statement for work that would take place in relation to other areas of trees and woodland that would be affected as well as protected species method statements.

5.1.74 Construction work would occur outside the bird breeding season, or if that was not possible, the developer would discourage birds from breeding in the affected areas by hard pruning the hedgerows that would be disturbed during the winter prior to the work.

5.1.75 Mitigation for the loss of hedgerows and trees would include the following measures:

- 550m of new hedgerow would be planted. Lost hedgerow would be planted on a 2:1 basis, so 212m would be for mitigation and the remainder, 338m, would be for enhancement. The scheme for replacing hedgerows is contained within the outline HMP, which forms a part of the CEMP and would be secured through Requirement 13 of the Applicant's final draft DCO for option A [REP11-018] and for option B [REP11-020];

- replacing all lost deciduous trees on a 2:1 basis [REP1-056, Q 6.21(a)]; and
- positive habitat management including the provision of new hedgerows and the creation of coppiced woodland which would benefit dormice.

5.1.76 The outline EMP [REP9-034] provided details of pre-construction surveys and method statements that would be carried out in relation to identifying and treating any invasive species if any were to be found within the working area.

## **REPRESENTATIONS**

5.1.77 The Applicant explained in their response to the Panel's FWQ4.16(a) [REP1-056] that EN-5 paragraph 2.7.1 acknowledges that certain bird species, particularly geese and swans, are at greater risk of collision with overhead lines than other species. The Applicant carried out appropriate types of bird survey including wintering birds and vantage point surveys to identify whether there were such higher risk species and reviewed European protected sites to identify internationally important bird populations that could be at risk were assessed. The potential for effects on Greenland white-fronted geese (GWfG), a feature of the Dyfi Estuary Special Protection Area (SPA), was considered in the ES. Paragraph 6.7.7 of the ES [APP-097] concluded that the distance from the Dyfi Estuary SPA to the proposed development and wider scheme would be such that chances of collision of GWfG with the overhead line would be minimal. The Applicant's ornithology data report 2014 [APP-127] also explained that while swans were a survey target species, none of the survey results included any sightings of swans. The risk of collision impacts on birds was therefore considered to be low, with few high risk collision species found in the Order limits, therefore no mitigation measures were proposed.

5.1.78 The Applicant further explained in response to FWQ4.16(b)[REP1-056] that the risk of electrocution to birds is very low. In order to be electrocuted a bird would have to be in contact with two power lines simultaneously or with the live line and the pole structure. The lines would be 2.0m apart and separated from the structure by an isolator which is approximately 2m long. Birds of that size were not documented in any of the study areas in the ES and within the UK a bird of that size would be very unusual. As such, the risks of electrocution would be very unlikely and not a significant effect requiring any form of mitigation.

5.1.79 Mr Richard Parry [RR-084] raised concerns about the detrimental impact upon permanent and migratory wildlife in Clocaenog Forest and surrounding moorland and farmland including the Brenig reservoir area. He stated that wildlife at Brenig reservoir includes black grouse, nightjars, crossbills, ravens and ospreys, one of which was reported as killed recently by an overhead line. He also stated that Clocaenog Forest is home to some rare species including the largest population of

red squirrels in Wales, hares, rare black grouse and wild Przewalski horses.

- 5.1.80 Mr David Roberts [RR-062] raised concerns in his relevant representation (RR) that the Hafod Dingle valley had not been investigated on foot by the Applicant's ecological survey team. He explained that where the overhead line would cross the Hafod Dingle valley, there is an 80m drop in levels and the development would have an adverse impact on the wildlife there. These concerns were expanded in his responses to the Panel's FWQs [REP1-016] and his post-hearing submission [REP3-041]. His concerns were about various wildlife interests including deer that graze on his land and also in relation to the mass felling of a significant section of the Hafod Dingle woodland. The need for enhancement and replacement tree planting on his land resulting from the mass felling would be along ancient hedgerow boundaries and cause problems in relation to his farming activities. He also explained that the overhead line would cross Afon Asa near a cave in the Hafod Dingle on his land. His photographic evidence indicated that there were bats living in the cave and he raised concerns that their presence had not been identified as part of SP Manweb's ecology and biodiversity studies.
- 5.1.81 Mrs J W Smith, in her written representation (WR) [REP5-002], raised concerns about the potential for bats in the property called Pandy on the Gwaenynog estate and was concerned that the development would disturb them, due to its close proximity.
- 5.1.82 Mr Iwan Jones [REP3-010] raised concerns that the list of important hedgerows in the draft DCO did not include some of the hedges identified as important (by the Applicant) and included some that had been assessed as un-important. He also provided information to the examination regarding the remaining two of the "*four sisters*" which was a group of trees which Mr Jones considered to be part of the area's heritage, located in Eriviat Hall parkland and were noted on historic maps [REP4-003]. Mr Jones' concerns were that the remaining two of the four sisters would be cut down as part of the development, despite them being of considerable age.
- 5.1.83 In their Statement of Common Ground (SoCG) [REP9-037] the Applicant and DCC agreed the following matters in relation to ecology and biodiversity:
- the baseline;
  - the approach to the assessment methodology and significance criteria for ecology and biodiversity impacts;
  - the conclusions on assessment of significance (alone and cumulatively);
  - mitigation; and
  - that there were no outstanding issues that needed to be heard at any ISH.

- 5.1.84 The same matters were agreed with CCBC in its SoCG with the Applicant [REP9-021].
- 5.1.85 DCC also agreed in its SoCG with the Applicant that the ES adequately assessed the felling and lopping of trees and removal of hedgerows and the conclusions in relation to significance were also agreed. DCC also agreed to the inclusion of the provisions in Article 9 of the draft DCO (application and modification of the Hedgerow Regulations 1997).
- 5.1.86 The Panel notes that the SoCG between CCBC and the Applicant was silent on these matters.
- 5.1.87 NRW [RR-075] explained that licences would be likely to be required in respect of certain species, notably dormice, and may be required for others, such as GCNs, otters, bats or badgers. Licensing requirements could not be finalised because, for certain species, survey work would not be completed until shortly before the commencement of works and because in some cases, a licence would only be sought if the species in question is encountered during the survey or, works.
- 5.1.88 The SoCG between NRW and the Applicant [REP9-019] stated that NRW agreed the following in respect of ecology and biodiversity:
- the survey information adequately describes the status of the species that NRW has assessed;
  - the approach to the assessment methodology and significance criteria for ecology and biodiversity impacts;
  - the conclusion on assessment of significance (alone and cumulatively);
  - the proposed mitigation;
  - that there are no outstanding issues that need to be addressed at any ISH; and
  - that no part of the development would be within the boundaries of a SSSI and granting development consent is unlikely to damage the features of any SSSI.
- 5.1.89 The SoCG between NRW and the Applicant also confirmed that the content of the ES Chapter 6 was sufficient to inform decisions concerning methods and procedures needed to protect nationally and internationally designated species, and based on the information available at that time NRW concluded that "*it is not unlikely that any necessary protected species licenses will be granted*". NRW also agreed the mitigation strategy set out in the Applicant's draft method statement for dormice.

## **FURTHER MITIGATION**

- 5.1.90 In response to the Panel's agenda item 9.3 in the ISH on landscape and visual impacts, heritage and biodiversity on 30 September 2015 [EV-022], NRW confirmed that they were "*reasonably content*" that ecological mitigation would be delivered through the outline CEMP and the environmental management plans, secured through a requirement, and did not express any need for ecological mitigation

details to be on the face of the DCO. No other representations from IPs were received in relation to identifying that there was a need for the ecological mitigation and management to be secured through requirements on the face of the recommended DCO rather than through environmental management plans.

- 5.1.91 The CEMP, HMP and EMP were updated several times during the Examination, with each iteration providing more detail and clarity on what mitigation would be delivered and when. In the ISHs, the Panel raised concerns about the style of wording in these documents, and requested that the documents were written in a way which would ensure certainty of delivery of aspects of ecological management and mitigation. The Applicant made changes to address these, which gives the Panel sufficient comfort that the mitigation proposed in the CEMP, HMP and EMP would be delivered.
- 5.1.92 There are no changes to the draft DCO being proposed by the Panel in respect of biodiversity or ecological management matters.

### **THE PANEL'S REASONING AND CONCLUSIONS**

- 5.1.93 The Panel is satisfied that the Applicant has assessed and reported the effects on habitats and protected species in sufficient detail. The Panel agrees with the Applicant's assessment that the development would not impact upon any SSSIs. The Panel is also satisfied that the Applicant's assessments and mitigation measures proposed have given due and proportionate regard to the provisions of EN-1 and EN-5 in relation to internationally and nationally designated sites, LWSs and other protected habitats and species. The Panel has had regard to Welsh policy in PPW 8 and TAN 5 in coming to these conclusions. The potential impacts on internationally designated sites and their features are considered and concluded upon in Chapter 6 of this report.
- 5.1.94 There was no evidence put forward to the Examination which contradicted the Applicant's statements in the ES regarding designated geological conservation sites. The Panel is satisfied that there would be no impact upon designated sites of geological conservation; it concludes as a result that there would be no adverse impacts on any such sites.
- 5.1.95 The Panel notes that six LWSs would be significantly impacted, resulting in the loss of approximately 1.1ha of ancient woodland and 0.05ha of other deciduous woodland. The Panel considers that the loss of 1.1ha of ancient woodland and 0.05ha of other deciduous woodland in LWSs would result in significant harm. It also notes that EN-1 (in paragraph 5.3.13) directs the Panel to accept that LWS designations should not be used in themselves to refuse consent, given the need for new infrastructure.
- 5.1.96 The Panel has considered alternatives in relation to both option A/option B and alternative solutions to an overhead line. Consideration of option A/option B in relation to biodiversity matters

has been discussed in this report section, and in relation to alternative solutions in Section 4.5 of this report.

5.1.97 The Panel concludes that the need for the Nationally Significant Infrastructure Project (NSIP) is sufficient to justify the loss of these small but significant areas of ancient woodland and LWSs. In order to address policy requirements mitigation is required. Having reviewed the Applicant's proposals for mitigation, in terms of quantity, quality and function of the proposed mitigation, it is satisfied with the proposed mitigation which is secured in the Applicant's final draft DCOs for option A [REP11-018] and option B [REP11-020] and carried forward into the Panel's recommended draft DCO.

5.1.98 It also notes that:

- a further 0.67ha of broadleaved woodland outside LWSs would be lost;
- 12m of important hedgerows and 14m of non-important hedgerows would be permanently lost;
- 110 mature deciduous trees would be lost; and
- 0.49ha of coniferous plantation (sitka spruce) at Clocaenog Forest would be lost.

5.1.99 The Panel considers that these tree and woodland losses would be mitigated through replacement tree and hedgerow planting, undertaking coppicing wherever possible and management of the newly planted trees and hedges as secured in the Applicant's final draft DCO Requirement 13 (which requires the submission, agreement and implementation of the EMP and HMP) and Requirement 5 (which requires the submission, agreement and implementation of the written landscape scheme).

5.1.100 The Panel is also satisfied that the Applicant's final draft DCO for option A [REP11-018] and option B [REP11-020] would secure appropriate mitigation of impacts on habitats and species, and that habitat and species interest along the route of the proposed development is addressed in accordance with EN-1 policy.

5.1.101 The Panel notes that there was no evidence submitted to the Examination which disproved the Applicant's statements regarding there being little collision or electrocution risk to birds arising from the development. The Panel considers that that applicant has given sufficient regard to these matters in accordance with EN-5 paragraph 2.7.1-2.7.6. It agrees with the Applicant that the risks to birds from collision or electrocution are so small that mitigation would not be required. The Panel concludes that there would be no adverse impacts on birds from either collision or electrocution.

5.1.102 The Panel notes the concerns raised by IPs including Mr Roberts and Mrs Smith about protected species (notably bats) being present or potentially present in particular locations along the route of the development, as well as the concerns raised by Mr Richard Parry about



protected species being found in Clocaenog Forest including red squirrel and black grouse. The Panel considers that these matters would be addressed in the detailed surveys that would be undertaken prior to construction commencing, with suitable mitigation to minimise risk of disturbance to protected species during the works and they would not, in themselves, give rise to reasons for the development not proceeding.

- 5.1.103 The Panel notes the SoCG details that were agreed between the Applicant and NRW in respect of protected species licences and dormice mitigation. It considers that these details provide comfort that there would not be any undue impediments to NRW granting protected species licences, should the Order be made
- 5.1.104 The Panel is aware that 110 mature trees would be lost to the development, of which two are likely to be the remaining veteran trees contained within the "*four sisters*" group of trees at Eriviat Hall parkland. The Panel considers that the four sisters is a locally important name used to describe the group of trees and their loss would be locally significant. Their loss would be unavoidable in order to deliver the NSIP. However, the Panel is satisfied that overall the number of trees that would be lost would be relatively small given the tree-dominated landscape and that mitigation includes the planting of replacement trees on a two to one basis, albeit it would take a very long time for the trees to mature to the size of the mature/veteran trees that would be lost.
- 5.1.105 The Panel is satisfied that the Applicant has given consideration to decommissioning as far as is reasonably possible with regard to biodiversity. The Panel is satisfied that Requirement 17(it its recommended draft DCO) would require a methodology for the ecological management of sensitive habitats to be agreed and implemented during the decommissioning and restoration works.
- 5.1.106 The Panel notes the SoCG details that were agreed between the Applicant and NRW in respect of protected species licences and dormice mitigation. It considers that these details provide comfort that there would not be any undue impediments to NRW granting protected species licences, should the Order be made.
- 5.1.107 The Panel concludes that there are no reasons relating to biodiversity effects from the proposed development that would prevent the DCO from being made, provided the environmental monitoring surveys are undertaken and mitigation measures that are proposed, are delivered. This includes the mitigation as set out in the Applicant's final draft DCOs for option A [REP11-018] and option B [REP11-020] for outline environmental management plans to be secured through Requirement 13 and ecological management methodology in respect of decommissioning secured through Requirement 17.
- 5.1.108 The Panel also concludes that in relation to option B, apart from a very small increase in hedgerows that would be impacted, compared to

option A, which is not a significant increase in effects, the conclusions given in the paragraph above apply equally to option B.

## **5.2 LANDSCAPE AND VISUAL IMPACT**

### **INTRODUCTION**

- 5.2.1 This report section provides details in relation to landscape and visual impact matters including consideration of alternatives as they relate to landscape and visual effects as set out in the National Policy Statements (NPSs).
- 5.2.2 This introductory section considers both National and Welsh policy matters that are relevant to landscape and visual impact.
- 5.2.3 The remainder of this report section considers:
- impacts and mitigation;
  - representations;
  - further mitigation;
  - the Panel's reasoning and conclusions in respect of landscape and visual impact.
- 5.2.4 Each sub-section includes consideration of the following landscape and visual impact matters:
- landscape elements and landscape character;
  - effects on visual receptors;
  - effects on residential visual amenity;
  - "*serious concerns*" in relation to landscape and visual impact and related national policy considerations; and
  - cumulative effects on landscape and visual impact receptors.

### **Policy context and background**

#### ***National Policy Statements***

- 5.2.5 EN-1 (paragraph 5.9.5) directs the Applicant to carry out a landscape and visual assessment and report it in the Environmental Statement (ES). The assessment should include effects on landscape components, on landscape character and on views and visual amenity during construction of the project and its operation (paragraph 5.9.6). Factors that should be taken into account when judging landscape impacts include existing character of local landscape, its current quality, how highly it is valued and its capacity to accommodate change (paragraph 5.9.8).
- 5.2.6 EN-1, paragraph 5.9.8, also accepts that virtually all nationally significant energy infrastructure projects will have effects on the landscape, but the aim should be to design the project carefully, taking account of the potential impact on the landscape, minimising harm and providing reasonable mitigation where possible and appropriate. It explains, in paragraph 5.9.14-5.9.17, that outside

nationally designated areas, there are local landscapes that may be highly valued locally and protected by local designation. However, local landscape designations should not be used in themselves to refuse consent, as this may unduly restrict acceptable development. It explains that the decision maker should consider whether any adverse impact is temporary, such as during construction, and/or whether any adverse impact on the landscape is capable of being reversed in a timescale that the decision maker considers reasonable. The decision maker should consider whether the project has been designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to minimise harm to the landscape by including reasonable mitigation.

- 5.2.7 It also states (in paragraph 5.9.13) that the fact that a proposed project will be visible from within a designated area should not in itself be a reason for refusing consent.
- 5.2.8 EN-5 refers specifically to the fact that overhead lines and associated infrastructure such as substations and cable sealing compounds can give rise to adverse and visual effects. EN-5 explains that mitigation can be achieved for the most part, but in particularly sensitive locations the potential adverse landscape may make it unacceptable in planning terms (paragraph 2.8.2).
- 5.2.9 EN-5 also sets out the requirements for the applicant's assessment, including guidance provided by the Holford Rules<sup>6</sup>; the need to consider undergrounding and mitigation including alternatives, support structures and landscape schemes which may also include offsite planting and local planting for screening or softening visual impact for specific receptors (paragraphs 2.8.4 to 2.8.11).
- 5.2.10 It directs the decision maker (in paragraph 5.9.15), to judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project.

***National Policy Statement tests in relation to landscape and visual impacts and whether the development should be undergrounded***

- 5.2.11 Section 4.5 of this report discusses and concludes upon the consideration of alternatives to the proposed development. In this section of the report, the Panel reviews national policy in EN-1 and EN-5 in relation to visual and landscape impacts with regards to whether the development should be undergrounded.
- 5.2.12 EN-5, paragraph 2.8.6, provides an overview of the Holford Rules and also states that the Holford Rules should be followed in the design of the overhead lines. Decision makers should take them into

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<sup>6</sup> The Holford Rules are a series of planning guidelines relating to the visual amenity of high voltage transmission, an overview of which is set out in EN-5 (paragraph 2.8.6)

consideration in relation to alternatives and the need for additional mitigation measures (paragraphs 2.8.5 to 2.8.7).

- 5.2.13 EN-5, in paragraph 2.8.8, provides clear national policy regarding under which circumstances electricity infrastructure should be undergrounded. It directs the decision maker to balance *"serious concerns about the potential adverse landscape and visual effects of a proposed overhead line against other relevant factors including the need for the proposed infrastructure, the availability and cost of alternative sites and routes and methods of installation (including undergrounding)."*
- 5.2.14 EN-5 provides further advice for the decision maker in paragraph 2.8.9, explaining that it should only refuse consent for overhead line proposals in favour of an underground line if it is satisfied that the benefits from the non-overhead line alternative will clearly outweigh any extra economic, social and environmental impacts and the technical difficulties are surmountable. In this context it should consider landscape, additional costs, and the environmental and archaeological consequences of undergrounding.
- 5.2.15 The issues of whether any *"serious concerns"* had been raised and whether the benefits of an underground line would *"clearly outweigh"* any extra costs and impacts were important matters for the Examination and will be discussed and concluded upon below.

### ***Welsh policy***

- 5.2.16 Planning Policy Wales (Edition 8, January 2016) (PPW 8), in section 5.1, explains that the natural heritage of Wales embraces the relationships between land form and landscape, habitat and wildlife, and their capacity to provide enjoyment and inspiration. The natural heritage and valued landscapes of Wales are not confined to statutorily designated sites but extend across all of Wales - to urban areas, the countryside and the coast. Paragraph 5.1.4 of PPW 8 requires biodiversity and landscape considerations to be taken into account at an early stage in both development plan and development management, with the consequences of climate change on the natural heritage and measures to conserve the landscape and biodiversity should be a central part of this.
- 5.2.17 PPW 8, paragraph 5.3.11 explains that non-statutory landscape designations, such as Special Landscape Areas (SLAs), should not unduly restrict acceptable development.

### ***Local Development Plans***

- 5.2.18 The Conwy County Borough Council (CCBC) Local Impact Report (LIR) [LIR-001] explained that the CCBC Local Development Plan (LDP) was adopted in 2013 and comprises the statutory development plan for the whole of Conwy Borough (excluding Snowdonia National Park). Policy NTE/4 provides policy in relation to the landscape and protecting special landscape areas.

5.2.19 It states:

*"1. Special Landscape Areas are shown on the proposal map and designated in the following locations:*

- (a) Great Orme and Creuddyn Peninsula*
- (b) Conwy Valley*
- (c) Abergele hinterlands*
- (d) Elwy and Aled Valleys*
- (e) Hiraethog*
- (f) Cerrigydrudion and the A5 corridor*

*2. In order to conserve the attributes of the Special Landscape Areas development proposals will have to show particular regard to the character of each locality in order to minimise their impact. Development will only be permitted if it is shown to be capable of being satisfactorily integrated into the landscape. In appropriate cases planning applications should be accompanied by a Landscape and Visual Impact Assessment to assess the visual and landscape impacts of the development.*

*3. All proposals, both within and outside Special Landscape Areas will be considered against the Development Principles and other policies in the Plan designed to protect the environment and landscape character."*

5.2.20 The Denbighshire County Council (DCC) LIR [LIR-002], in paragraph A4.3.1, explained that the DCC LDP was formally adopted on 4 June 2013. It provides the basis on which development management decisions are made and will guide development in the County up to 2021. None of the policies identified in the LIR as being relevant to the proposed development related specifically to landscape. However paragraph A4.3.5 of the LIR stated that the Council had approved supplementary planning guidance in relation to landscape and visual matters in the document, Conwy and Denbighshire Landscape Sensitivity and Capacity Assessment for wind turbine developments, dated August 2013.

## **IMPACTS AND MITIGATION**

### **Introduction**

5.2.21 The Applicant provided a landscape and visual impact assessment (LVIA) as part of its ES [APP-098]. This was accompanied by six appendices.

5.2.22 The study area for the LVIA was the area within which the Applicant considered that likely significant landscape and visual effects may occur; a 2km buffer from the centreline of the limits of deviation (LoD). Paragraph 7.4.16 explained that overhead lines supported on wood poles may be visible up to 5km away, but they are unlikely to be prominent features, particularly if seen against a backdrop of landform or vegetation.

- 5.2.23 The LVIA explained that, for the purpose of the assessment, effects which were predicted to be of major or moderate significance by virtue of more sensitive receptors and the greater magnitude of effects were generally considered to be significant. Those falling outside the major or moderate categories were generally considered to be not significant. Whilst effects can be adverse or beneficial, for this project, all effects identified were considered adverse unless specifically stated otherwise.
- 5.2.24 Long term effects were considered to relate to proposals where effects were still felt 15 years after construction, and not declining. Thus, for the proposed development, all LVIA effects were considered to be long term effects.
- 5.2.25 The LVIA explained (paragraph 7.4.73), that viewpoints were selected to represent views which would be experienced by the specific visual receptors and secondly they contributed to an understanding of the more general effects on visual amenity experienced by people moving around the area. The selection of viewpoints was informed by the zone of theoretic visibility analysis and by field and desk based assessment. It was not the intention to identify every possible location which would have a view of the overhead line.

### **Impacts on landscape and landscape character**

- 5.2.26 The development would be located outside the Clwydian Range and Dee Valley Area of Outstanding Natural Beauty (AONB) (which is approximately 7km to the east) and Snowdonia National Park (which is approximately 17km to the west).
- 5.2.27 Other designated and undesignated landscape features in the study area included:
- Y Berwyn area of outstanding beauty (AOB), designated by DCC and lies approximately 17km to the south of the proposed development;
  - SLAs, designated by CCBC:
    - SLA2 Rhyd-y-Foel to Abergele (approximately 2.2km to the north west of the proposed development);
    - SLA3 Elwy and Aled Valleys (approximately 1.8km to the west of the proposed development); and
    - SLA4 Hiraethog (approximately 4.7km to the south west of the proposed development).
  - Conservation Areas at Henllan, Bodelwyddan, Nantglyn and St Asaph, the nearest being Henllan Conservation Area which would be approximately 1.4km to the east of the proposed development;
  - Various Open Access Areas identified under the Countryside and Rights of Way Act 2000, the nearest being within the Order limits at Clocaenog Forest;

- The Clwydian Way regional trail and the North Wales Pilgrim's Way long distance footpaths (the proposed development would oversail these footpaths);
  - Various Welsh Registered Historic Landscapes included within Part 2 of the Register of Landscape, Parks and Gardens of Historic Interest in Wales, the nearest of which is the Lower Elwy Valley Registered Historic Landscape of special historic interest (the closest point would be approximately 350m from the proposed development);
  - Various registered Parks and Gardens included within Part 2 of the register of landscapes, parks and gardens of historic interest in Wales and England, the closest of which is Bodelwyddan Castle (approximately 720m to the north of the proposed development).
- 5.2.28 Scheduled ancient monuments and ancient and semi-natural woodland sites are considered in report Sections 5.4 and 5.1.
- 5.2.29 The ES considered impacts to be negligible in respect of the following:
- Snowdonia National Park and the nearest AONB;
  - Y Berwyn AOB;
  - SLAs and Conservation Areas;
  - Open Access Areas and registered historic landscapes; and
  - Scheduled (Ancient) Monuments.
- 5.2.30 The ES predicted minor effects on the landscape at Foxhall Newydd Registered Park and Garden (which would be approximately 1.3km to the east of the proposed development). The overall significance of landscape effects on Registered Parks and Gardens was predicted to be minor.
- 5.2.31 Table 7.20 of the ES chapter on LVIA [APP-098] predicted there to be moderate (and therefore significant effects) in relation to the following landscape character areas:
- Denbigh and Derwen Hills;
  - Llanefydd lowlands;
  - Afon Elwy Valley - East;
  - Upper Elwy Valley; and
  - Limestone Valley - Cefn.

### **Impacts on visual receptors**

- 5.2.32 The ES described the route of the proposed development in four sections, in paragraphs 7.7.62 -7.7.85 [APP-098]. These are shown on figure 7.9 [APP-107]. The four sections are as follows:
- Clocaenog to Bwlch (section A);
  - Bwlch to Eriviat (section B);
  - Eriviat to Plas Buckley via Hafod (section C); and
  - Plas Buckley to Groesffordd Marli (section D).

5.2.33 A total of 30 viewpoints from the final route alignment were assessed. Their locations are shown on Figure 7.3 in the ES [APP-107]. The impacts at the 30 assessment viewpoints are described in the ES, table 7.21. The viewpoint locations where the effect of the proposed development on visual amenity was considered to be moderate, and therefore significant were:

- 02 - from the B5435 on the western edge of Saron village at approximately 290m above ordnance datum (AOD);
- 03 - from the junction of the B4501 east of Foel Gasyth near Bron Haul, at approximately 330m AOD;
- 05 - from the B4501 south of Plas Captain, heading to Peniel, at approximately 190m AOD;
- 08 - from the public footpath north of Ty-Coch, at approximately 140m AOD;
- 11 - from the A543 as it runs from Groes to Denbigh, at approximately 180m AOD;
- 12 - from the B5428 near Eriviat Bach-Isaf and Eriviat Bach-Uchaf at approximately 140m AOD;
- 26 - near Berain house and farm, at approximately 150m AOD;
- 27 - Croenllwm Mawr northwest of Henllan, near Tyddyn Bartley and Berain;
- 32 - south west approach to the Elwy Valley from Tal-y-Bryn and Plas Buckley, at approximately 160m AOD;
- 34 - Tan-y-Graig on the north-eastern slopes of the Elwy Valley at approximately 130m AOD;
- 37 - public footpath near Plas Hafod and Plas Newydd at approximately 120m AOD;
- 39 - footpath adjacent to Pentre Mawr (northeast of the Cefn Meiriadog ridge line), at approximately 60m AOD;
- 42 - footpath northwest of Nantglyn, near Hendre, at approximately 160m AOD; and
- 47 - minor road from the B4501 at Llyn Brenig; and
- 50 - from Tan-y-Garth which lies close to the ridge at Foel Gasyth.

5.2.34 The ES concluded that moderate effects were predicted for 15 out of 30 viewpoints, with the visual impact from the other 15 viewpoints being negligible or minor.

5.2.35 Moderate (and therefore significant) visual effects were predicted in each of the four sections along the proposed route, these were listed in paragraph 7.7.125 of the ES [APP-098]. The selected viewpoints were considered to give a representative selection of the more sensitive viewpoints within the vicinity of the final route alignment. The ES considered, in paragraph 7.7.126 that other receptors (of a similar type) would be likely to experience visual effects of similar or lesser significance.

5.2.36 The ES, in paragraph 7.7.127 considered that significant visual effects would be more likely to be experienced at viewpoints close to the proposed development. Even then, views would be likely to be



partially screened by the undulating topography and intervening vegetation. The south of the study area, from the upland locations near Clocaenog, Tir Mostyn and Foel Gasyth would give rise to views in which the overhead line would be likely to be more visible.

### **Impacts on residential visual amenity**

- 5.2.37 The ES explained (paragraph 7.4.105) that residential visual amenity assessment is the assessment of views from private properties which would lie close to the proposed development. Residential visual amenity is defined as the visual amenity experienced by occupiers of residential properties, including their gardens. Residents are typically highly susceptible to changes in their views.
- 5.2.38 The ES predicted that moderate (and therefore significant) visual effects would be likely to occur at four individual residential properties within 200m of the proposed development. They were as follows:
- Tan-yr-Allt (105m away from the proposed development);
  - Ty Coch (180m away from the proposed development);
  - Llechryd Bach (140m away from the proposed development); and
  - Plas Hafod (105m away from the proposed development).
- 5.2.39 The ES considered, in paragraph 7.7.135 that although occupiers of these properties may experience significant visual effects, none would be likely to have the visual amenity affected to the point where they become, *"unattractive and thus unsatisfactory places in which to live"*.
- 5.2.40 For other assessed properties, whilst the 132kV overhead line would be likely to be visible, the ES explained that it would not be a particularly dominant component of the view.

### **The Applicant's views on "serious concerns" in relation to landscape and visual impact**

- 5.2.41 In Appendix 1 to the Planning Statement [APP-159], the Applicant explained :
- "In terms of defining "serious concerns" this has previously been interpreted by SP Manweb in its submissions in respect of the Llandinam Scheme ..., to mean adverse significant landscape and visual effects that are over and above that expected for this type of project. In the context of an overhead line, this is taken to be a major adverse effect as identified in the ES for the Proposed Development."*
- 5.2.42 It explained in section 3.7 that the LVIA found that the proposed development (both on its own and cumulatively) did not give rise to any major adverse effects. However moderate/major cumulative effects were identified in the cases of views towards the Tir Mostyn area from the combined effects of the proposed development and the four wind farms and other developments included in the cumulative assessment on the effects on recreational and transport receptors in the area. The Applicant concluded that this moderate/major

significant effect would remain with or without the proposed development. This was because the major effect would arise as a result of the wind farms considered cumulatively and as they have already been consented, and the proposed development would add to that already major effect. However the Applicant considered it would result in a borderline moderate/major effect due to the scale of the proposed development and the effects reducing with distance from the wind farms.

- 5.2.43 It further considered [APP-159, paragraph 3.7.11] that the borderline moderate/major outcome was not considered to reach the bar of serious concerns, but it noted that there were a number of moderate effects arising in views towards the Tir Mostyn area. In paragraph 5.1.5 it explained that potential moderate-major visual cumulative effects are possible in this area, these would primarily be due to the additional visual impacts of the wind farms and the single wind turbines being located in close proximity to the development, rather than the development itself. Undergrounding the development at this location would be *"unlikely to reduce the moderate-major visual effects of the cumulative developments planned within this area"*.
- 5.2.44 It stated, in paragraph 3.7.8 that there would also be one property (Hafod Olygfa, viewpoint 19) that would be likely to experience minor-moderate cumulative effects on residential visual amenity.
- 5.2.45 It considered costs in relation to undergrounding the cable, and in paragraph 4.3.18 stated that the costs for (undergrounding) the Tir Mostyn section would increase the overall lifetime costs by £1.7m. It went on to explain that the Applicant did not consider that the additional costs associated with undergrounding the cable in the Tir Mostyn area were justified.

### **Cumulative impacts in the Environmental Statement**

- 5.2.46 Cumulative impacts were assessed in relation to developments that have planning consent but were not constructed at the time of the assessment, as well as undetermined planning applications for consent. The ES LVIA chapter [APP-098, Tables 7.24 and 7.25] listed the developments that were considered in the cumulative impacts assessment in relation to landscape and visual impacts.
- 5.2.47 The cumulative impacts were described in the ES in relation to different areas around the route of the proposed development. The areas where moderate (and therefore significant) cumulative impacts were predicted to arise in the ES are summarised here:
- Area 1 (Clocaenog Forest) - the combination of the proposed development, the collector sub-station, and Clocaenog and Brenig Wind Farms would result in an overall moderate and therefore significant effect;
  - Area 2 (Llyn Brenig Moorland/Forest) - the combination of the proposed development, the collector sub-station and Clocaenog

and Brenig wind farms would result in a an overall moderate and therefore significant effect;

- Area 3 (Denbigh and Derwen Hills) - the combination of the proposed development, the collector sub-station and Clocaenog and Brenig wind farms would result in a an overall moderate and therefore significant effect;
- Area 5 (Llanefydd Lowlands) - the potential effect of the proposed development was identified as moderate. The additional effects of the combination of the proposed development, the collector sub-station and Clocaenog and Brenig wind farms would not result in any increase above moderate, due to the distances;
- Area 8 (Afon Elwy Valley, East) - the potential effect of the proposed development was identified as moderate in the LVIA. There were no other developments that would affect the character of the landscape and so there would be no cumulative effects at this location.
- Area 9 (Upper Elwy Valley) - the potential effect of the proposed development was identified as moderate in the LVIA. There were no other developments that would affect the character of the landscape and so there would be no cumulative effects at this location.
- Area 10 (Limestone Valley - Cefn) - the potential effect of the proposed development was identified as moderate in the LVIA. The other developments were not predicted to affect the character of the landscape and so there would be no cumulative effects at this location.

5.2.48 Overall the cumulative effects on the landscape were considered to be moderate and therefore potentially significant before mitigation, particularly around the Clocaenog Forest area and within the Llanefydd lowlands. Elsewhere cumulative effects were not considered to be significant.

### **Specific mitigation measures in the Environmental Statement**

5.2.49 The ES [APP-098] assessed landscape and visual effects on the basis of the realistic worst case scenario and these were assessed with embedded mitigation (including direct hedgerow replacement), but without any specific mitigation planting in place. Specific mitigation measures would include a series of planting proposals to mitigate identified effects on landscape character and views, including tree planting and additional hedgerow and hedgerow tree planting within and immediately adjacent to the final route alignment.

5.2.50 The ES considered (in paragraph 7.8.5), that in the landscape areas where moderate (significant) effects had been identified, large scale tree planting was not proposed as it could have a detrimental effect on views (by obscuring them) and could alter the character of a landscape. Large scale planting was generally not a feature of the landscape within the study area, which was characterised by pastures bounded by hedges with occasional hedgerow trees. As such, the

reinforcement of hedgerows and the planting of hedgerow trees would present a more appropriate solution to mitigate the effects of the proposed development.

- 5.2.51 The ES (paragraph 7.8.6) explained that some areas were considered suitable for planting in order to help lessen the likely significant effects, on the edge of woodlands which would have to be thinned or pruned during construction, including areas of woodland near Bryn Foel, south east of Peniel (on the ridge east of Foel Gasyth), Pandy Wood, Hafod Dingle, Croen Llwm Mawr and on the southern slopes above the Afon Elwy. At these locations, new woodland edge planting, and natural regeneration of woodland scrub habitat were recommended to soften the edge of any areas if woodland pruning was needed.

### **Impacts arising in relation to option B**

- 5.2.52 The Environmental Report in Support of Option B (ERISOB) [OpB-003] concluded that there would be likely to be small increases and small decreases in the magnitude of effects resulting from movements in pole positions and additional poles, the judgement on the overall significance of the assessments reached in the ES remains unchanged. Proposed change 1 would result in moving the poles on the ridge at Tir Mostyn to the edge of the LoD nearest Hafod Olygfa and this would result in the overall significance of residential visual amenity effects being moderate and therefore significant, whereas it would be minor if the poles stayed in the middle of the LoD. This conclusion was already included in the ES and did not represent a change to the environmental impact assessment (EIA).

## **REPRESENTATIONS**

### **Representations on landscape and landscape character**

- 5.2.53 The Statement of Common Ground (SoCG) between the Applicant and Natural Resources Wales (NRW) [REP11-015] stated that NRW agreed the following in respect of landscape and visual impacts:
- (a) the baseline;
  - (b) the approach to the assessment methodology and significance criteria for landscape and visual impacts;
  - (c) that there will be no effect on Statutory Designated Sites; and
  - (d) that there are no outstanding statutory landscape designation issues that need to be addressed at any issue specific hearing.
- 5.2.54 The SoCG between the Applicant and DCC [REP9-037] stated that DCC also agreed the baseline, the approach taken to the assessment methodology and also the application of the Holford Rules. However, this SoCG also explained that DCC did not agree with the Applicant in relation to DCC's view that the proposed development would have a detrimental impact on the quality and integrity of the local landscape and that the predicted effects were underestimated.

5.2.55 The SoCG between the Applicant and CCBC [REP9-021] stated that CCBC agreed to the following in respect of landscape and visual impacts: the baseline, approach to the assessment methodology and significance criteria (alone and cumulatively) except in relation to the A543 crossing and general principles of mitigation (except in relation to the A543 crossing).

5.2.56 In the SoCG between the Applicant and Snowdonia National Park Authority [REP1-058] the Snowdonia National Park Authority states (amongst other things) that:

*"Having examined the supporting documents, and given the distance of the proposed route from the National Park boundary - some 15km, I do not believe there will be any adverse landscape or visual impacts on the Park, or its setting, or any loss of amenity to its residents or visitors to Snowdonia."*

### **Representations on visual receptors**

5.2.57 In the SoCG with the Ramblers Association [REP10-017], the Ramblers Association agreed with the Applicant, in that the route of the planned development, with the type of cable support structure proposed, would not have an unacceptable level of visual and landscape intrusion and loss of enjoyment to walkers and is therefore acceptable as being the best route available within the constraints of the pre-determined points. The SoCG with the Ramblers Association however stated that they considered that the proposed development from Plas Captain to its termination point at Clocaenog Forest requires further mitigation in terms of visual impact on walkers at three locations:

- ridge crossing the B4501 north of Peniel;
- ridge crossing of minor road west of Bwlch; and
- ridge travers from crossing of Bryn Golau/minor road to Clocaenog Forest termination.

5.2.58 The SoCG between the Applicant and DCC [REP9-037] stated that DCC did not agree with the Applicant in relation to the coverage of visual receptors, nor did it agree with the Applicant on the location, direction and number of views covered in photomontages, which DCC considered under-estimated impacts.

5.2.59 Whilst historic environment matters are considered in detail in report Section 5.4, the letter from Cadw to the Panel [REP10-023], in response to a Rule 17 request for information in relation to the setting of the listed buildings at Berain and the unregistered historic parkland at Eriviat Park [PD-020] provided information in relation to the landscape issues attached to these matters.

5.2.60 Cadw concluded that it was likely that there would be a harmful visual impact on the setting of the listed buildings at Berain. It continued, *"In our view, the rarity and exceptional interest of this group of buildings would make this a cause for concern."* Cadw also explained that while Eriviat Hall parkland had not been included in the Register

of Parks and Gardens, that earlier decision could now be reviewed. Cadw considered that an initial examination of historic maps and aerial photographs suggested that the parkland could be a potential candidate for addition to the register. They explained that the parkland's suitability would need to be formally assessed.

- 5.2.61 CCBC considered (in their SoCG with the Applicant) [REP9-021], that there would be an adverse effect on landscape character in the location where the proposed development would cross the A543 and the development would present a significant visual detractor to receptors travelling along the A543. CCBC agreed with the Applicant in that the development crossing the road would not give rise to any major adverse landscape and visual effects (as they were assessed as moderate and therefore significant), but considered that there was an overriding case for requiring undergrounding in this location and requested the Panel to consider the impacts of the overhead line to be sufficiently exceptional to justify this requirement.
- 5.2.62 In the Issue Specific Hearing (ISH) of 8 December 2015, the Applicant explained that the crossing of the A543 was at an oblique angle in order to comply with the Holford Rules. Mr Iwan Jones asked why the poles crossed the A543 at an elevated point, rather than at a lower elevation. The Applicant explained [REP9-023, paragraph 7.19.1], that to cross the road at a lower elevation, the poles would have to move further south and therefore closer to the farm and residential property at Groes Bach. This would also need the use of an angle pole closer to the road, which would be more visible from the road. Whereas moving the poles further north would take them onto slightly higher land, closer to the bend and increasing the wider visibility of the poles.
- 5.2.63 The SoCG between the Applicant and Cefn Meiriadog and Glascoed Road Residents and Users Group, (CMAGRRUG) [REP10-014] stated that the CMAGRRUG consider that the assessment of the landscape and visual effects of the proposed development as being moderate is an understatement. Also they considered that the selection of viewpoints 34, 37, 39 and 40 for the LVIA did not cover a sufficiently wide range of situations as is reasonable and necessary to demonstrate the likely significant visual effects.

### **Representations on residential visual receptors**

- 5.2.64 The Panel asked the Applicant, in the second ISH on 8 December 2015, which covered landscape and visual impact issues, whether the report prepared by its landscape consultants for Gwynedd Council, the Isle of Anglesey County Council and Snowdonia National Park, on guidance on the application of separation distances for residential properties [REP6-041], was considered and used in the LVIA for the proposed development. Ms Gibson, landscape consultant to the Applicant, explained that the report had been taken into account in preparing the LVIA and using their site knowledge and previous experience working with double pole lines, a conservative approach

was taken to increase the distance to 200m either side of the wooden poles as the trigger distance for consideration of residential visual amenity effects. Additional properties outside the 200m trigger distance were also assessed where specific concerns were raised during stakeholder and public consultations [REP9-023].

- 5.2.65 A significant number of Interested Parties (IPs) submitted representations expressing concern about the visual impact of the development in relation to their residential properties, the details below summarise some (but not all) of the concerns that were raised. The Panel has however had regard to every representation.
- 5.2.66 Mr H M Parry (Plas Hafod) [RR-064], raised concerns about the impact of the development on his property. The Applicant had assessed the residential visual amenity as moderate (and therefore significant) because of its proximity to the proposed development (105m away). However option B would take the proposed development further away and Mr Parry's agent [REP5-006] confirmed his preference for option B.
- 5.2.67 Mr John Mars Jones (Berain) representations are considered in report Section 5.4 on historic environment.
- 5.2.68 Mr Dewi Parry (College Farm Bungalow) provided various representations and participated during the Examination. The Applicant considered that the residential visual amenity impact that the development would have on College Farm Bungalow would have a high sensitivity but a magnitude of small, resulting in a minor (not significant) effect as the development would be 190m away from Mr Parry's property. Mr Parry [REP1-021] disputed this as well as the Applicant's assertion that the views from the property across the countryside to the overhead line would be from the side and rear of College Farm Bungalow. Mr Parry also asserted that the visual effects would be greater during the winter when the screening effect of the trees would be less.
- 5.2.69 Mrs Nerys Jones (Tan yr Allt) [REP1-043] accepted the Applicant's visual amenity assessment result for Tan yr Allt, which was moderate (and therefore significant), because of the property's proximity at 105m to the proposed development. However, she stated that the cumulative impact of the proposed development with the existing wind farms had not been sufficiently addressed.
- 5.2.70 Mr Peris Jones (Bwlch) [REP4-005] stated that the development should be undergrounded. He was also concerned about the effect that it would have on his tourism business, (a holiday cottage adjacent to his house). He explained that Bwlch occupies an elevated position with magnificent views which are much admired by his customers and would be compromised in the future, due to the proposed development.

- 5.2.71 Mr Meilir Jones [REP3-023] stated that he owned a valuable plot with planning permission close to Hafod. The proposed development would pass within close proximity of his future dwelling, yet the Applicant, in his view, had failed to fully acknowledge the situation and they had not consulted sufficiently with him.
- 5.2.72 Mrs Beedles (Tywysog Bach) [RR-035] explained that in her opinion, the development would totally obliterate the beautiful views from her property.
- 5.2.73 Dr Janine Poletti Hughes (Llys Hedydd) [REP1-034] stated that the proposed development should have been undergrounded. Her concern was that as a family, they have invested heavily in an extension whose views would be compromised by the proposed development.

**Representations on "*serious concerns*" in relation to landscape and visual impact**

- 5.2.74 In the second written questions (SWQs) [PD-016], the Panel asked the Applicant questions about its interpretation of the term, "*serious concerns*" in relation to paragraph 2.8.8 of EN-5. In particular, in its SWQ, the Panel explained that it considered that the term, "*serious concerns*" in paragraph 2.8.8 of EN-5, does not relate to a particular minimum level of impact applicable to all such NSIPs, but rather simply to the level of concern about whatever level of potential adverse landscape and visual effects there may be. The definition used by the Applicant for "*serious concerns*" suggests that it considers that there is only a single standard level of impact one would expect from an overhead line as a general concept applicable to all overhead lines across the country, as opposed to each proposed line requiring its own assessment. Whilst the Applicant did not agree with this statement, in its response [REP6-035], it considered that prefixing the word, "*serious*" before "*concerns*", indicated that the Government intended the level of significance to be something more than one would expect from an overhead line, in this case from a double wood pole overhead line.
- 5.2.75 In response to SWQ1.1(c) the Applicant agreed that even if there was only a single method of construction, a single pole or pylon height and a single set of materials available to all power line developers, that uniform construction could have very different landscape and visual effects at different locations, giving cause for serious concerns at some, but not at others [REP6-035].
- 5.2.76 At the second ISH which had included landscape and visual impact matters, on 8 December 2015, the Panel further questioned the Applicant about its interpretation of "*serious concerns*", in particular, given the text in paragraph 2.8.9 of EN-5, why the Applicant considered that "*serious concerns*" could only relate to landscape and visual impacts, and not any other impacts for the development (such as heritage or biodiversity impacts).



- 5.2.77 It responded, and its oral representations were summarised in its written summaries of oral evidence [REP9-023]. The Applicant considered that the term "*serious concerns*" can only relate to landscape and visual impacts. It considered that EN-5, paragraph 2.8.8 had been drafted carefully and deliberately and links the term "*serious concerns*" expressly to "*landscape and visual impact*".
- 5.2.78 The Panel also asked the Applicant to confirm, whether, in its view, the term "*serious concerns*" could be applied to non-designated landscapes and the Applicant confirmed that this was indeed the case.
- 5.2.79 The SoCG between the Applicant and DCC [REP9-037] stated that DCC did not agree with the Applicant in relation to the significance criteria for impacts in relation to "*serious concerns*", as set out in EN-5. Neither did it agree with the Applicant in relation to the threshold at which the Applicant would consider undergrounding, which it considered had been set "*too high*". They considered that there had not been an appropriate review to determine whether or not the benefits of an underground line clearly outweigh any extra economic, social and environmental impacts.

#### **Representations in relation to cumulative impacts**

- 5.2.80 The SoCG with NRW [REP11-015] stated that NRW agreed the following in respect of cumulative impacts:
- the two staged approach to cumulative effects as set out in Chapter 4, EIA methodology [APP-095]; and
  - the conclusions of the cumulative assessment so far as relevant to those environment and land use planning impacts which have been assessed by NRW set out in Chapter 15 'summary of environmental effects' of the ES [APP-106].
- 5.2.81 Relevant representations received from Mr Martin Barlow [RR-049] and Cefn Meiriadog Community Council [RR-007] expressed concerns about cumulative impact at the northern end of the proposed development. They both noted that a crematorium had recently been granted planning permission in the field adjacent to Groesffordd Farm. Mr Barlow considered the situation particularly difficult for the group of properties around Groesffordd Farm with existing lines, the crematorium and the proposed terminal poles. He considered the terminal poles to be "*a very large and unsightly double-double pole structure with stays in a visually prominent position*", which in his view would constitute skylining for various properties, a road, bridle path and footpath north of the ridge.

#### **Representations in relation to specific mitigation**

- 5.2.82 The SoCG between the Applicant and DCC [REP9-037] stated that DCC did not agree with the Applicant on the matter of the future of mitigation planting once the 5 year aftercare period is complete.

- 5.2.83 Many of the Affected Persons (APs) that objected to the compulsory acquisition (CA) of rights across their land, also raised concerns about the tree and hedgerow planting proposals. These matters are described in report Chapter 8.

### **Representations in relation to option B**

- 5.2.84 In the Applicant's written summaries of its oral representation made at the ISH on landscape and visual impact matters on the 8 December 2015, it explained [REP9-023] that the changes to poles 210 to 214 in option B were to improve views from Plas Hafod in the southerly direction and the change to the location of pole 71 had resulted from the tenant farmer requesting the landscaping in this location to be removed and therefore no mitigation planting was required.
- 5.2.85 In the same document, at paragraph 4.15, Mrs Critchley, the Applicant's landscape consultant, explained that due to a widening of the Order limits to accommodate an additional angle pole near Plas Hafod a slightly longer section of hedgerow would sit within the Order limit, increasing the length of hedgerow potentially affected by approximately 10m. As with all hedgerows that would be crossed by the overhead line, the assessment was considered on the realistic worst case approach, even though not all of the hedgerow would be affected.
- 5.2.86 Mrs Critchley also confirmed that all mitigation planting could be delivered with option B.

### **FURTHER MITIGATION**

- 5.2.87 The Panel is not proposing any further mitigation for landscape and visual impacts in its recommended development consent order (DCO).

## **THE PANEL'S REASONING AND CONCLUSIONS**

### **Introduction**

- 5.2.88 Following lengthy questioning on landscape and visual impact matters in the two sets of the Panel's written questions as well as in the ISHs which considered landscape and visual impact on 30 September 2015 and 8 December 2015, it was clear to the Panel that landscape and visual impact assessment is not a precise science and relies upon the assessor's perceptions and understanding of impacts. Whilst the Panel is not questioning the Applicant's landscape consultants professionalism or competence, it accepts that in many landscape and visual impact issues, there would be differences of opinion. Disagreements between the Applicant and IPs on landscape and visual impact issues were prevalent and the Panel accepted that these would remain for the duration of the Examination and would be unlikely to be resolved.

## **Landscape and landscape character**

5.2.89 The Panel agrees with the Applicant that there would be moderate (and therefore potentially significant effects) both before and after mitigation in relation to the following landscape character areas:

- Denbigh and Derwen Hills;
- Llanefydd lowlands;
- Afon Elwy Valley - East;
- Upper Elwy Valley; and
- Limestone Valley - Cefn.

## **Visual receptors**

5.2.90 The Panel attended various accompanied and unaccompanied site inspections [EV-001, EV-004, EV-005, EV-051 and EV-052] along the route of the proposed development, prior to the end of the Examination. The Panel agrees with the Applicant in relation to the moderate (and therefore significant) impacts upon visual receptors including where the development would cross the A543 and where it would cross long distance footpaths.

5.2.91 The Panel agrees with the Applicant that moderate (and therefore significant) visual effects would occur at various locations in each of the four sections along the proposed route. The south of the study area, from the upland locations near Clocaenog, Tir Mostyn and Foel Gasyth would give rise to views in which the overhead line would be likely to be more visible.

5.2.92 The setting of the listed buildings at Berain and the unregistered parkland at Eriviat Hall are described and concluded upon in report Section 5.4. The Panel has considered the concerns of CCBC and Cadw in relation to the impact of the development on the landscape setting of the listed buildings at Berain, and the fact that the unregistered parkland at Eriviat Hall may warrant inclusion in the Register of Historic Parks and Gardens.

5.2.93 The Panel finds that none of the impacts on visual receptors would be so adverse as to indicate that the proposed development is unacceptable from a landscape or visual impact perspective.

## **Residential visual amenity**

5.2.94 The Panel considered the representations from all IPs that were concerned about impacts upon their properties. In nearly all cases, they understood the concerns but accepted that the results of the impact assessments that the Applicant had carried out were correct. However, in the case of Mr Dewi Parry (College Farm Bungalow), due to the stacking effect of the wood poles that would be visible from his property, the Panel concludes that his property would also be subject to a moderate (and therefore significant) effect.

- 5.2.95 The Panel agrees with the Applicant in relation to the level of significance at residential properties from which moderate (and therefore significant) visual impacts would result from the proposed development. It also finds that while the occupiers of these properties could experience significant visual effects, none would be likely to have the visual amenity affected to the point where they become, unattractive and thus unsatisfactory places in which to live.

***"Serious concerns"* in relation to landscape and visual impact and the tests in EN-5**

- 5.2.96 The Panel does not agree with the Applicant in its interpretation of *"serious concerns"* in the context of paragraph 2.8.8 of EN-5. It considers that, had the Government wished the term to be defined in the way that the Applicant has interpreted it, it would have said so in the policy document. The Panel considers that as the term was not defined in EN-5, the Government, when drafting this policy document, would not have had any one particular definition in mind for the term.
- 5.2.97 The Panel considers that *"serious concerns"* would relate to the perception of the impact and could be serious in cases where any significant impact is possible. In view of the imprecise nature of LVIA assessment of effects, the Panel also find that, in relation to the proposed development, serious concerns would not necessarily be limited to locations or residential properties where effects are assessed at a moderate or higher level. The Panel finds that *"serious concerns"* could be raised when impacts are assessed as moderate or above (and therefore significant) or when the perception of the visual impact is considered to cause harm. In the case of the proposed development, therefore, the Panel concludes that serious concerns in relation to landscape and visual impacts were raised by a number of IPs.
- 5.2.98 Turning now to the national planning policy tests in section 2.8 of EN-5, in relation to whether the balance of benefits from undergrounding the development would clearly outweigh the extra economic, social and environmental impacts and the technical difficulties associated with undergrounding are surmountable. EN5 requires the decision maker to consider the landscape in which the proposed line would be set, the additional cost of any undergrounding, and the environmental and archaeological consequences of undergrounding.
- 5.2.99 The impacts upon the landscape in which the proposed development would be set are considered and concluded upon above. There would be moderate (and therefore significant) impacts upon the following landscape interests:
- five residential properties along the route;
  - four landscape character areas including the Llanefydd lowlands; and
  - 15 out of 30 of the viewpoints along the route;

- 5.2.100 The additional costs of undergrounding are considered and concluded upon in report Section 4.5 above. The Panel accepts that an underground cable route would be technically feasible and deliverable, but it is not satisfied that the benefits of such an option would clearly outweigh the additional cost burden.
- 5.2.101 Report Section 4.5 also provides details in relation to the environmental and archaeological consequences of undergrounding the development and concludes that the underground option would be technically feasible as it would be installed in road margins and verges. The Panel considers therefore, that it would be unlikely to experience any significant unknown archaeological interests and would be unlikely to have significant environmental impacts.
- 5.2.102 The Panel concludes that moderate (and therefore significant) adverse effects would arise in relation to landscape and visual impact, from the proposed development. However, the Panel finds that the adverse landscape and visual impact effects would not lead to a level of harm which is sufficient to outweigh the urgent and national need for the development. The Panel also concludes that the balance of benefits from undergrounding the development would not clearly outweigh the extra economic impacts that would be incurred.

### **Cumulative impacts**

- 5.2.103 Overall the significance of cumulative effects (arising from the proposed development and other developments) on the landscape is considered by the Panel to be of moderate significance, particularly around the Clocaenog Forest area and within the Llanefydd lowlands.
- 5.2.104 The Panel understands the concerns from Cefn Meiriadog Community Council and Mr Barlow about cumulative impacts in the region of the proposed terminal pole. The Panel, on its accompanied site inspection (ASI) noted that the location of the terminal pole is in a landscape which has various other pole lines visible from it. The Panel accepts that harm which may already exist should not be compounded, but considers that the addition of the terminal poles would not cause a significant change in respect of overall landscape and visual impact at this area.

### **Mitigation**

- 5.2.105 The Panel finds the proposed mitigation would be reasonable and proportionate and concludes that the mitigation proposed, in the form of landscape planting of trees and hedgerows, in the locations proposed in the landscape plans is acceptable. However, in coming to that view, the Panel has accepted that the mitigation planting is unlikely to be effective for much of the life of the development, while it establishes and starts to grow. The Panel considers that both mitigation and enhancement planting (with the agreement of the landowner) would assist in softening and reducing the effects of the

proposed development for the latter part of the life of the development.

### **The Panel's overall conclusions on landscape and visual impact**

- 5.2.106 Landscape and visual impact matters were raised as a point of concern by many IPs. The Panel has considered all of these concerns and reported upon them. There was much discussion of the methodology and conclusions on landscape and visual impact in the ES, during the hearings and in representations. Inevitably for someone concerned about the impact of a double wood pole, or numerous double wood poles near their home or locally important viewpoint, describing the adverse visual impacts as moderate (and therefore significant) could appear as an underassessment.
- 5.2.107 Notwithstanding this difference in perception, the Panel has accepted the Applicant's methodology and results of assessments as moderate (and therefore significant) and does not consider that any landscape or visual receptors would experience a major impact from the development.
- 5.2.108 The Panel considers the proposed mitigation for landscape and visual impacts to be reasonable and proportionate and it considers that both mitigation and enhancement planting (where implemented, with the agreement of the landowner), would assist in softening and reducing the effects of the proposed development for the latter part of the life of the development.
- 5.2.109 The Panel is satisfied that the approach that the Applicant took to the use of the Holford Rules and consideration of alternatives was proportionate and met the tests set out in EN-5.
- 5.2.110 The Panel is satisfied that the requirements of EN-1 and EN-5 have been met and sees no reason on landscape and visual impact grounds for the Secretary of State not to consent the grant of the Order on any landscape or visual impact matter, providing the Panel's proposed changes to the draft DCO are accepted.

## **5.3 GOOD DESIGN**

- 5.3.1 This section considers the proposed design of the overhead line and in particular the proposed use of a double wooden pole system instead of other alternative overhead line designs. This section does not consider alternative design solutions to the overhead line such as undergrounding as these are considered in detail in other sections of this report.

### **National policy**

- 5.3.2 Paragraph 4.5.1 of EN-1 advocates that applying 'good design' to energy projects should produce sustainable infrastructure sensitive to place; efficient in the use of natural resources and energy used in their

construction and operation; matched by an appearance that demonstrates good aesthetics as far as possible.

5.3.3 EN-1 then states in the following paragraphs that good design is also a means by which many policy objectives of the NPS can be met. The decision maker needs to be satisfied that energy infrastructure developments are sustainable and, having regard to regulatory and other constraints, are as attractive, durable and adaptable as they can be, taking into account functionality (including fitness for purpose and sustainability) and aesthetics (including its contribution to the quality of the area in which it would be located) as far as possible (paragraph 4.5.3). It also notes that the design and sensitive use of materials in any associated development such as electricity substations will assist in ensuring that such development contributes to the quality of the area.

5.3.4 With regard to electricity networks infrastructure paragraph 2.5.2 of EN-5 advocates that proposals should demonstrate good design in their approach to mitigating the potential adverse impact which can be associated with overhead lines. These include:

- biodiversity and geological conservation;
- landscape and visual;
- noise and vibration; and
- electric and magnetic fields.

These impacts and their mitigation are considered in detail in: biodiversity and geological conservation (Section 5.1); landscape and visual (Section 5.2); noise and vibration (Section 5.9); and electric and magnetic fields (Section 5.12).

5.3.5 Paragraph 2.8.7 of EN-5 states that the Holford Rules, and any updates, should form the basis for the approach to routing new overhead line and that the decision-maker should take them into account in any consideration of alternatives and in considering the need for any additional mitigation measures. Whilst the Panel acknowledges that the Holford Rules were developed in relation to steel lattice pylons the Panel considers that they also provide a useful framework for assessing an overhead line.

5.3.6 Finally, the Electricity Act 1989 confers a duty upon the network provider to ensure that it has regard to amenity when carrying out its undertakings. Schedule 9 states that a licence holder has a general responsibility when formulating proposals for new electric lines to have regard to the desirability of preserving natural beauty, of conserving flora and fauna and geological and physiographical features of special interest and protecting sites, buildings and objects of architectural, historic or archaeological interest. Also to do what it can to mitigate any effect which the proposal would have on natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.

## **Welsh policy and guidance**

- 5.3.7 Planning Policy Wales (Edition 8, January 2016) (PPW 8) states that the planning system is intended to help protect the amenity and environment of towns, cities and the countryside in the public interest while encouraging and promoting high quality, sustainable development (paragraph 3.1.1). PPW 8 defines design as *"the relationship between all elements of the natural and built environment. To create sustainable development, design must go beyond aesthetics and include the social, environmental and economic aspects of the development, including its construction, operation and management, and its relationship to its surroundings."*
- 5.3.8 TAN 12 (Design) highlights that the Welsh Government is strongly committed to achieving the delivery of good design in the built and natural environment which is fit for purpose and delivers environmental sustainability, economic development and social inclusion, at every scale throughout Wales (paragraph 2.2).
- 5.3.9 TAN 8 (Planning for Renewable Energy) does not specify routes or locations for distribution lines and states that the District Network Operator has the responsibility of routing the electrical cable onwards from the substation to the nearest suitable point of the electricity distribution network. In paragraph 2.12 it advocates that this connection will be achieved either by a standard 3-wire system on wooden poles or by underground lines but recognises that costs of undergrounding are more expensive and therefore would only be justified for limited lengths and/or under special circumstances.

## **PROPOSED DESIGN**

- 5.3.10 The proposed development would consist of the construction of a 17.4km 132kV overhead electricity distribution connection between Clocaenog Forest and a terminal pole located south of Glascoed Road, B5381, near to St Asaph.
- 5.3.11 The proposed 132kV overhead line would comprise conductors supported by double wood poles. The wood poles would generally be no larger than 470mm in diameter and would range from 11m-16.6m in length. Taking into account that the nominal depth of the poles would be 2.5m and that the steel bracings and insulators would add typically 2.3m to the length, the net result is that the actual conductor height above ground (at pole positions) is about 0.2m less than the pole lengths referred to. The average span between posts would be 79m.
- 5.3.12 The overhead line would be a single circuit design that would accommodate three individual phase conductors and an underslung earth conductor. The phase conductors would be supported on two insulator types, horizontal tension insulators and vertically mounted post insulators which would be secured to galvanised steel cross-arms assemblies. The cross arm assemblies would in turn be supported by



the "H" wood pole structures. The underslung earth conductor would incorporate a fibre optic cable and would be fixed to the lower side of the cross arm assembly. Galvanised steel stay wires, which would provide the structures with support to cater for lateral forces, would only be attached to poles where the line changes direction; failure containment structures and at terminal poles.

- 5.3.13 There would be four types of pole design used within the proposed development:
- Intermediate structures - used where the overhead line follows a straight line and the topography is relatively level.
  - Angle Section structures - used where the line needs to change direction.
  - Failure containment structures - used at strategic points along a route to contain any cascade damage which would arise in the unlikely event of a failure of one or more conductors.
  - Terminal structures - used at either end of an overhead line to allow the overhead line to be either connected to an underground cable or directly to a substation gantry.
- 5.3.14 Paragraph 4.5.4 of EN-1 states that applicants should be able to demonstrate in their application documents how the design evolved. This is set out in detail in Chapter 3 (alternatives and design evolution) of the Environmental Statement (ES) [APP-094], the Design and Construction Report [APP-154] and the Strategic Options Report [APP-156].
- 5.3.15 With regard to option B the Applicant states that the potential effects of the design of the overhead line would be the same as for option A. The Panel agrees and therefore what follows applies equally to option A and option B.

## **REPRESENTATIONS**

- 5.3.16 Although not identified specifically as a Principal Issue the design of the proposed overhead line was included in the amplification of other Principal Issues at Annex C of the Panel's letter of 2 July 2015 [PD-004 and PD-005]. The particular concerns regarding design identified in the letter included:
- the scale and size of the wood pole lines and cables; and
  - size, location and design of terminal pole.
- 5.3.17 A number of Interested Parties (IPs) raised concerns about the design of the overhead line. The Cefn Meiriadog and Glascoed Road Residents and User's Group (CMAGRRUG) [REP1-003] considered that the proposed design is particularly unprepossessing and unsympathetic. Mr Dafydd I Jones [REP1-011] considered that the views of those who would be burdened by the overhead line have been overlooked at the design stage. Mr Durand Hotham [REP1-024] considered *that "modern industrial, steel gantries, double wooden pylons with their associated metal and glass furniture, magnified by*

*their disproportionate size is the antithesis of aesthetic".* The Llanrhaeadr-yng-Nghinmeirch Community Council [REP1-037] did not consider the proposed wooden poles a good design.

- 5.3.18 The need for the earthing wire was also questioned by a number of IPs including the CMAGRRUG [REP1-003] who considered that undergrounding the earth would allow the line to be made a single pole. Mr Robin Barlow [REP1-047] and Mr Iwan Wynn Jones [REP1-030] both mentioned that during pre-application consultation the Applicant had indicated that they were also looking at the possibility of a lighter single wood pole design. Mr Barlow considered that undergrounding the earth was an option that had not been considered by the Applicant but that would allow the use of a much lighter steel superstructure and possibly the use of a single pole design.
- 5.3.19 A number of IPs also questioned the continued need for a double pole design with the reduction in number of wind farms that the connection would be serving, these included the CMAGRRUG [REP1-003], Mr Dewi Parry and Mrs Helen Parry [REP1-021], Mr Iwan Wynn Jones [REP1-030] and Mr Robin Barlow [REP2-001].
- 5.3.20 The Panel explored the choice to use double poles through the Panel's first written question (FWQ) FWQ1.4 and 1.18 and at the Issue Specific Hearing (ISH) on 29 September 2015[EV-015] and again at the ISH on 8 December 2015 [EV-033].
- 5.3.21 In response to FWQ1.4 the Applicant [REP1-056] advocated that the benefits of using a wood pole over a steel lattice tower are:
- Lattice towers are taller which can lead to greater visual intrusion and more likelihood of being seen on the skyline - this is more apparent in rolling/undulating farmland like the study area.
  - Lattice towers are more urban in appearance and therefore fit less well into the rural landscape.
  - Wooden poles are more flexible in their routing options and can provide a better landscape 'fit' with existing features.
  - The corridor for wooden poles is narrower and therefore less woodland clearance would be required.
- 5.3.22 As a result the Applicant eliminated steel lattice towers as an option for the proposed development which left the choice of either overhead conductors on wooden poles or an underground cable. For the reasons explained in detail elsewhere in report Section 4.5, undergrounding was discounted as an option.
- 5.3.23 The Applicant advocated that they had considered whether a lighter single wood pole design would be suitable [APP-154, Chapter 2] but concluded that earthed construction would be required to control rise of earth potential (ROEP) and as a single wood pole design does not carry an earth it could not be used. This issue was examined further at the ISH on 29 September 2015 [EV-015] where Mr Barlow in particular questioned the need for an earthing wire. The Applicant

confirmed that an earth wire would be needed as earth rise potential can be lethal for persons and livestock and is therefore a critical safety issue.

- 5.3.24 Having accepted that if an earth wire would be required Mr Barlow asked whether the only way that this could be provided was through the design proposed as it would appear that on other projects elsewhere, the Applicant had used a single pole trident scheme which included an earthing wire [REP2-001 and REP3-027]. However, the Applicant advocated that the single pole system referred to by Mr Barlow was not yet a fully approved technology that complied with company standards, unlike the double pole system that has been tested and approved, and that there is currently not a solution for a trident system to carry an earth wire [EV-015].
- 5.3.25 The Applicant at the ISH [EV-015] confirmed that the earth wire could be undergrounded however this is not the preferred approach for safety reasons due to the difficulty in monitoring and maintaining the integrity of a separately routed undergrounded earth conductor. In addition to which they advocated that a single pole scheme would require more poles closer together as the same spans cannot be achieved.
- 5.3.26 A number of IPs [REP1-011 and REP1-030] have questioned whether, in view of the wind farm developers for Nant Bach and Derwydd Bach indicating that they are not intending to proceed with their consented schemes a double pole overhead line would still be required. The Applicant responded to these concerns [REP7-002] and advised that the contracted generating capacity for the two remaining wind farms (Clocaenog Forest and Brenig) would account for 125MW (73.5%) of the total 170MW of the original contracted generation and therefore the network connection in the form submitted would still be required.

### **The Panel's reasoning and conclusions**

- 5.3.27 Having heard and read all the evidence the Panel is satisfied that an earth wire would be required and whilst there are other overhead line designs available, of those available to the Applicant the double pole proposed given the location of the route represents the best design that is currently technically and economically feasible and deliverable and available to the Applicant for this development.
- 5.3.28 As a result the proposal would be in accordance with the requirements of EN-1, EN-5, PPW 8 and TAN 12 regarding good design.

## **5.4 HISTORIC ENVIRONMENT**

### **INTRODUCTION**

#### **Infrastructure Planning (Decisions) Regulations 2010**

- 5.4.1 Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 requires the decision-maker, when deciding an application which

affects a listed building or its setting, to 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.

### **National policy in EN-1 and EN-5**

- 5.4.2 The Overarching National Policy Statement for Energy (EN-1) states at paragraph 5.8.8 that applicants should provide a description of the significance of the heritage assets affected by the proposed development and the contribution of their setting to that significance. EN-1 (paragraph 5.8.6) explains that the decision-maker should consider the impacts on other non-designated heritage assets, as identified either through the development plan making process (local listing) or through the Nationally Significant Infrastructure Project (NSIP) decision making process, on the basis of clear evidence that the assets have a heritage significance that merits consideration in its decisions, even though those assets are of lesser value than designated heritage assets.
- 5.4.3 EN-1 directs the decision maker, in paragraph 5.8.11, to seek to identify and assess the particular significance of any heritage asset that may be affected by the proposed development, including by development affecting the setting of a heritage asset, taking account of:
- evidence provided with the application;
  - any designation records;
  - the Historic Environment Record, and any similar sources of information;
  - the heritage assets themselves;
  - the outcomes of consultations with third parties; and
  - where appropriate and when the need to understand the significance of the heritage asset demands it, expert advice.
- 5.4.4 Paragraph 5.8.14 explains that significance (of heritage assets) can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. It goes on to explain that substantial harm to, or loss of, a Grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated assets of the highest significance including Grade I and II\* listed buildings should be wholly exceptional.
- 5.4.5 Paragraph 5.8.15 explains that any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of the development, recognising that the greater the harm to the significance of the heritage asset, the greater the justification will be needed for any loss.
- 5.4.6 Furthermore, EN-1, in paragraph 5.8.18 notes that when considering applications for development affecting the setting of a designated heritage asset, the decision maker should treat favourably applications that preserve those elements of the setting that make a positive

contribution to, or better reveal the significance of, the asset. When considering applications that do not do this, the decision maker should weigh any negative effects against the wider benefits of the application. The greater the negative impact on the significance of the designated asset, the greater the benefits that will need to justify approval.

### **Welsh policy in Planning Policy Wales and Welsh Office Circular 61/96**

- 5.4.7 Planning Policy Wales (Edition 8, January 2016) (PPW 8), paragraph 6.1.1 explains that it is important that the historic environment - encompassing archaeology and ancient monuments, listed buildings, conservation areas and historic parks, gardens and landscapes - is protected. The Welsh Government's objectives in this field include the following:
- *"preserve or enhance the historic environment, recognising its contribution to economic vitality and culture, civic pride and the quality of life, and its importance as a resource for future generations; and specifically to"* (amongst other things):
  - *"ensure the character of historic buildings is safeguarded from alterations, extensions or demolition that would compromise a building's special architectural and historic interest".*
- 5.4.8 PPW 8, in paragraph 6.5.9, states that when a development proposal affects a listed building or its setting, the primary material consideration is to have special regard to the desirability of preserving the building, or its setting, or any features of special archaeological or historic interest which it possesses.
- 5.4.9 Welsh Office Circular 61/96: Planning and the Historic Environment: Historic Buildings and Conservation Areas (5 December 1996) sets out advice on legislation and procedures relating to historic buildings and conservation areas. In paragraph 70, it explains that the buildings setting and its contribution to the local scene, which may be very important, e.g. where it forms an element in a group, park, garden or other townscape or landscape, or where it shares particular architectural forms or details with other buildings nearby, are issues which are generally relevant to the consideration of listed building consent applications. It states, in paragraph 71, that grades I and II\* identify the exceptional architectural or historic interest of a small proportion (7-8%) of all listed buildings.

### **IMPACTS**

- 5.4.10 Three study areas were considered for the spatial assessment of the heritage assets of the proposed development, a 100m wide area, a 200m wide area and a 4km wide area centred on the final route alignment of the proposed development.
- 5.4.11 The 100m wide study area was selected by the Applicant to identify and assess any potential direct impacts on heritage assets due to the

construction of the proposed development including works traffic. The 200m wide area would allow any unknown assets prior to construction to be identified and assessed and the 4km area would allow a visual assessment of any heritage assets either side of the proposed development.

- 5.4.12 Furthermore, during the 100m wide survey, the nature of all field boundaries, access tracks and the construction compound within that zone were recorded. This is laid out in the Environmental Statement (ES) [APP-099, paragraph 8.4.22].
- 5.4.13 Like most of Britain, the 4km study area contained evidence of human habitation from the Palaeolithic and Mesolithic to the present. From the Pontnewydd cave with its stone tools and Neanderthal artefacts to the two listed K6 type 1936 telephone call boxes at Bontnewydd and Peniel and the well preserved remains of a 1960's scout camp at Brynbach.
- 5.4.14 A detailed account of the study area's richness of historic assets across time can be found in the ES [APP-099, paragraphs 8.5.4 to 8.5.29]. A further assessment of assets within the study area and a regional overview from the Palaeolithic to the present is set out in ES Technical Appendix [APP-140, paragraphs 3.3.2 to 3.3.18].
- 5.4.15 There are three Registered Historic Landscape Areas in the vicinity of the proposed development; Denbigh Moors to the south west, the Vale of Clwyd to the east and Lower Elwy Valley also to the east. The Applicant stated [APP-099, paragraph 8.4.57], that the proposed development would only have a local effect on the Historic Landscapes of Denbigh Moors and the Elwy Valley and unlikely to have any effect on the Vale of Clwyd. Therefore no Assessment of the Significance of the Impact of Development on Historic Landscape Areas (ASIDOHL) was needed.
- 5.4.16 Cadw in their consultation response, agreed that no ASIDOHL was needed but noted that part of the Lower Elwy Valley Historic Landscape boundary lay within the 4km study area. Cadw's response was documented in the Applicant's Scoping Opinion [APP-152] and summarised by the Applicant in the ES [APP-099, Table 8.3].
- 5.4.17 The Applicant identified in the ES [APP-099, Table 8.8], 120 heritage assets of high value, though none were within the 200m wide study area. High value assets were defined as either designated Scheduled Monuments, Listed Buildings or Registered Historic Landscapes, Parks or Gardens. In addition, Zones of Theoretical Visibility plans with a radius of 5km based on the centre lines of the pole route and a 15m height were compiled to assess the visual sphere of influence of the proposed development.
- 5.4.18 These comprised of 12 Grade II\* Listed Buildings, 90 Grade II Listed Buildings, 5 Historic Parks and Gardens, 2 Registered Historic Landscapes and 11 Scheduled Ancient Monuments.

- 5.4.19 These were all listed in the Gazetteer of Heritage Assets the ES Technical Appendix F [APP-140, F75 to F98]. The Applicant considered that the proposed development would only have a moderate to large, and therefore potentially significant (adverse) effect on Berain House, agricultural range, carthouse and brewhouse.
- 5.4.20 Of the others, the effects of the proposed development on Llechryd House, range, barn and stables; Segrwyd Mill; Plas Captain farmhouse; Tal-y-Bryn House; the lofted granary at Egryn; Gwaenynog House; Foxhall Newydd; and Tyddyn Bleiddyn chambered tomb, were all assessed by the Applicant as having a moderate to slight effect. All the other high value assets had an assessed significance of effect of either slight or neutral including Plas Newydd, a Grade II\* Elizabethan regional gentry house.
- 5.4.21 Because Eriviat Hall was not a listed building and the parkland around it was not a registered park or garden, the Applicant [APP-140, F36], assessed their value as medium and the significance of effect of the proposed development upon these heritage assets as slight even though part of the parkland would be within the Order limits.
- 5.4.22 The effect of the proposed development on the setting of Plas Newydd, Eriviat Hall parkland and Berain was an issue through the Examination with Interested Parties (IPs) submitting representations up to deadline 11.
- 5.4.23 There are conservation areas at Henllan, Bodelwyddan, Nantyglyn and St Asaph, the nearest being Henllan conservation area which would be approximately 1.4km to the east of the proposed development. Therefore the Panel conclude that the proposed development would not have an effect on the character or appearance of these conservation areas.
- 5.4.24 The ES, Technical Appendix F [APP-140], contained an assessment of the significance of effect that would be caused by the proposed development on all ancient semi-natural woodland, restored ancient woodland sites, former field boundaries and tracks, ponds, kilns, derelict farm buildings and other countryside artefacts and features. All were assessed by the Applicant as either slight or neutral and therefore not significant.
- 5.4.25 The Applicant explained that it had assessed features of unknown antiquity like mounds and cairns as slight /moderate. Also because alluvial or colluvial deposits could have potentially protected buried archaeological remains from disturbance by agriculture or other activities, mitigation measures as outlined below were proposed by the Applicant.
- 5.4.26 The assessment methodology is found in the ES [APP-099, paragraphs 8.4.14 to 8.4.62]. The methodology was not questioned during the Examination, though IPs did question the Applicant's assessment

results in relation to Berain, Eriviat Hall, and to a lesser extent, Plas Newydd.

### **Impacts on historic environment in relation to option B**

- 5.4.27 The option B environmental report [OpB-003] explained, that in relation to historic environment matters, with respect to statutory designated sites, the ES had included a 4km wide study area. The option B amendments to the Order limits/Order land would not result in any further sites falling within the study area. It concluded that the option B Order limits would not result in any changes in the significance of effects compared with option A.

### **Mitigation**

- 5.4.28 The Applicant put forward a number of mitigation measures for the proposed development, in relation to historic environment interests:
- Flexibility: due to the tolerance inherent within the Limits of Deviation (LoD), which would allow any identified historical assets to be potentially preserved in situ;
  - Demarcation: the ability for any asset either inside or outside the Order Limits to be discovered or monitored. The protection given to any discovered asset would be proportionate to its importance and size;
  - Protection by record: in cases where preservation in situ was not achievable then an appropriate record in whatever form would be undertaken and the level of detail agreed with the relevant local authority's archaeological advisor;
  - Observation, investigation and recording of archaeological features: which would be undertaken during the construction of the proposed development including access tracks and lay-down areas so that any previously unknown assets would be subject to this mitigation.
- 5.4.29 All of these mitigation measures were set out in the ES [APP-099, paragraphs 8.4.73 to 8.4.75]. The mitigation proposed by the Applicant for the archaeological watching brief scheme would be secured through Schedule 2 Requirement 12, (Archaeology) in the Applicant's final draft development consent orders (DCOs) [REP11-018] and [REP11-020], which would require the scheme to be approved by the relevant Local Planning Authority (LPA) after it had been consulted upon with the Clwyd-Powys Archaeological Trust and the relevant LPA.

### **REPRESENTATIONS**

- 5.4.30 The Panel notes that representations on heritage assets focussed on IPs interests near to the proposed development. However, the Panel, in coming to a conclusion on these matters, later in this report section, has considered potential impacts upon all historic environment receptors.



### **Plas Newydd (Grade II\* listed building)**

- 5.4.31 Three IPs, in their relevant representations (RRs), specifically mentioned the importance of Plas Newydd; Ms Lois Williams [RR-046], Mr Martin Barlow [RR-049] and Mr Durand Hotham (the owner of Plas Newydd [RR-019]).
- 5.4.32 Mr Martin Barlow on behalf of Cefn Meiriadog & Glascoed Road Residents and Users Group [REP1-006] pointed out that Plas Newydd was only 750 meters from the boundary of the Lower Elwy Valley Historical Landscape Area. Ms Lois Williams [REP1-038] stressed the importance of Plas Newydd as an important Grade II\* listed building.
- 5.4.33 Mr Durand Hotham [REP1-025] stated that Plas Newydd was built in 1583 by Robert ap Ffolkes as the first in its period to encompass dormers, an example of early use of glass and slate and exceptionally tall high status chimneys. Of note was the "*solar room*" half the width of the whole house, selected and designed to accommodate an impressive vista. He contended that the proposed development being only 180 meters from the curtilage of Plas Newydd, would unalterably and permanently compromise the setting of Plas Newydd and that the Applicant had exaggerated the screening effect of the trees, buildings, mounds and other landscape features.
- 5.4.34 Ms Lois Williams [REP9-014] and Mr Martin Barlow [REP9-015] made further representations at deadline 9, again stressing the importance of Plas Newydd and expressing a concern that the proposed development would now become a permanent feature and not as their original understanding, a feature that would be in place for the 25 year lifetime of the wind farms with a maximum 40 year existence.
- 5.4.35 Mr Martin Barlow [REP11-001] on behalf of Cefn Meiriadog and Glascoed Residents and Users Group, stated that even if the proposed development was confined to 30 years, that was a long time span in the lifetime of an individual. He also questioned the 200 meters assessment as being arbitrary and having no statutory basis.
- 5.4.36 Mr Durand Hotham [REP11-003] questioned why the Applicant's assessment of the proposed development on Plas Newydd was lower than Berain given that the immediate setting of Berain had in part been compromised by a range of modern agricultural buildings but Plas Newydd still stood in its original setting.
- 5.4.37 Neither the Applicant nor any IP questioned the status or importance of Plas Newydd as a Grade II\* listed building.
- 5.4.38 However the Applicant contended [APP-140, paragraph 5.3.4] that the surrounding landscape is far from pristine due to lower voltage lines, aggregate access tracks, modern barns and kennels and roadside furniture.

- 5.4.39 Furthermore, it considered that the undergrounding of 520m and 930m of lower voltage lines as part of the wider scheme would remove five stacked poles and three poles respectfully.
- 5.4.40 The Denbighshire County Council (DCC) Local Impact Report (LIR) [LIR-002, paragraph 9.2.3] stated that *"it is accepted that in both cases, Plas Captain and Plas Newydd, the impact on the setting of these buildings would be neutral and moderate/slight respectively."*
- 5.4.41 The Applicant also noted that in the Welsh Government's response to the Panel's FWQs [REP1-098], Cadw had agreed the results and findings of the heritage assessment and had no particular concern at that stage.
- 5.4.42 This was further confirmed in the Applicant's post hearing submission for the Issue Specific Hearing (ISH) on 30 September [REP3-037], in response to agenda item 8.2, it considered that the impact of the development on the setting of Plas Newydd was neutral or moderate/slight.
- 5.4.43 Plas Newydd was visited by the Panel during an accompanied site inspection (ASI) on 23 September 2015 [EV-005] including, at the request of the owner, Mr Durand Hotham, an opportunity to view the location of the proposed development from view-points that included the solar room. The Panel noted the assessment of the Applicant, DCC and Cadw; however Mr Martin Barlow [REP11-001] and Mr Durand Hotham [REP11-003], both expressed a concern regarding the effect that the proposed development would have on the setting of Plas Newydd and the development's proposed time frame.

#### **Eriviat Hall and parkland (unregistered parkland)**

- 5.4.44 The ES [APP-140, Appendix 8.1, paragraph 3.3.15] stated that Eriviat Hall was constructed in 1856 and had replaced a modest farmhouse dated 1467 which had been modified and enlarged with a new frontage in 1732.
- 5.4.45 Mr Conrad Proudfoot [REP9-001] of Eriviat Hall stated that Eriviat parkland dated back to 1467, and may have consisted of between thirty and forty thousand acres in its original form, though more as a hunting parkland than the commonly understood formal parkland of recent centuries.
- 5.4.46 He also submitted a copy of the 1898 obituary of Major Jocelyn Ffolkes whose family had owned Eriviat for 500 years. On his death, the estate consisted of between two and three thousand acres.
- 5.4.47 However by the 21st century, only 19ha of Eriviat parkland was in the ownership of Mr Hefin Wynne Hughes [EV-047], it qualified as an agriculturally *"improved parkland"* option in his Tir Gofal agri-environment scheme.

- 5.4.48 The effect of the proposed development on Eriviat Hall as a business has been considered in the socio-economic section. However the Panel noted that Cadw [REP10-023] had considered listing Eriviat Hall in 2006, but the Inspector concluded that it did not meet the relevant criteria. Cadw also noted that though their parkland records were inconclusive, it appeared to them that Eriviat parkland was considered in the 1990's for inclusion in the original Register of Historic Parklands and Gardens and may have not been included because it did not appear to meet the relevant criteria.
- 5.4.49 Cadw said [REP10-023], in response to the Panel's Rule 17 request for information in relation to Eriviat Hall and Berain [PD-020], that an initial examination of their historic and aerial photographs suggested that the parkland could still be considered as a possible candidate for inclusion, though it would need to be formally reviewed which included a consultation process.
- 5.4.50 Mr Iwan Jones in reply [REP11-004] questioned whether Eriviat parkland would still be a candidate in 30 years time after tree cutting and the construction of a double pole grid.
- 5.4.51 The Applicant [REP11-011] stated that even had Cadw decided to re-evaluate Eriviat and include it in the Register of Historic Parks and Gardens, the assessed minor effect on a high grade asset would still not be significant in environmental impact assessment terms.
- 5.4.52 Because of the nature of its location, additional tree planting and replacement planting or the preservation of existing trees, were issues throughout the Examination. Mr Conrad Proudlock said that he would not like to see further trees planted since they would restrict the view of the parkland and the approach to the Hall [REP9-001]. The Applicant stated that planting was proposed along existing field boundaries and therefore would not hinder either the view of the approach to the Hall or the Parkland [REP10-011].
- 5.4.53 Mr Iwan Jones [REP9-006] asked the Applicant to do a parkland tree survey in Eriviat Hall parkland area. The Applicant confirmed, that subject to the landowner's agreement, an arboricultural team would undertake a survey [REP10-011].

**Berain (Cluster of two Grade II\* and two Grade II listed buildings in a farmstead)**

- 5.4.54 Conwy County Borough Council (CCBC), throughout the Examination, expressed concern about the effect of the proposed development on the setting of Berain. In its LIR [LIR-001], CCBC thought it certain that the proposed development would have a significant (major) impact on Berain and considered it imperative that the historic landscaping and field boundaries should be retained and if necessary replanted as part of the scheme. Their specific concerns in respect of the impact on the listed buildings of Berain remained until the end of the Examination, with no agreement possible with the Applicant in the

Statement of Common Ground (SoCG) [REP9-023], with CCBC contending that there was an overriding case for undergrounding at Berain.

- 5.4.55 CCBC set out their understanding of the national policy framework in relation to Berain, quoting EN-1 [REP1-008]. CCBC also said the Applicant had a Statutory Duty under Schedule 9 of the Electricity Act, specifically para 1(2), of that schedule to "*have regard to the desirability of conserving buildings of historic interest*" and "*to do what is reasonable to mitigate any effect on buildings*". It also noted PPW 7, (which was extant at that time) which requires special regard for preserving a building or its setting, this being reinforced by paragraph 1 of Welsh Office Circular 61/96.
- 5.4.56 Also CCBC cited Policy CTH/2, Development Affecting Heritage Assets, in their Local Development Plan (LDP), which was adopted in 2013, which stated that developments which affect the setting of heritage assets should preserve or enhance that asset.
- 5.4.57 Taking the above into account, CCBC stated in paragraph 1.3 of their SoCG, that the proposed development would have a significant adverse impact on the setting of the group of listed buildings at Berain. They explained that the Farmhouse was listed Grade II\* in 1952 as was the L shaped agricultural range as a large and scarce example of a timber framed Elizabethan barn. The carthouse, brewhouse and pigsty were listed Grade II for their group value.
- 5.4.58 In paragraph 3.18, CCBC acknowledged that the "*setting of the listed buildings have already been affected by modern farm buildings, some of which are significant in scale albeit with mitigation*". However in paragraph 3.19, CCBC maintained that the proposed development would form an extensive linear feature and would have an adverse effect on the setting of Berain. CCBC, in [REP1-010] asked the Panel to visit Berain on the ASI. The Panel duly did this [EV-004 and EV-005].
- 5.4.59 In reply to the Panel's FWQ1.3(b), [REP1-009], CCBC considered that the proposal would not preserve or enhance the setting of the listed buildings at Berain and considered that the proposed development would not comply with Policy CTH/2 of their LDP.
- 5.4.60 Mr John Mars Jones submitted details of a planning application that was decided in October 2010. It was for an extension to an existing building that was consented in 2003. The 50m extension to the existing 29m building lead to a combined length of 79m. It would be 21m wide with a ridge height of 9m, identical to the existing shed. The planning officers were sympathetic, noting that the agricultural business was expanding and that the proposed extension would bring both economic and environmental benefits. The Principle Conservation Officer had stated that the proposal would not affect the setting of the listed buildings, however the landscape officer expressed

concern that the proposed development would have an adverse effect on the character of the Special Landscape Area.

- 5.4.61 Mitigation planting consisting of a beech and hawthorn hedge with 4 groups of 5 trees to break up the linear feature of the hedge would provide some mitigation of the visual impact of the extension, though viewpoints of the extension from a public highway were limited.
- 5.4.62 The Panel noted that the concern of the CCBC landscape officer because of the impact of the extension on the general setting of Berain, not its immediate setting. Its immediate setting had already been affected, if not by the 2010 extension, then certainly by the 2003 consented buildings as was acknowledged by CCBC in paragraph 3.18 of CCBC written representation [REP1-008].
- 5.4.63 In the SoCG between CCBC and the Applicant, CCBC stated [REP9-021, paragraph 4.4.6(a)], that there is an overriding case for requiring undergrounding in the vicinity of the listed buildings at Berain.

#### **Cadw's representations in relation to Berain**

- 5.4.64 Cadw explained, in their response to the Panel's Rule 17 request for information [REP10-023], that their role in a planning or development consent application was to assess the likely effect of a proposal on scheduled monuments and registered historic parks and gardens. It was normally a matter for the local planning authority to assess the impact of a development on listed buildings and conservation areas.
- 5.4.65 Cadw confirmed [REP10-023] that their initial response to the North Wales Wind Farms Connection application was based on a desk top assessment which informed their contribution to the Welsh Government's letter of 25 June 2014, which said that, "*the route corridor now appears to avoid any potential impacts on the setting of scheduled monuments*" and even if impacted, that impact would be minor, "*due to the low timber pole construction of the proposed development*".
- 5.4.66 However in the light of an independent assessment of the effect of the proposed development on Berain [REP10-013] and CCBC's written representation [REP1-008] and LIR [LIR-001], Cadw had re-evaluated their position on the likely impact of the proposed development on the setting of Berain. Cadw noted that the independent assessor contracted by the Applicant, concluded that the impact of the proposed development would be moderate and any harm to the significance to the group would be small. However Cadw also noted that CCBC had reached a different conclusion stating that the position, roof profiles and colour of modern agricultural buildings mitigated their impact, whereas the overhead line would be distinctly visible as it runs almost parallel to the historic buildings and above them.
- 5.4.67 Cadw acknowledged [REP10-023] that "*only one relevant viewpoint, had been submitted with the ES, and the chosen angle of view makes it difficult to assess the impact of the overhead line on more direct*

*views of the farmstead group", however given the proximity and the positioning of the proposed development to Berain in their view, "we consider that it is likely that there would be a harmful visual impact on their setting. In our view, the rarity and exceptional interest of this group of buildings would make this a cause for concern."*

- 5.4.68 The Panel notes that it was unfortunate that Cadw had not visited the site, given its sensitivity, and it had come to its conclusion based on limited photographic and written evidence.

**Mr John Mars Jones' representations in relation to Berain**

- 5.4.69 Mr John Mars Jones, whose family own Berain, in his written representation [REP1-036] set out the historical context of Katherine (Tudor) of Berain c1535, (*"the Mother of Wales"*) a descendant of Henry VII. He also described the architectural features of Berain that justified its listing as a Grade II\* significant early Tudor Gentry house.
- 5.4.70 He concluded that the overhead power line would have a detrimental visual impact on the historic property and surrounding parkland of Berain and that the Applicant should have taken note of its rich cultural history and undergrounded this section of the proposed development.
- 5.4.71 In his representation made at the Open Floor Hearing (OFH) [REP3-018] he stated that the proposed overhead line would cross Berain for a distance of approximately 1.25km which equated to some 7.5% of the proposed development and that 16 pairs of double poles would dissect his land.
- 5.4.72 His post hearing submission [REP3-015] included an e-mail with the subject (gwybodaeth ychwanegol) further information. The e-mail dated 01 October 2015 was from Huw Davies of CCBC and stated that the Council considered that the DCO proposal is *"certain to have a Significant (Major) Impact on the Grade II\* and Grade II Listed Buildings of Berain for the reasons stated in its Written Representation and Local Impact Report"*.
- 5.4.73 Mr John Mars Jones submitted a visualisation of the location of wood poles numbered 159 to 174 at Berain [REP2-011] and again in [REP9-013]. Whilst the Panel accepts that his visualisation of the wood poles was only an approximation of location, it did as acknowledged by the Applicant [REP10-011], make a contribution to an understanding of the effect that the proposed development would have on Berain parkland/agricultural land west of the farmstead towards Hafod Dingle.
- 5.4.74 Mr John Mars Jones made a further and substantive submission [REP11-005]. This submission contained a number of documents. Many of these documents contain information in either Welsh or English, on the life of Katherine of Berain and the architecture and setting of Berain.

- 5.4.75 Mr John Mars Jones having précised Cadw and CCBCs submissions, went on to challenge the basis of the assessment of the proposed development in relation to Berain stating that it only considered a short term impact not an "*in perpetuity*" impact. Also no account was taken of the addition of lattice top structures to the proposed double poles in the visual impact assessment, the listed buildings were not assessed as a group and therefore their cumulative impact was not given sufficient weight and the proposed hedgerow and tree planting in mitigating the visual effect of the modern agricultural buildings was not taken into account.
- 5.4.76 He considered that the assessment methodology was subject to personal interpretations with no allowance given for the topographical profile of the existing modern farm buildings in relation to rising land either to the north west or north east. He said that the setting of Berain, with its sense of enclosure, nestling within a sheltered dip, would be compromised and severely affected by a linear line constructed across the landscape with its historic boundaries, which would dominate the horizon from Berain to the west. Finally he stated that limiting the proposed development to thirty years would generate a presumption of acceptance and lead to a further 30 year application, which would further diminish the standing of Berain's historic buildings and setting and would lead to a reconfiguration of its existing historic field boundaries in order to accommodate variations in farming practices caused by the proposed development.

#### **The Applicant's representations in relation to Berain**

- 5.4.77 Because of the number of submissions from John Mars Jones, CCBC and other IPs general concerns, the Applicant submitted a composite paper, "*The Berain Paper*" at deadline 6 [REP6-044]. At paragraph 2.3.2, Berain's setting is described as "*open landscape of large scale pastoral fields associated with the farm and there are long views over this landscape. These fields display a more formal parkland character with rows of individual mature trees*".
- 5.4.78 The paper then went on to assess the landscape and visual impact of the proposed development discussing first the baseline. The Applicant contended that not many parkland trees remain, there are statuesque individual trees but these are within rather than along the edge of the fields. Though due west of Berain is an open landscape sheltered to the west and east by rising ground, the immediate setting of Berain is dominated by modern farm buildings.
- 5.4.79 It explained that because of modern requirements, telegraph poles and low voltage overhead electricity lines are visible in the vicinity of Berain.
- 5.4.80 Using the Landmap criteria, the overall landscape value of the Llanefydd Lowlands in which Berain sits was assessed as medium high. However the overall susceptibility of this landscape was assessed as medium due to undulating landform and the presence of hedgerows

and mature trees made the landscape more susceptible to accommodating wooden pole overhead lines compared to more intimate or large scale landscapes [REP6-044, paragraph 5.9.3].

- 5.4.81 Given the above, the Applicant's assessment of sensitivity of landscape effect was judged as medium high, however this Panel recognise that this was a conservative judgement based on the effect of the modern buildings at Berain and the lack of parkland trees [REP6-004, Section 5.10].
- 5.4.82 In paragraph 5.10.1 [REP6-044], the Applicant stated that the introduction of a new man-made feature into the rural landscape would not fundamentally change its character but would strengthen the landscape change which is otherwise occurring though it would locally affect the parkland character of the land to the west of Berain. However the scale of the effect would still be predicted as small-medium due to the fact that the landscape already contains man-made features and that the landscape around Berain is in a state of transition with the parkland landscape declining and farming practices modernising and expanding.
- 5.4.83 Therefore by combining medium-high sensitivity with a small-medium magnitude of effect, the Applicant said it would give a moderate and therefore significant overall effect on the landscape.
- 5.4.84 In the Assessment of visual effects section of the Berain Paper [REP6-044, Section 5.11], the sensitivity of occupiers was considered high, but since the number of views of the proposed development would be relatively restricted, due to its alignment and architectural design, then the effects on residential visual receptors were considered minor and therefore not significant. It considered that many views from the property would remain unaffected or would experience only negligible effects, including long distance views to the east which focus on the Clwydian Range and Dee Valley Area of Outstanding Natural Beauty (AONB).
- 5.4.85 Historic environmental impacts were considered in section 6 of the Berain Report. The heritage assets under consideration were the listed buildings of Berain. Nobody questioned the importance of these listed buildings or challenged the validity of their listing.
- 5.4.86 Most IPs agreed that the immediate setting of the listed buildings had been compromised to one degree or other by their proximity to modern agricultural buildings. However the effect of the proposed development on the wider setting of Berain, especially the approximate 1300m length of parkland and agricultural land to the south of Berain, towards Hafod Dingle was a source of considerable disagreement.
- 5.4.87 The Applicant stated that there is no statutory definition of "*setting*". Cadw advised against a prescriptive or restrictive approach but to consider the general concept of immediate, wider and extended. The



Applicant stated that setting was not considered to be a heritage asset itself but its importance lay in the contribution that it made to the significance of a heritage asset. In order to assess significance then four component values; evidential, historical, aesthetic and communal values, should be considered as laid out in March 2011, Cadw's Conservation Principles. Taking those four values, the Applicant stated that the immediate setting of Berain would not be compromised by the proposed development.

- 5.4.88 Historical value derived from the ability of the present to connect with aspects of past life would not be compromised. Inside Berain and around its immediate vicinity would still provide an understanding of the context of past lives. Aesthetic value based on how people draw sensory and intellectual stimulation from a place might well be affected depending on an individual's perception of a new man-made structure in proximity to a heritage asset. Communal Value based on the meaning of place for those that relate to it or for whom it figures in their collective experience or memory might be affected.
- 5.4.89 In dealing with historic landscape and setting, the Applicant accepted [REP6-044, paragraph 6.1.18], that "*enclosures to the south of Berain are notably large and although not formal parkland they do display parkland characteristics*". The Applicant also stated that the property appears isolated from its surrounding landscapes.
- 5.4.90 In the Berain paper [REP6-044, paragraph 6.1.34], the Applicant considered that the wider setting as it runs from north to south for 1300m across the farm estate would be visually altered by the proposed development, however at paragraph 6.1.36 the Applicant contends that an 132kV overhead line would not introduce an entirely new form of infrastructure into the landscape since poles and wires accompany all the roads which border and cross the farm estate.
- 5.4.91 The Applicant called upon Mr David Bonner, their cultural advisor, (who had assessed the impact of the proposed development as moderate, [REP6-044, paragraph 6.1.39]), to answer questions in the ISH on historic environment matters. The Applicant also asked Dr Jonathan Edis of the Heritage Collective to provide an independent assessment [REP10-013].
- 5.4.92 In setting out the purpose of the assessment Dr Edis stated that his role was to examine the setting and significance of Berain from first principles, taking Cadw's Conservation Principles of historic value, communal value, aesthetic and evidential value, cultural value and sense of place.
- 5.4.93 He considered historical value and cultural value were high because of Katherine of Berain's well documented role in history and association with Berain. Aesthetic and evidential value were also high because of Berain's physical fabric including archaeological and architectural characteristics have been maintained and recorded, also the strong relationship between the house, older agricultural buildings and the

surrounding countryside including roads, fields and hedges some of which may be of considerable antiquity.

- 5.4.94 In [REP10-013, Chapter 4], Dr Edis turns to the setting of Berain and how as a working farm since the 15th century, its setting has evolved over time. He said in paragraph 5.7, *"Despite a large visual change; the historical and communal values of the place has survived well enough to be the subject of considerable debate in connection with the proposed overhead power line"*.
- 5.4.95 He stated [REP10-013, paragraph 5.9], *"If the modern agricultural buildings have not unacceptably reduced our ability to appreciate the historical and communal significance of Berain then it is difficult to see how and overhead line on 15m poles some 120 metres to the west at its nearest point will have an unacceptable impact. If it were to be suggested that the modern agricultural outbuildings had a large effect on Berain then the effect of the proposed power lines must be less than large."*
- 5.4.96 He concluded in paragraph 5.13, *"The reality is that harm to the setting and significance of Berain will be much less than substantial and less than the precautionary moderate/large affect described in ES 8 [APP-009]. The Berain Paper is closer to the mark in assessing the effect as being towards the lower end of moderate. The setting of the Listed Buildings will be preserved and will be no less significant after the development takes place than now"*.

#### **Other representations on other heritage matters**

- 5.4.97 Both CCBC and DCC confirmed that they had no in-house archaeological service; however the Clwyd-Powys Archaeological Trust provided support to both councils on this subject. The two councils both requested that Requirement 12 (Archaeology) should contain, *"that no authorised development must commence until, following consultation with CPAT and the relevant local authorities"*.
- 5.4.98 DCC, in their LIR [LIR-002], stated that their conservation architect had advised that there were no listed buildings within 100m of the proposed development, the nearest being Plas Captain and Plas Newydd at approximately 300m. The conservation architect assessed the impact of the proposed development on these listed buildings in the DCC area as neutral and moderate slight respectively. CCBC [REP1-009] stated that they had no disagreement with the Applicant's assessment of the impacts of the development upon the historic environment.
- 5.4.99 The Welsh Government stated, in the final paragraph of their letter to the Applicant dated 28 January 2016, accompanying the SoCG between the Welsh Government and the Applicant, [REP11-008] that there should be a SoCG between the Applicant and Clwyd-Powys Archaeological Trust on non-designated assets. The Panel does not consider that this would be necessary as the Applicant has already

agreed SoCG with DCC and CCBC, in which archaeological matters were agreed.

- 5.4.100 Cadw and Natural Resources Wales (NRW) agreed that there was no ASIDOHL required for the three historic landscape in the vicinity of the proposed development.
- 5.4.101 The Welsh Government, in their SoCG with the Applicant [REP11-008] agreed that the route of the proposed development would avoid any direct impacts on Scheduled Monuments, Registered Parks and Gardens and historic landscapes and minimises any setting impacts on such designated heritage assets. Under this section of the SoCG it was reported that there were no matters that were not agreed.

### **FURTHER MITIGATION**

- 5.4.102 The Panel is not proposing any further mitigation in relation to historic environment matters in its recommended draft DCO.

### **THE PANEL'S REASONING AND CONCLUSIONS ON HISTORIC ENVIRONMENT MATTERS**

#### **Introduction**

- 5.4.103 The Panel notes that the concerns in relation to the longevity of the proposed development and long term impacts upon heritage assets were addressed by the Applicant's final draft DCOs [REP11-018] and [REP11-020], with a requirement for the expiry of the development consent. This has been modified in the Panel's recommended DCO, attached as Appendix E, in Requirement 19, in relation to the expiry of the consent, which it recommends is 30 years after the date that the Order would be made.
- 5.4.104 The Panel considers that there is no difference in impact upon heritage assets from option A or option B.

#### **Plas Newydd**

- 5.4.105 The Panel, having visited Plas Newydd as part of an ASI, and having had the opportunity to assess the proposed development from prominent viewpoints within Plas Newydd, agrees with the Applicant that the impact of the setting of Plas Newydd should be considered as neutral or moderate /slight and therefore not significant.
- 5.4.106 The Panel reached this conclusion because of the distance of the proposed development from Plas Newydd itself, the oblique angle of the proposed development in relation to the setting of Plas Newydd and the mitigating effect of trees.

#### **Eriviat Hall parkland**

- 5.4.107 The Panel notes the inclusion of 19ha of Eriviat in a Tir Gofal agri-environment scheme, but understands that this was a non-statutory

voluntary agreement. Whatever its status in the future, during the Examination Eriviat was not included in the register of historic parks and gardens. The Panel notes that the views from the northern side of the A543, alongside the drive towards Eriviat Hall and in the vicinity of the parkland from pole number 112 to 123, were the only viewpoint locations that the Panel had inspected that did not contain a view of a single electricity or telegraph pole.

- 5.4.108 Nonetheless this viewpoint would not be seen by users of the A543, it is only viewable from a private road or one public footpath and the Panel considers that the development would only have a local effect.
- 5.4.109 Therefore the Panel agrees with the Applicant's Written Summary of 8 December 2015 Issue Specific Hearing (ISH) [REP9-023], and concludes that the proposed development would locally alter the character and appearance of the location between poles 112 and 123, however the change would be slight, the threshold for a moderate magnitude of effect would not be reached and therefore the effect would be not significant.
- 5.4.110 However this change would be local in nature on land that is not registered as an historic parkland, and therefore the effect of the proposed development on Eriviat is rightly assessed as slight to moderate. Therefore the Panel notes that this assessment concurs both with Denbighshire County Council and Cadw.
- 5.4.111 The Panel also notes that Requirement 19 of the Applicant's final draft DCO [REP11-020] states that, "*consent expires 30 years from commencement of the authorised development*", which the Panel is recommending to change to an expiry 30 years after the DCO is made in its recommended draft DCO (Appendix E). The Panel therefore considers that the concerns raised by IPs in relation to the potential longevity of the proposed development have been addressed. The reasons for the Panel changing the expiry date to 30 years after the DCO is made (in its recommended draft DCO) are given in Chapter 9. The Panel considers that whilst 30 years is a long time for the local communities to host the development, in relation to the lifespan of historic buildings and parkland, the proposed development would not impact for much of the life of these heritage assets.

#### **Panel's reasoning and conclusions in relation to EN-1 policy for Eriviat Hall parkland**

- 5.4.112 The Panel has taken into consideration all of the documents and representations from the Applicant and the IPs that commented on Eriviat Hall parkland. In addition, the Panel viewed the location on an ASI. It considers that even though Eriviat Hall gardens and surrounding parkland are not currently listed in the register of parks and gardens for Wales, they have a heritage significance that merits consideration. As Cadw have stated that Eriviat Hall parkland could still be considered as a possible candidate for inclusion, the Panel's reasoning and conclusions in relation to Eriviat Hall parkland

are formed on the basis that it is a candidate for inclusion in the register in the future, thus taking a 'worst case' approach.

- 5.4.113 The Panel has considered the impacts of the proposed development on the parkland of Eriviat Hall. In so doing, it has taken into account national policy in EN-1, section 5.8. It considers that, in relation to paragraph 5.8.13 of EN-1, the proposed development would not enhance the significance of the heritage asset, the contribution of the setting or assist in making a positive contribution to sustainable communities and economic viability.
- 5.4.114 The two tests in EN-1 that have to be considered in relation to this undesignated parkland are (i) whether the proposed development would lead to substantial harm (assuming that Eriviat Hall parkland is akin to a grade 2 park/garden), and if so, (ii) whether the proposed development is exceptional development.
- 5.4.115 The Panel considers that, in view of its proposed location, height, scale and materials that would be used, the double wood pole line would not cause substantial harm or loss to Eriviat Hall parkland. The Panel agrees with the Applicant's written Summary of 8 December 2015 Issue Specific Hearing (ISH) [REP9-023] and concludes that whilst the development would locally alter the character and appearance of Eriviat Parkland over its life, the change would be slight and therefore not significant.
- 5.4.116 In any event, even if there would be substantial harm or loss of the heritage asset, caused by the development (which there would not be), the Panel considers that the proposed development, being a NSIP, has a recognised urgent need. The Panel concludes that the proposed development is exceptional development, and so the second test in EN-1, in relation to balancing the need for the development with harm to the heritage asset, would also give rise to a situation where the need for the development would outweigh any harm. The proposal is therefore in accordance with Welsh policy as contained within paragraph 6.1.1 of PPW 8.

### **Berain**

- 5.4.117 The Panel accepts that Berain is not situated within a formal, registered, parkland setting but notes that sufficient mature individual trees remain to retain a parkland effect. The Panel accepts that the immediate setting of Berain has been compromised by dominant modern agricultural buildings. However, the Panel considers that these were required to assist in keeping the Berain farm unit economically viable. The presence of sufficient hedgerows and mature trees makes the landscape amenable to accommodating a new wood pole overhead line.
- 5.4.118 The Panel agrees with the Applicant's moderate, and therefore significant overall effect on the landscape at Berain that would arise from the development, but notes that changes and the presence of

man-made features are considerably greater within the vicinity of Berain compared to its wider setting.

- 5.4.119 The Panel agrees that when the assessment of visual effect is considered only from the context of the residential receptors at Berain, then it would be fair to consider the assessment of visual effect to be minor and therefore not significant. However Berain is not only a dwelling but a working farm and receptors would spend a significant amount of their time outside, in the vicinity of Berain and its wider environment.
- 5.4.120 The Panel considers that the long 1300m sweep of the parkland/agricultural fields due south of Berain is, in the Panel's view, a relevant and connected geographic setting to the listed buildings within a historic parkland environment.
- 5.4.121 The Panel agrees that the existing poles follow roads that border the farm estate but the location of those roads are confined to the edge of the farm estate and cross at its northerly and southerly extremities, whereas the proposed development would bisect it. Notwithstanding these reservations, the Panel accepts that the overall magnitude of effect should be considered to equate to moderate magnitude [APP-099, Table 8.5].
- 5.4.122 The Panel accepts that the definition of setting of these listed buildings could vary widely. The Panel considers that the residents of Berain would no doubt find their collective experience affected by the proposed development, so might somebody to a lesser degree, whose anticipation of Berain would be affected by the periodic glimpses of the proposed development on the approaches to Berain. Whereas, those whose collective memory was confined to the historical literature of Berain, would experience no loss of value.
- 5.4.123 The Panel does not agree with the Applicant's statement that Berain appears isolated from its surrounding landscape. The Panel inspected the locality of Berain three times prior to the close of the Examination. The two unaccompanied site inspections took place from viewpoints on nearby public highways and the accompanied inspection was within the vicinity of Berain. On all three site inspections, the Panel considered that Berain farmhouse and associated listed buildings are connected to its landscape. Setting a house of this type and period sensitively within its landscape would have been a primary reason for choosing its location.
- 5.4.124 In coming to its conclusions, the Panel has considered the enjoyment of the listed buildings and their setting by its residents, visitors and others who visit Berain and its setting. In considering the harm to the setting of the listed buildings at Berain, the Panel considers that the extent of the setting cannot be mapped, however it is the experience of the listed buildings in their locality that is of importance. Despite much of the setting of Berain being across farmland which is not publically accessible, the setting is not dependent upon public

accessibility and so the Panel has given no weight to the lack of public access across the farmland at Berain. The Panel also considers that the setting of the listed buildings at Berain is not a heritage asset in its own right, more a contributor to the overall experience and importance of the listed buildings.

**Panel's reasoning and conclusions in relation to EN-1 policy for the setting of the listed buildings at Berain**

- 5.4.125 The Panel has taken into consideration all of the documents and other representations from the Applicant and the IPs that commented on the impact that the development would have on the setting of Berain. In addition, the Panel viewed the location and setting on various site inspections.
- 5.4.126 The Panel has considered the impacts of the proposed development on the setting of Berain listed buildings. In so doing, it has taken into account national policy in EN-1, section 5.8 and considers that the setting of Berain has a heritage significance that merits consideration. It considers that, in relation to paragraph 5.8.13 of EN-1, the proposed development would not enhance the significance of the heritage asset, the contribution of the setting or assist in making a positive contribution to sustainable communities and economic viability.
- 5.4.127 The two tests in EN-1, section 5.8, in relation to the impact upon the listed buildings at Berain and their setting are whether the proposed development would lead to substantial harm, and if so, whether the proposed development is wholly exceptional development.
- 5.4.128 The Panel considers that, in view of its proposed location, height, scale and materials that would be used, and distance away from the listed buildings at Berain, the double wood pole line would not cause substantial harm or loss to the listed buildings themselves or their setting. The fact that the wood pole line would be decommissioned after 30 years assists the Panel in coming to the conclusion that whilst the impact of the development on the setting of Berain would be moderate and therefore significant for its life, 30 years in the life of the listed buildings would not be a substantial proportion of their life. The Panel also concludes that a moderate or significant impact on the setting of Berain for the duration of the development is not substantial harm.
- 5.4.129 If the Panel had concluded that the harm to the setting of the listed buildings at Berain would give rise to substantial harm or loss, then the second test in EN-1, paragraph 5.8.14, that the development should be wholly exceptional, would also fail. Had this situation occurred, the Panel would have concluded that the development should be undergrounded. For this development however, as the first part of the EN-1 test in relation to the setting of the listed buildings at Berain, the Panel concludes that the development would not cause substantial harm or loss to the listed buildings or their setting.

Therefore, the Panel concludes that there is no justification, in relation to the listed buildings at Berain and their setting, for it to recommend that the Secretary of State should refuse the development in favour of an underground alternative.

- 5.4.130 In coming to these conclusions, the Panel has had regard to the desirability of preserving the listed buildings and their setting and the features of special architectural and historic interest which they possess in accordance with Welsh policy as contained in paragraph 6.1.1 of PPW 8.

**Panel's reasoning and conclusions in relation to other heritage matters**

- 5.4.131 The Panel notes that 120 High Value Assets had been identified, including 2 Registered Historic Landscapes and noted the close proximity of the Vale of Clwyd Historic Landscape to the proposed development. The Panel also noted that neither Cadw nor NRW requested an ASIDOHL for the three nearby Registered Historical Landscapes. Of the 120 High Value Assets, only Berain was assessed by the Applicant as a moderate/large impact and therefore potentially significant, all others were assessed by the Applicant as moderate to slight. This assessment was not questioned except for Eriviat parkland and Plas Newydd. Along with Berain, these properties are discussed separately.
- 5.4.132 All other impacts upon heritage assets including features of unknown antiquity were assessed as slight to neutral or slight to moderate and therefore not significant. The Panel agrees with the assessed impact levels. The Panel notes that any potentially undiscovered assets would be adequately dealt with as described in the mitigation section of this chapter and secured by Requirement 12 (archaeology) in its recommended draft DCO, and finds this to be reasonable and proportionate.
- 5.4.133 The Panel does not agree with the Welsh Government's suggestion that there should be a further SoCG with Clwyd-Powys Archaeological Trust on non-designated assets. This is because the Clwyd-Powys Archaeological Trust is the archaeological contractor and advisor to DCC and CCBC and both CCBC and DCC have already agreed a SoCG with the Applicant including matters of archaeology and non-designated assets.

**Panel's overall conclusions on historic environment**

- 5.4.134 The Panel concludes that the Applicant has followed national policy on the historic environment within EN-1, which is also consistent with the aims of PPW 8 and the Welsh Office Circular in relation to historic environment matters.
- 5.4.135 The harm identified by the IPs and the Panel in relation to heritage assets and historic environment has been considered against EN-1 policy. The Panel concludes that there are no historic environment



reasons (including the setting of listed buildings), which would lead the Panel to conclude that the proposed development should be refused in favour of an underground alternative. In coming to this conclusion the Panel has had regard to the enjoyment of the heritage assets and their settings by owners, their guests and visitors to the locality and Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010.

## **5.5 FLOOD RISK AND HYDROLOGY**

5.5.1 This section deals with flood risk and hydrology, drainage, water quality and resources.

### **National policy**

#### ***Flood risk***

5.5.2 EN-1 in paragraph 5.7.3 states that flood risk is taken into account in the planning process *"...to avoid inappropriate development in areas at risk of flooding<sup>7</sup>, and to direct development away from areas at highest risk. Where new energy infrastructure is exceptionally, necessary in such areas, policy aims to make it safe without increasing flood risk elsewhere and, where possible, by reducing flood risk overall."*

5.5.3 EN-1 paragraph 5.7.5 sets out the minimum requirements for Flood Risk Assessments (FRAs)<sup>8</sup> with paragraph 5.7.9 providing a list of requirements that, where relevant, the decision-maker need to be satisfied, these include:

- the application is supported by an appropriate FRA;
- the Sequential Test has been applied as part of the site selection;
- a sequential approach has been applied at the site level to minimise risk by directing the most vulnerable uses to areas of lowest flood risk; and
- in flood risk areas the project is appropriately flood resilient and resistant, and that any residual risk can be safely managed over the lifetime of the development.

5.5.4 The Sequential Test advocates that preference should be given to locating projects in Wales in Flood Zone A (FZA). If there is no reasonably available site in FZA then projects can be located in Flood Zone B (FZB). If there is no reasonably available site in FZA or FZB, then nationally significant energy infrastructure projects can be

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<sup>7</sup> Areas at risk of flooding are defined as Flood Zones (FZ) in Planning Practice Guidance - Flood Risk and Coastal Change (DCLG, 7th March 2014) Zones increase in severity from Flood Zone 1 (FZ1) to Flood Zone 3 (FZ3) which has the highest probability of river or sea flooding

<sup>8</sup> Both NPS EN-1 and NPS EN-5 refer to Flood Risk Assessments. A Flood Consequence Assessment (FCA) is a Flood Risk Assessment (FRA) to meet the requirements of TAN 15. A FRA is the terminology used in the National Planning Policy Framework which only applies in England. As the application is in Wales the Applicant has submitted a FCA

located in Flood Zone C1 and 2 (FZC1/2) subject to the Exception Test.

- 5.5.5 The Exception Test provides a method of managing flood risk while still allowing necessary development to occur. It is only appropriate for use where it would not be appropriate to require the development to be located on an alternative lower flood risk site (paragraph 5.7.15).
- 5.5.6 There are three elements to the Exception Test and EN-1 requires that all three elements have to be passed for the development to be consented (paragraph 5.7.16). The three elements are:
- it must be demonstrated that the project provides wider sustainability benefits to the community that outweigh the flood risk;
  - if the project is not on previously developed land that there is no reasonable alternative sites on developable previously developed land subject to any exceptions set out in the technology specific NPSs; and
  - a FRA must demonstrate that the project will be safe, without increasing flood risk elsewhere and where possible will reduce flood risk overall.
- 5.5.7 Paragraph 2.2.2 of EN-5 recognises that the general location of electricity network projects is often determined by the location of a particular generating station and the existing network infrastructure taking electricity to centres of energy use which gives a locationally specific beginning and end to a line. However, EN-5 also recognises that whilst the start and end of a line may be fixed it is not necessarily the case that the connection should be via the most direct route as the Applicant would need to take a number of factors, including environmental aspects, into account.
- 5.5.8 EN-5 advocates that electricity networks infrastructure needs to be resilient to climate change and that applicants need to set out to what extent the proposed development is expected to be vulnerable and how it would be resilient to the effects of climate change which include flooding (paragraph 2.4.1).

### ***Hydrology and water quality***

- 5.5.9 Paragraph 5.15.2 of EN-1 states that where the project is likely to have effects on the water environment, the applicant should undertake an assessment of the existing status of, and impacts of the proposed project on water quality, water resources and physical characteristics of the water environment as part of the Environmental Statement (ES) or equivalent.
- 5.5.10 Paragraph 5.15.3 expands on this by stating that the ES should in particular describe:

- the existing quality of waters affected by the proposed project and the impacts of the proposed project on water quality, noting any relevant existing discharges, proposed new discharges and proposed changes to discharges;
- existing water resources affected by the proposed project and the impacts of the proposed project on water resources, noting any relevant existing abstraction rates and proposed changes to abstraction rates (including any impact on the use of mains supplies and reference to Catchment Abstraction Management Strategies);
- existing physical characteristics of the water environment (including quantity and dynamics of flow) affected by the proposed project and any impact of physical modifications to these characteristics; and
- any impacts of the proposed project on water bodies or protected areas under the Water Framework Directive and Source Protection Zones around potable groundwater abstractions.

### **Other national policy and legislation**

- 5.5.11 The Water Framework Directive 2000 which amongst other things aims to protect the water environment from deterioration is implemented in Wales through the Water Environment Regulations 2003. The Water Framework Directive requires an assessment to be made of all permanent developments that may impact the water environment. The Water Framework Directive establishes a strategic approach to water management and a common means of protecting and setting environmental objectives for all groundwaters and surface waters, integrating the various preceding directives into a new framework.
- 5.5.12 The Environmental Permitting (England and Wales) Regulations 2010 control activities that could cause water pollution and require operators to obtain a permit from Natural Resources Wales (NRW) in respect of discharges to water.

### **Welsh policy and guidance**

- 5.5.13 Planning Policy Wales (Edition 8, January 2016) (PPW 8) states that the Welsh Government's objectives are:
- To maximise environmental protection for people, natural and cultural resources, property and infrastructure; and
  - prevent or manage pollution and promote good environmental practice.
- 5.5.14 Chapter 13 of PPW 8 deals with minimising and managing environmental risks and pollution which includes water quality and managing the risks associated with climate change which includes flooding.

- 5.5.15 With regard to flooding it advocates that development proposals in areas defined as being of high flood hazard should only be considered where:
- new development can be justified in that location, even though it is likely to be at risk from flooding; and
  - the development proposal would not result in the intensification of existing development which may itself be at risk; and
  - new development would not increase the potential adverse impacts of a flood event.
- 5.5.16 Paragraph 13.12.1 highlights that the potential for pollution affecting the use of land will be a material consideration in deciding whether to grant planning permission. It then goes on to list material considerations for potentially polluting development which amongst other things include:
- the rise and impact of potential pollution from the development, insofar as it might have an effect on the use of other land and the surrounding environment;
  - prevention of nuisance; and
  - the need, where relevant, and feasibility of restoring the land (and water resources) to standards sufficient for an appropriate after use.
- 5.5.17 TAN 15 : Development and Flood Risk (2004) (TAN 15) provides further detailed technical advice on the approach to flooding as well as defining the various flood zones it advocates that new development should be directed away from FZC towards land in FZA, otherwise to FZC1/2 where river and coastal flooding would be less of an issue. However, it also acknowledges that in some cases development may be required in FZB and FZC1/2 (paragraph 6.2).
- 5.5.18 TAN 15 provides further guidance on land uses which are acceptable within the defined flood zones. Utilities infrastructure which would include an overhead line would be considered as 'less vulnerable development' (paragraph 5.1). As a result TAN 15 permits the construction of utilities infrastructure within FZC1/2 subject to meeting the justification criteria defined within section 6 of TAN 15 and the provision of a Flood Consequence Assessment (FCA).
- 5.5.19 The Justification Test (paragraph 6.2) states that development will only be justified where amongst other things it can be demonstrated that:
- *"its location in FZC is necessary to assist, or be part of, a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement;*
  - **or**
  - *its location in FZC is necessary to contribute to key employment objectives supported by the local authority, and other key partners, to sustain an existing settlement or region;*

**and**

- *it concurs with the aims of PPW and meets the definition of previously developed land;*
- and**
- *the potential consequences of a flooding event for the particular type of development t have been considered, and in terms of the criteria contained in sections 5 and 7 and Appendix 1 (which define the requirements for a FCA) found to be acceptable".*

5.5.20 There is no specific TAN with regard to water quality.

### **FLOOD RISK IMPACTS**

5.5.21 Average Annual rainfall in the study area (which is defined as 200m either side of the centreline of the Limits of Deviation) is around 1200mm where the overhead line would start in Clocaenog Forest dropping to around 800mm close to St Asaph. The area generally drains east or north-east towards the Vale of Clwyd. Due to the linear nature of the route it would cross several tributaries of Afon Clwyd/River Clwyd (hereafter referred to in this report as Afon Clwyd). Table 9.8 in Chapter 9 of the ES [APP-100] lists the significant water features that would be crossed by the proposed development.

5.5.22 Although the overhead line would oversail many small watercourses, the FCA [APP-086] concludes that flood risks would be very limited because the conductors (wires) would be suspended well above the watercourses and most of the pole locations would be sited outside of flood risk areas.

5.5.23 In order to minimise the potential for flooding, whilst the Applicant recognises that some crossings of rivers will be inevitable [APP-100, paragraph 9.6.2] where this has to occur the shortest route possible has been chosen. This has allowed all rivers, with the exception of the Afon Elwy/River Elwy (hereafter referred to in this report as Afon Elwy), to be crossed without any supporting poles being within the recognised floodplain.

5.5.24 The exception would be pole location 204 which would need to be located within Afon Elwy floodplain, which is a FZC1, because this floodplain exceeds the distance that can be accommodated between poles whilst maintaining sufficient ground clearance for the overhead line. This pole has been sited as far from the main river as possible.

5.5.25 As a consequence the impact from the construction of the development on the floodplain of Afon Elwy was identified as a Principal Issue at Annex C of the Panel's letter of 2 July 2015 [PD-004].

5.5.26 With regard to option B the Applicant considers that the proposed changes to pole locations would result in the same impacts as for option A with pole location 204 remaining unchanged. The Panel agrees and therefore what follows applies equally to option A and option B.

## **REPRESENTATIONS**

- 5.5.27 Denbighshire County Council (DCC) raised no major concerns with regard to new flood risk occurring as part of the proposals [LIR-002]. Conwy County Borough Council (CCBC) made no comments on flood risk in their Local Impact Report (LIR) [LIR-001].
- 5.5.28 The Panel asked a number of specific first written questions (FWQs) with regard to flood risk. Whilst the majority of these were requests for clarification or further information from the applicant. FWQ7.11 [PD-010] asked NRW to confirm that they had no outstanding concerns with regard to flooding.
- 5.5.29 In response NRW [REP1-042] indicated that they considered the FCA acceptable but requested further consultation on the pole location 204 due to it being within the floodplain of Afon Elwy. They also highlighted that for 132kV overhead line which span 'main rivers' NRW, whilst recognising that their preferred requirements are greater than statutory requirements, usually require a vertical clearance above the river and any flood banks of 12m and a horizontal clearance of 15m between electrical support structures and the bank top of the watercourse.
- 5.5.30 In response to FWQ7.6 [REP1-056] the Applicant provided further information on the proposed design of the pole for pole location 204 and at the Issue Specific Hearing (ISH) on 29 September 2015 [EV-017] NRW confirmed that they were satisfied with the proposed design. Furthermore, in response to FWQ7.4 the Applicant demonstrated that the vertical clearances required by NRW would be achieved.
- 5.5.31 The concerns surrounding pole location 204 relate to the potential for one or both of the poles to become dislodged as a result of the scouring of its foundations in the event of the area being flooded. One or both the poles could then potentially become dislodged and be carried downstream and cause a blockage at a constriction such as a bridge, leading to a localised increase in flood level [APP-086, paragraph 5.1.2]. The nearest such constriction would be a road bridge that crosses Afon Elwy at Bont-newydd approximately 2km downstream from pole location 204.
- 5.5.32 The Panel inspected the bridge at Bont-newydd as part of their unaccompanied site inspection on 27 July 2015 [EV-001]. It was noted that due to the topography the apex of the arch was a considerable distance above the surface level of Afon Elwy.
- 5.5.33 As a result the Panel agrees with the conclusions of the FCA that the consequences of the location of pole 204 would be very minor, constituting of the potential blocking of the bridge at Bont-newydd, and these concerns could potentially be addressed through adequate foundation and bracing of the pole.

- 5.5.34 The Panel is satisfied that constructional flood risk would be minor and would be managed through requirement 13 (the Construction Environmental Management Plan) which would require machinery, equipment and stockpiled soil to be located 10 metres from the edge of the floodplain and the use of silt fences around stockpiled soil where considered appropriate. Finally, the proposed construction compound, temporary storage locations for poles and access routes are not within recognised floodplains.

### **HYDROLOGY INCLUDING DRAINAGE, WATER QUALITY AND RESOURCES**

- 5.5.35 There are no groundwater protection zones, drinking water safeguarded zones or public water abstraction points within the Study Area. There are however, numerous private water supplies and agricultural water uses along the length of the route. Furthermore the Applicant has indicated that there is a highly productive aquifer underlying the proposed route north east of Afon Elwy valley.
- 5.5.36 In order to minimise the effect on water quality the Applicant proposes several features in the design to minimise impacts. These include the use of wooden poles which would minimise the effects on groundwater and water quality as they would require a less substantial foundation than larger steel lattice towers. This would have the advantage of minimising the use of concrete, reducing the need for excavation and import of materials and would reduce the risk of cementitious materials close to small water courses.

### **REPRESENTATIONS**

- 5.5.37 DCC drew the Panel's attention to the fact the following properties were served by private water supplies:
- Bryn Bach and Bryn Bach Bungalow - private water supply extracted from adjacent stream that then joins Afon Concwest. The southern section of the overhead line goes over this stream prior to the extraction point for these properties.
  - Pen Parc Llwyd which would be within 300m of the proposed overhead line is served by a 250 foot deep borehole.
  - Dolben Hall, 1km east of the proposed overhead line is served by a spring.
- 5.5.38 In addition DCC highlighted that there were a number of other sources of private water supplies and infrastructure tanks and pipelines that supply agricultural businesses. DCC requested that the direct and indirect impact on these water supplies should be fully considered [LIR- 002, paragraph 10.2.5].
- 5.5.39 CCBC raised no concerns regarding water resources or water quality [LIR-001]. NRW [REP1-042, paragraph 3.10.1] were also satisfied that the risks to groundwater from the proposed scheme would be likely to be low if the measures included in the outline Construction Environmental Management Plan (CEMP) [REP9-030] are followed.

- 5.5.40 DCC concerns were reflected by a number of Interested Parties (IPs) including Mr Dafydd I Jones [REP1-011] who stated that IPs require water supplies to be safeguarded by the development consent order (DCO). Mr Dewi Parry and Mrs Helen Parry in their response to the Panel's FWQ4.14 [REP1-021] advised that a natural stream passes through all but one of the fields at College Farm and is the only source of water for animals within these fields. The proposed overhead line would cross the stream at its furthest upstream point and a double pole would be within approximately 2 metres of the stream [APP-010]. As a result they had concerns regarding potential contamination from construction and the long term water quality given the proposed pole location.
- 5.5.41 Thus the key concerns would appear to be:
- how construction would be managed to minimise disruption to water supply; and
  - how excavation/construction near water courses will be undertaken.
- 5.5.42 In addition the Panel through the FWQ [PD-010] had queried how potential long term damage to drainage would be managed.
- 5.5.43 To address these concerns the Applicant proposed a number of measures within the outline CEMP [REP9-030] which would be secured through Requirement 13 of the recommended DCO.
- 5.5.44 As part of the discussions on construction impacts at the ISH of 29 September 2015 [EV-017] the mitigation proposals for private watercourses were examined further. As a result of these discussions and the concerns raised by the IPs both at the ISH and through written representations the outline CEMP was amended. As a result the Applicant would now, prior to the commencement of construction of the relevant section of the overhead line, identify water supplies through discussions with land owners. During construction if livestock are unable to be reallocated then replacement water sources through the additional water piping or water troughs would be provided. In addition to which if there is a temporary or permanent loss of a private water supply, the Applicant would provide a replacement water supply to affected individuals [REP9-030, Section 2.5].
- 5.5.45 During construction machinery, equipment and stockpiled soil would be kept a minimum of 10m from the edge of a watercourse. If the watercourse has an associated floodplain then the limit would be extended to 10 meters from the edge of the floodplain. In addition the outline CEMP [REP9-030, Section 2.16] proposes the following measures:
- water containing silt would not be pumped or allowed to flow into watercourses;
  - where possible water would be prevented from entering excavations;



- the amount of exposed ground would be minimised in the working areas to reduce the risk of silty surface water run off;
- fuel, oil and chemical storage would only be permitted at the construction compound and not at individual pole locations;
- suitable spill kits will be held in the vicinity of watercourses during construction and in the event of a spill the spilt material shall be contained; and
- herbicides would not be used on or near any watercourses or ponds within the working area without written approval from NRW.

5.5.46 At the ISH on 1 October 2015 [EV-025] concerns were raised by a number of IPs regarding potential damage to existing field drainage systems. The concerns arose out of the length of time that it could potentially take for damage to the drainage systems to manifest and that the proposed timescales within the outline CEMP were potentially too short to allow for any damage to become apparent. Following the ISH the Applicant revised the outline CEMP [REP9-030, paragraph 3.6.4 iv] to extend the period for repair of land drainage systems to within 5 years of the completion of construction.

5.5.47 Finally, in response to the Panel's FWQ7.13 and 7.14 [PD-010] the Applicant confirmed that most of the poles would not penetrate aquifers. Where a pole would penetrate an aquifer the excavation would consist of removing the rock and replacing it with clean granular fill. As a result water quality would not be affected and groundwater movement would not be impeded. Poles are pressure treated with preservative as part of the production process before being delivered to site. Whilst the Applicant acknowledges that some preservative could leach into the soil over the lifetime of the proposed development they advocate that this would be very limited and would not have a detrimental effect on water quality.

5.5.48 Consequently the Panel are satisfied that the proposed development would not adversely affect hydrology during the construction and operational phases.

### **Decommissioning**

5.5.49 Decommissioning would essentially be the reverse of construction, with a requirement for the same access tracks and storage areas to be re-used. After removal of the conductors the poles would be cut to the ground and the foundation blocks removed and, where used, imported infill material replaced with soil similar to that existing on site.

5.5.50 In terms of flood risk the pole within Afon Elwy would be removed. As with the construction phase the effects of flood risk are considered to be negligible.

## **The Panel's reasoning and conclusions**

- 5.5.51 In respect of the guidance in EN-1 paragraph 5.7.9 the Panel conclude that the application is supported by an appropriate FCA; the sequential test has been applied insofar as it is a linear route that is constrained by the need to cross a number of watercourses and rivers and their respective floodplains; the project is appropriately flood resilient and that as a consequence any flood risk could be safely managed.
- 5.5.52 In respect of the guidance in EN-1 paragraph 5.7.16 and 5.7.17 the Panel considers that the project would meet the test for exceptions.
- 5.5.53 With regard to the Water Framework Directive 2000 the Panel conclude for the reasons outlined above that the proposal would not cause deterioration in status or prevent actions required to raise the water quality status of any of the water bodies within the vicinity of the proposed development.
- 5.5.54 The proposal can be justified in this location in accordance with PPW 8 and would meet the Justification Test set out in TAN 15 in that it would assist in achieving energy security which is essential for the delivery of both regeneration and key employment objectives.

## **5.6 CLIMATE CHANGE MITIGATION AND ADAPTION**

### **INTRODUCTION**

#### **National policy**

- 5.6.1 EN-1, in paragraph 4.8.5, explains that new energy infrastructure will typically need to remain in operation over many decades. It requires applicants to consider the impact of climate change when planning the location, design, build, operation and, where appropriate, decommissioning of new energy infrastructure. The Environmental Statement (ES) should set out how the proposal will take account of the projected impacts of climate change. While not required by the environmental impact assessment directive, this information will be required by the decision maker.
- 5.6.2 EN-5, paragraph 2.4, requires applicants to take into account the need for resilience in relation to factors associated with climate change including flooding, effects of wind and storms on the overhead lines and higher annual temperatures over future years, which could lead to future transmission losses.

#### **Welsh policy**

- 5.6.3 The Climate Change Strategy for Wales (CCSW) (Welsh Government, 2010) explains that the Welsh Government is committed to deliver the following targets:

- reducing greenhouse gas emissions by 3% per year from 2011 in areas of devolved competence, against a baseline of average emissions between 2006 and 2010; and
- achieving at least a 40% reduction in greenhouse gas emissions in Wales by 2020 against a 1990 baseline.

## **IMPACTS**

- 5.6.4 In response to the Panel's First Written Question (FWQ) FWQ7.12 [REP1-056], the Applicant explained that in designing the overhead line it had taken into account the need for resilience in relation to factors associated with climate change including flooding, effects of wind and storms and higher annual temperatures.
- 5.6.5 It stated that in the ES the design of the overhead line had been assessed in terms of climate change mitigation and adaptation and therefore the effects of wind and storms and higher annual temperatures over future years which could lead to increased transmission losses had not been considered further. The ES had considered risks to or from the proposed development associated with flooding in Chapter 9 [APP-100]. This chapter had taken into account the results of the Flood Consequence Assessment (FCA) [APP-086], which considered potential impacts associated with climate change, including the potential for increased risks from flooding. No climate change adaptation measures were identified as necessary, as there were not considered to be additional risks to, or from the development, as a result of increased flooding due to climate change factors. The Panel, in its conclusions on flood risk matters, in report Section 5.5 agreed with the Applicant in this regard.

## **REPRESENTATIONS**

- 5.6.6 Ms Ann Williams [RR-002], raised concerns about extreme weather conditions which had caused energy supply problems in Canada and France in 1999. She considered that whilst such extreme weather conditions do not affect the UK, in October 2013, an unsafe pylon at Porthmadog affected local roads and trains for days. In her view, extreme weather conditions are projected to be more prevalent in future.
- 5.6.7 The Welsh Government [REP1-098] explained that the proposed development would help deliver a number of priorities set out in CCSW as well as two further documents (Low Carbon Revolution -Welsh Government Energy Policy Statement (2010), and Energy Wales: A Low Carbon Transition).
- 5.6.8 The Applicant, in response to the Panel's FWQ1.13(a) [REP1-056] considered that the proposed development would assist in delivering the goals in CCSW for the following reasons:
- it would enable the supply of renewable energy to be effectively and economically distributed by connecting the wind farms to the collector substation; and

- it would contribute to the UK achieving a low carbon economy and the targets set for significant reduction in greenhouse gas emissions.

5.6.9 Denbighshire County Council (DCC), in their response to the Panel's FWQ1.13 [REP1-018] accepted that a grid connection is essential to realise the potential of renewable energy development in this area, in turn driving the national strategies for reducing carbon emissions. However, the connection can be achieved by overhead lines, or undergrounding, and either option would achieve the objectives in the strategies.

5.6.10 Conwy County Borough Council (CCBC), in their response to the same FWQ [REP1-009], also agreed that the proposed development would help to deliver the CCSW objectives.

### **FURTHER MITIGATION**

5.6.11 No further mitigation in relation to climate change matters was considered necessary by the Panel.

### **REASONING AND CONCLUSIONS**

5.6.12 In report Section 5.5, the Panel agrees with the Applicant regarding there being no risks arising from the development in relation to flooding.

5.6.13 The Panel considers that the Applicant has adequately addressed the EN-1 and EN-5 requirements in relation to climate change adaption and mitigation. The development would also help to deliver Welsh policy targets for renewable energy. The Panel concludes that the development would not give rise to any impacts that could exacerbate climate change effects.

5.6.14 The Panel's conclusions apply equally to both option A and option B.

## **5.7 LAND USE AND LAND MANAGEMENT**

### **INTRODUCTION**

#### **National policy**

5.7.1 EN-1, paragraph 5.10.8, requires applicants to seek to minimise impacts on the Best and Most Versatile (BMV) agricultural land, defined as land with grades 1, 2 and 3a in the Agricultural Land Classification system and preferably use land in areas of poorer quality (grades 3b, 4 and 5) except where this would be inconsistent with other sustainability considerations. EN-1, in paragraph 5.10.15 requires the decision maker to ensure that applicants do not site their scheme on the BMV land without justification.

5.7.2 It goes on to direct applicants, in paragraph 5.10.9, to safeguard any mineral resources on the proposed site as far as possible, taking into

account the long-term potential of the land use after any future decommissioning has taken place.

### **Welsh policy**

- 5.7.3 Planning Policy Wales (Edition 8, January 2016) (PPW 8), paragraph 4.10.1, states that the BMV land should be considered as a finite resource for the future. It goes on to say that land in grades 1, 2 and 3a should only be developed if there is an overriding need for the development and either previously developed land, or land in lower agricultural grades is unavailable, or lower agricultural grade land has an environmental value recognised by a landscape, wildlife, historic or archaeological designation which outweighs the agricultural considerations.

### **Agri-environment schemes**

- 5.7.4 The Basic Payment Scheme (BPS), previously the Single Payment Scheme, makes a major contribution to a farm holding's viability; indeed for many farms, their viability is dependent on BPS. In order to qualify for BPS, a claimant must meet cross compliance rules set by the EU.
- 5.7.5 Any compliance issues that may result in a percentage reduction of BPS payment is a source of concern to the farming community. It is not within the remit of the Panel to take a view on whether the penalties imposed are proportionate to the level of compliance failures; suffice it to say that breaches of compliance may lead to a significant reduction in BPS payments for individual holdings.
- 5.7.6 Similar problems might arise with Glastir, the voluntary whole farm agri-environment scheme available to farmers across Wales. This scheme's literature was introduced into the Examination in the Applicant's responses to the Panel's first written questions (FWQs) [REP1-085].

### **Biosecurity**

- 5.7.7 During an age of increasing liberalisation of trade, pathogens and diseases benefit equally from freer movement, as do goods and raw materials. Due to a number of high profile animal diseases and plant pathogens, and other bio-security concerns including foot and mouth disease (Aphthae epizooticae), sheep scab (Psoroptes ovis), classical swine fever (Pestivirus flaviviridae) and ash die back (Chalara fraxinea), bio-security concerns and bio-security as a practical working tool were considered during the Examination.

### **Quarrying**

- 5.7.8 Whilst the application site is underlain by a range of economic mineral deposits, the proposed development would not affect any active mines or quarries or any Regionally Important Geological Sites.

## **Unexploded ordnance**

- 5.7.9 In order to confirm that unexploded ordnance would not be an issue during construction, the Applicant commissioned Zetica UXO to undertake a desk study assessment. The result of that assessment is found in the Environmental Statement (ES) [APP-142, Appendix A].

## **IMPACTS**

### **Impacts in relation to agricultural land classification**

- 5.7.10 In the ES, Chapter 10 [APP-101, paragraph 10.5.4], the Applicant used a "*Provisional*" reclassification by the Department for Environment, Food and Rural Affairs (Defra), which removed the sub-classification within Grade 3, so defining BMV land as only grades 1 and 2. The Applicant stated, [APP-101, paragraph 10.7.1], that no BMV land would be affected by the proposed development. This is considered further below under representations.
- 5.7.11 In its post hearing submissions, in respect of the Issue Specific Hearing (ISH) on land use, land take and land management issues on 1 October [REP3-036], Mr K Stewart, of Laurence Gould, rural business advisor to the Applicant explained (paragraph 3.9) that a total land take (uncropped area) of 2.52 ha would result from the development.

### **Impacts on farming practices**

- 5.7.12 Though the route of the proposed development would traverse grade 4 land at its southerly end near Clocaenog, a significant part of the route goes through grade 3 land. This grade of land lends itself to a dynamic mixed farming system with arable and cropping, dairying and pasture being inter-changeable.
- 5.7.13 This would mean that the impact that the development might have on farming practices would vary from year to year depending on whether fields were in a grazing/dairying system or a cropping/arable system. The effect would be considerably less in pasture systems, especially permanent pasture because grazing animals could utilize grass right up to the base of the poles but in silage cropping or arable systems the development would impose larger land take issues.
- 5.7.14 Though the foot print of the approximately 17.4km overhead line would be relatively small, at approximately 2.5 ha, nonetheless farmers would encounter a barrier where none had existed before and routine agricultural operations like spraying, mowing and ploughing would have to adjust accordingly.
- 5.7.15 However this would not be a problem unique to the location of the proposed development. Farmers have to adjust on a regular basis to what is becoming an increasingly cluttered countryside. Obviously farmers would prefer to have double poles located in hedgerows or away from the more productive parts of their farms. Poles sited close

to access points, or in slopping land that is in an arable rotation, also posed a particular problem.

- 5.7.16 In part, the Applicant tried to address these problems by putting forward option B, but it accepted, that for a variety of technical and visible reasons not all requests to move pole locations could be accommodated within the project design and Order limits.

### **Impacts on agri-environment schemes**

- 5.7.17 At deadline 4, the revised draft of the outline Construction Environmental Management Plan (CEMP) [REP4-012], contained comprehensive details of the role of the Agricultural Liaison Officer. Of particular relevance to this section are 3.6.5 and 3.6.6 of that edition of the CEMP, which are summarised in the next paragraphs.
- 5.7.18 Three months prior to the commencement of work, the Agricultural Liaison Officer would make an assessment with owners, occupiers and if relevant, their agent of any potential breaches of cross compliance or Glastir rules. This would form part of the planned record of condition report for the agricultural holding.
- 5.7.19 One month prior to commencement of work and ongoing throughout the project, if and when a potential breach was identified, the Liaison Officer would assist in providing the necessary information required for the contract holder to inform the appropriate department.
- 5.7.20 This would include a letter to each affected holding stating the nature of the work that would take place, its timing and duration and a confirmation that such works would take place in accordance with the development consent order.
- 5.7.21 This information would explain the reason for any disturbance should an inspection take place by the relevant authority. Should the proposed development cause a Glastir or cross compliance breach, then any penalties would be included in a compensation claim.
- 5.7.22 This issue was addressed in the ISH on 8 December 2015 [EV-032] when Interested Parties (IPs) were asked to comment on the adequacy of the Applicant's response.
- 5.7.23 Mr Iwan Wynne Jones [EV-032] considered that the appointment of an Agricultural Liaison Officer would address their concerns but expressed a worry that the availability of this facility might not be known to all who might be affected by the proposed development.

### **Impacts in relation to biosecurity issues**

- 5.7.24 The purpose of bio-security is to assess and as much as possible eliminate potential impacts. The foot and mouth outbreak of 2001 was a graphic example of a bio-security breakdown.

- 5.7.25 Phytophthora ramorum (a tree disease) is a known risk within Clocaenog Forest and larch is especially susceptible to this fungus-like pathogen which causes extensive damage and loss of income by the premature felling of timber as a disease control measure.
- 5.7.26 Whilst bio-security is only given a passing reference in ES 10 [APP-101] paragraph 10.6.12, there was a comprehensive bio-diversity section in the outline CEMP [REP9-030] at 2.15.1 to 2.17.1 with proposed mitigation measures in 3.6.1 to 3.6.9.
- 5.7.27 The Applicant stated, in the outline CEMP, that a number of the biosecurity measures identified in the Defra document, biosecurity guidance to prevent the spread of animal diseases, would be adopted. These include:

- comprehensive discussions with land managers prior to construction and on-going liaison during construction;
- avoidance of contact with farm animals;
- construction vehicles and trailers to be situated whenever possible on hard standing and away from areas accessible to livestock;
- vehicles to be thoroughly cleaned, including foot wells and pedals and free from manure, slurry, soil and other materials before they are taken to other premises;
- suitable protective clothing and footwear to be worn on all premises and clean on arrival and departure in order to prevent contamination being carried from farm to farm; and
- biosecurity measures to apply also to watercourses and wherever possible, machinery and equipment to be kept a minimum of 10m from the edge of the watercourse.

all of the above would be implemented through the outline CEMP [REP9-030], which would be secured by Requirement 13 of the Panel's draft recommended DCO (Appendix E).

- 5.7.28 The outline Ecological Management Plan (EMP) [REP9-034, paragraphs 2.7.2 to 2.7.3] states that if invasive species were identified during construction then a 7m exclusion zone would be implemented and the cut vegetation treated as contaminated waste and if required, disposed of in permitted landfill sites, by specialist contractors.

### **Impacts from unexploded ordnance**

- 5.7.29 The assessment by Zetica UXO, regarding whether unexploded ordnance would be located along the route of the development confirmed that, because the recorded WWII bombing across the application area was 0.5 to 2.0 bombs per 405 ha, this was well within the low risk category, defined as a bombing density of up to 10 bombs per 1000 acres.
- 5.7.30 Zetica UXO concluded their assessment with the recommendation that, *"A detailed desk study, whilst always prudent, is likely to do no*



*more than confirm an unexploded ordnance (UXO) hazard level for the site”.*

### **Option B impacts**

5.7.31 The Applicant's Environmental Report in Support of Option B (ERISOB) [OpB-003, Section 3.5], explained that the changes to the specific location of the Order land/Order limits in a few locations results in a slightly greater land take when compared to the land within the option A Order limits. This resulted in a minimal increase in the total area of the Order limits as follows:

- option A 899,238m<sup>2</sup>
- option B 900,663m<sup>2</sup>

5.7.32 The net change of 1425m<sup>2</sup> over all of the Order limits was not considered to be significant. The ERISOB report explained that many of the proposed amendments resulted from requests from landowners for minor changes in pole locations in order to assist with their agricultural activities. These amendments and the slightly larger land take were considered to be minor and did not affect the outcome of the assessment on land use and agriculture, however they were considered by the Applicant to be a positive benefit to the individual landowners concerned.

## **REPRESENTATIONS**

### **Representations in relation to agricultural land classification**

5.7.33 As part of the Panel's FWQs, the Applicant was asked to provide a revised Agricultural Land Classification (ALC) Map showing subgrades 3a and 3b separately. The Applicant replied that they requested that information from Natural Resources Wales (NRW) who held the archive of ALC maps. NRW replied to the original request for ALC data stating that Welsh Government held all the ALC data. The Welsh Government provided an outline ALC map for the Applicant based on 1977 data but it did not contain any detail on sub-divisions of grade 3 lands [REP2-015, page 40].

5.7.34 The Welsh Government, in their reply to the Panel's FWQs [REP1-098] said that it was not appropriate to downgrade all grade 3 land to non BMV land for the purpose of any study for the proposed development.

5.7.35 The Campaign for the Protection of Rural Wales Clwyd Branch [REP1-002] and Cefn Meiriadog and Glascoed Residents User Group [REP1-006] expressed a concern as did Denbighshire County Councillor Alice Jones [REP3-008] that agricultural land is a finite resource and since BMV land is a small percentage of the total agricultural land within Wales, it therefore should be protected and conserved for future generations. Also Denbighshire County Council (DCC), in its written representation (WR) [REP1-019] questioned whether the Applicant's submissions had clearly established that there is no grade 3a land affected by the proposals. If that was the case, the effective

sterilisation of the land beneath and alongside the overhead line would, in their view, conflict with the tests of PPW 7 paragraph 4.10.

- 5.7.36 The Panel notes that PPW 7 is now PPW 8 (January 2016) but the wording in section 4.10 has not changed between the two editions.
- 5.7.37 The Applicant, at the ISH on 1 October 2015 [EV-024], and subsequently confirmed at deadline 3 post hearing submissions [REP3-036], said that there was no extant survey that differentiated between grade 3a and grade 3b land. The Applicant did not propose an independent survey for agricultural land within the proposed development area since any potential survey would, in their view, be intrusive and time consuming. During the hearing, however the Applicant confirmed that in ES Chapter 10 [APP-101] the environmental impact assessment (EIA) had been prepared on the basis that all grade 3 land was BMV land and that there was an error in paragraph 10.7.1 of the ES which erroneously stated that there was no BMV land affected by the proposed development. The Applicant confirmed this in its post hearing representation [REP3-036, paragraph 3.4].
- 5.7.38 In response to SWQ4.1(b) from the Panel [REP6-035], the Applicant provided the percentages of the ALC grades along the route of the proposed development. They were as follows:
- Grade 3 - 71.95%
  - Grade 4 - 21.92%
  - Grade 5 - 1.32%
  - Other (non-agricultural land) - 4.81%
- 5.7.39 In response to the Panel's SWQ4.1(c), the Applicant confirmed [REP6-035] that the text in paragraph 10.7.1 of the ES should state:
- "It has been assumed that all land affected by the Proposed Development is Grade 3a and therefore BMV land."*
- 5.7.40 In the Statement of Common Ground (SoCG) between the Applicant and NRW [REP11-015], NRW agreed that it is not involved in the classification of agricultural land and therefore leaves it up to the Secretary of State to balance the land use and agricultural impact against the other impacts identified.

### **Representations in relation to farming practices**

- 5.7.41 Interested Parties expressed concerns in relation to the potential effect that the proposed development would have on farming practices. Mr Iwan Thomas Jones and Mrs Helen Jones (Pengerddi) [RR-034] thought that the proposed development would bring considerable disturbance to farming operations. Mrs Carol Ann Owen [RR-071], as did most of Eifion Bibby's clients, regretted the fact that the overhead line was through productive agricultural land rather than roadside or field boundaries. Mr Meilir Jones [RR-050] claimed that he would not be able to farm with "pylons" in the middle of fields.

- 5.7.42 Mr John Mars Jones [REP3-016] and Mr Iwan Wynne Jones [REP3-010] provided detailed concerns about the impact that the proposed development would have on their farming operations at the first Compulsory Acquisition Hearing (CAH) held on 24 September 2015. The Panel does not doubt the sincerity of those views.
- 5.7.43 The Applicant, in the ISH on 1 October 2015 and subsequently in the Post-hearing submission [REP3-036], sought to quantify the potential loss of agricultural production.
- 5.7.44 This amounted to a maximum loss of 2.52 ha for cropping systems but considerably less for grazing systems. For farmers in a feed barley system this would equate to a loss per pole of £1.56 and a loss of £14.43 per maximum containment of which 8 were proposed, to which another £0.60 could be added because of the loss of the value of straw.
- 5.7.45 The Applicant considered that since commodity prices were low, it would be sensible to add a price sensitivity rating to these projections which would take potential losses to £2.24 per pole and £20.75 per containment.
- 5.7.46 Therefore the Applicant concluded that the potential loss of agricultural income across the entire proposed development amounted to £982.80, [REP3-036, paragraph 3.11.1 to 3.11.3]. On a three cut per season system, grass silage losses were calculated at £4.25 per pole and interference with straight cropping passes because of introduced obstructions would amount to 7 passes per cut and 21 in total which were factored into the calculations.
- 5.7.47 Horizontal alignments to avoid obstructions had been factored in. As to vertical alignment, 11kV lines, which are common within the proposed development area have a minimum clearance of 5.2m whereas a 132kV line would have a clearance of 6.7m, therefore, for the majority of the proposed development area, this would not be a problem for most agricultural machinery.

### **Representations in relation to agri-environment schemes**

- 5.7.48 In 2015, a new system was introduced to calculate the BPS, this was based on the amount of eligible i.e. "*farmable*" land on a holding. Because none of the land on which the proposed development might take place, was affected by the proposed development in 2015, all land within the proposed development would have qualified as "*farmable*" land.
- 5.7.49 Subsequently some portions of this land, either as a result of construction or on-going land take by the proposed development might not qualify as "*farmable*" land and therefore would lose a small element of the holding's BPS payment.
- 5.7.50 The Applicant was clear that this could be addressed through a compensation claim. This matter was explained in the Applicant's post

hearing submission regarding representations made at the ISH on land use, land take and land management impacts [REP3-036, paragraphs 4.1.1. to 4.1.9].

- 5.7.51 If no voluntary agreements were reached to address the above issues then the Applicant stated [REP1-056] in reply to the Panel's FWQ4.1(e) that, "*Compensation would be dealt with in the usual way should SP Manweb exercise the compulsory acquisition powers and temporary use powers in the development consent order, through the Statutory Compensation Code and a claim being made to the Upper Tribunal of the Land Tribunal*".
- 5.7.52 The role of the proposed Agricultural Liaison Officer is discussed in the sections below dealing with cross compliance and biosecurity issues, however the Panel noted that the outline CEMP [REP9-030, paragraphs 3.6.1], sets out a wider remit for that role which included liaising and monitoring with the farming community during the construction and reinstatement works. The Agricultural Liaison Officer would be employed by the Applicant and his/her role would include:
- Managing pole delivery times so as not to hinder milk tanker and other deliveries.
  - Arranging pre-entry meetings to ensure that disruption to farming activities is kept to a minimum especially during the breeding cycle of agricultural animals.
  - Ascertaining the location of field drains; it was notable that the Applicant during the examination raised its responsibility for drainage damage due to the proposed development from 2 years to 5 years.
  - Agree clearly delineated grassland access routes.
  - Replace hedges or fences as appropriate.
  - Locate storage space for soil, stone or construction material away from watercourses and standing water.
  - Record details of private roads, gateways, fences, drainage systems and ground conditions prior to work commencing.
- 5.7.53 Given the apparent complexity of Glastir, the Panel was concerned by the Applicant's reply to its FWQ [REP1-056], that the responsibility of a Glastir contract lay with the individual scheme member who must notify the appropriate department of any changes in circumstances and that no responsibility could be accepted by the Applicant.
- 5.7.54 This response was very much in line with that given in table 10.3 of ES [APP-101], when in reply to a consultation response from National Farmers Union Cymru expressing their concern as to potential disruptions to agri-environment schemes and that the ability to amend contracts during agreement periods is limited; the Applicant stated that the responsibility fell on each individual scheme member.
- 5.7.55 The Applicant had however in the ES Figures Document [APP-106], identified through discussions with landowners and tenants, land

holdings within the order limit which were in the entry and advanced elements of Glastir.

- 5.7.56 The Applicant also stated that if the proposed development caused a breach in a Glastir contract then that breach would be quantified and the affected landowner would have the right to include this in a compensation claim.
- 5.7.57 During the ISH on 1 October [EV-024], issues raised by IPs concentrated on three key areas:
- breaches of Glastir contracts were considered manageable, since a works plan and discussions with land managers would show for instance, when a hedge would be removed and re-instated, a temporary track created or a small area of habitat modified. The problem would be known in advance and therefore appropriate steps could be taken to inform the relevant departments;
  - why the responsibility to identify the problem and inform the relevant departments should fall entirely on them since the proposed development would be imposed upon them and would not be of their own choosing; and
  - the proposed development might result in a breach of cross-compliance, especially that of soil management and soil erosion caused by unexpected and heavy rain during construction leading to deep ruts and standing water caused by construction traffic. These events would be unpredictable and therefore out of the control of both the landowner and Applicant. It was therefore unreasonable to expect the landowner to be responsible for informing the relevant authority of an unforeseen problem.
- 5.7.58 The Panel questioned the Applicant on whether it considered that it was absolved from a responsibility to rectify any problems that occurred. The Applicant stated that the point raised by the Panel was eminently capable of being resolved through careful communication between the Applicant and landowners that would allow information to be disseminated to the relevant authorities.
- 5.7.59 The Applicant, in its post hearing submissions on land use issues [REP3-036], accepted that the onus would lie with the Applicant to provide as much information as possible at an early stage that would allow a landowner to assess and inform how construction works might affect their ability to comply with Glastir contracts and compliance rules.

### **Representations in relation to biosecurity**

- 5.7.60 Though most of the representations from land owners and land managers concentrated on the potential effects that double pole structures would have on the efficiency of their farming systems, many made passing references to the need to maintain a strong bio-security regime during the construction phase. Mr Gordon Owen [RR-029] and some of Mr Dafydd I Jones's clients, including Mr Emlyn and

Mrs Nicola Davies [RR-024], Mr Neville Hughes [RR-078] along with Mr Eifion Bibby's clients, Mr Hefin Wyn Hughes [RR-063] and Mr D C Jones [RR-058], are some examples of that response.

- 5.7.61 Mr Dewi Parry in his response to the Panel's FWQ [REP1-021] expressed a concern over the potential contamination of animal drinking water due to the close proximity of one set of double poles to a water course. The Panel noted his concern and considered that any slight risk would only be present during the construction phase if a pole inadvertently came into contact with the water course and if the outline CEMP was followed, no livestock would be present at that juncture.
- 5.7.62 Mr Iwan Wynne Jones [RR-066] and Mr John Mars Jones [RR-068], who were present at almost all the oral hearings, included biosecurity as one of the issues that could be incorporated within the role of the agricultural liaison officer.
- 5.7.63 At deadline 6 a representation from the owner of Bryn Golau poultry (broiler) farm [REP6-046] raised concerns about potential increased risk of disease transmission and transfer of invasive weed species associated with vehicle movements along the working corridor, explaining that everyone involved with poultry must 'buy in' to the concept of biosecurity, including heeding restrictions on vehicle movements in relation to reducing microbial load on vehicles and other mobile equipment by washing and disinfecting, controlling visitors and the movements of workers and the use of protective clothing.

### **Representations in relation to quarrying**

- 5.7.64 The Panel asked a FWQ about impacts that the development could have on mineral safeguarded areas [PD-010]. Conwy County Borough Council (CCBC), in their response to the Panel's FWQ1.8, confirmed that the development would cross safeguarded mineral resources of sand and gravel and hard rock, but considered that the proposal would have a limited impact upon the safeguarded mineral resource due to the narrow footprint of the infrastructure [REP1-009]. In response to the same question, DCC [REP1-018] stated that the development would inevitably cross over land containing safeguarded minerals. They considered that as there had been little interest in working minerals in the vicinity of the development; there exists a healthy supply of consented hard rock reserves across north Wales; the small percentage of total mineral resource that would be sterilised by the development and the unknown quality of any resources under the route of the cables meant that the sterilisation of mineral resources under the development would have no significant impact on the county's obligations to make provision for both hard rock and sand and gravel.

### **Representations in relation to unexploded ordnance**

- 5.7.65 The Applicant stated [APP-142] that the pre-desk study assessment for unexploded ordnance had been undertaken by Zetica UXO which had showed that the risk to the proposed development from unexploded ordnance was considered to be low. Zetica UXO concluded that a detailed desk study, whilst always prudent, was likely to do no more than confirm a low hazard level for the proposed development.

### **Representations regarding option B**

- 5.7.66 Most of the changes proposed by the Applicant in option B were as a result of attempting to accommodate land use concerns, though Mrs Carol Ann Owen [RR-071] raised concerns about the impact of the development on future aspirations to erect a new rural enterprise dwelling on land that her family owns. Also Mr H M Parry [RR-064] wanted poles 210 to 214 moved further away from Plas Hafod, his dwelling. The Applicant was able to accommodate changes in both these locations in option B.
- 5.7.67 Mr Meilir Jones [RR-050] also wanted the overhead line moved away from his potential home for which he has obtained planning permission [REP3-023]. For technical reasons, this was not acceptable to the Applicant.
- 5.7.68 For most Affected Persons (APs), change was sought for practical agricultural reasons. Following these requests, the Applicant amended the route, where it was able to. For example, Mr R Evans' [RR-070] request to move poles 38 to 42 in order to accommodate agricultural practices was accepted in option B as was Mr Dewi Clwyd Hughes [RR-058] request to move poles 88 to 90 for similar reasons.
- 5.7.69 Mr Hefin Wyn Hughes [RR-065] request to move pole 119 whose location, in a "*pinch point*" would have been a major impediment in winter in accessing land further down the valley, was acceptable to the Applicant and incorporated into option B. However, because of increased visual impact and woodland loss, the Applicant could not agree to move poles 120 to 123 on his land.
- 5.7.70 Mr Hywel Meirion Jones [RR-069] had his request accepted, to move pole 129 to a hedgerow and the removal of a stay from pole 127, again for practical agricultural reasons. However a further request to move another 3 poles could not be accommodated, because it would have caused an unacceptable length of span between those poles.
- 5.7.71 Mr D R Owen [RR-061] requested that a pole was moved to a field boundary to free up agricultural land, but it could not be accommodated for technical reasons, whilst Mr A A Owen's request to move pole 182 [RR-055] for agricultural reasons was acceptable to the Applicant and included in option B, but his request to move pole 186 could not be accommodated.

- 5.7.72 Some farmers requests for moving poles could not be accepted at all. Mr A E M Owen's request [RR-056] to move pole 193 could not be accommodated because of clearance infringements and his request to move pole 196 was not accepted by the Applicant because of the increased span length and the fact that the proposed location would be located in a disused quarry.
- 5.7.73 Mr D E Jones' requests to move poles [RR-059] could not be accommodated in option B because of low clearance issues and breaches of maximum allowable spans [REP5-006] as did Mr Iwan Wynne Jones [RR-066] because one proposed pole locations span would have been less than 50m and the other would have been more than 85m [REP6-022].
- 5.7.74 Full consideration of requests for changes to pole and stay locations from APs is provided in report Chapter 8.
- 5.7.75 Wherever possible the Applicant tried to accommodate agricultural concerns within option B; however due to technical reasons, span lengths and insufficient clearance, extra woodland clearance and increased maintenance costs for example, this was not always possible. One request was well outside the Order limits for option A, (that of Mr John Mars Jones [RR-068]), and therefore his request to move a section of the overhead line could not be included in option B.

### **FURTHER MITIGATION**

- 5.7.76 The Panel is not proposing any further mitigation in relation to land-use and land management matters.

### **THE PANEL'S REASONING AND CONCLUSIONS ON LAND USE AND LAND MANAGEMENT**

#### **Introduction**

- 5.7.77 In the Panel's view, the proposed overhead line would cause IPs to face a number of competing priorities. For landowners and land managers, the priority would be that the overhead line in whatever shape or form would be located where their effect on agricultural operations would be minimal. For others, minimising their visual impact would be the priority. Some would be concerned that sensitive habitats would not be compromised whilst for others, the effect on residential receptors would be uppermost in their minds.
- 5.7.78 During the course of the Examination, option B evolved in order to try to accommodate some of these competing priorities. The Panel's reasoning and conclusions on option B are provided below.

#### **Agricultural land classification and land take**

- 5.7.79 The Panel accepts the importance of conserving BMV land as a finite resource for future generations; however BMV land affected by the proposed development would only amount to approximately 2.5ha.



- 5.7.80 The Panel notes that the loss of this BMV land would not be a permanent loss since Requirement 17 (Decommissioning) and Requirement 19 (Expiry of development consent) of the Panel's recommended draft DCO, if made, would lead to the restoration of the Order land within 30 years of the date that the Order is made.
- 5.7.81 The Panel accepts the Applicant's assurance that all grade 3 land in the ES has been assessed as BMV land [REP6-035]. The Panel finds that the route from the collector substation at Clocaenog to the St Asaph substation would inevitably include BMV land. The Panel notes that the potential land take would be approximately 2.5ha. The Panel further notes that this would not be a permanent land take but the BMV land would be restored on decommissioning the overhead line.
- 5.7.82 The Panel also accepts that the loss of 2.5ha of BMV land would be contrary to Welsh policy in PPW 8, but concludes that as the route of the development would be restored when the development is decommissioned, it would not be a permanent loss.
- 5.7.83 The Panel has considered alternative routes and alternative solutions (i.e. undergrounding) in report Section 5.2. Whilst other overground routes would have been technically possible, many crossed land with nationally important environmental designations. All other overhead line routes would have been significantly longer than the proposed development. The Panel concludes that the need for the development is sufficient to outweigh the PPW 8 policy constraint in relation to BMV land and considers that agricultural land classification has been given due weight within the Examination.

#### **Farming operations and other farming matters**

- 5.7.84 The Panel notes the concerns of the farming community on the efficiency of their agricultural systems caused by the imposition of the proposed development. The Panel accepts that this would lead to a modification of existing farming practices.
- 5.7.85 The Panel considers that this would not be unique to the proposed development and that other rural communities and farming systems face similar challenges.
- 5.7.86 The Panel notes the Applicant's calculation of potential production loss across the length of the proposed development and the Applicant's assessment of the loss as minor. The Panel also notes that either Voluntary Agreements or Compensatory Mechanisms would be available to rectify losses.
- 5.7.87 The Panel considers that the appointment of an Agricultural Liaison Officer as a mitigation measure would be very important in helping to minimise the impacts upon the farming community.
- 5.7.88 The Panel notes that whatever the constraints on farming systems caused by the proposed development, they would be limited to 30 years. The Panel concludes that the proposed development would

have an effect on farming practices but because of mitigation and other issues identified in this section, the effect of the development on land-use and land management would be minor and therefore not significant overall.

### **Agri-environment schemes**

- 5.7.89 The Panel considers that the Glastir agri-environment scheme is not a scheme to be entered into lightly and if landowners/tenant farmers have agri-environment scheme commitments, then any possible breaches that would be caused by the development would cause potential issues to the farming community.
- 5.7.90 The Panel finds that considerable progress was made during the Examination to address this issue. The Panel accepts that the legal duty to inform any breaches of cross compliance of Glastir rules lies with the contract holder, but the Applicant, through the appointment of an Agricultural Liaison Officer has made a reasoned and proportionate contribution to the discharge of that duty.
- 5.7.91 The Panel concludes that the concerns raised by IPs in relation to potential breaches of cross compliance and other agri-environmental scheme issues would be assisted through the appointment of the Agricultural Liaison Officer, as detailed in the outline CEMP which would be secured through Schedule 2, Requirement 13 of the Applicant's final draft DCO [REP11-018 and REP11-020] and the recommended DCO in Appendix E.

### **Biosecurity**

- 5.7.92 The Panel finds that biosecurity, though not a predominant issue either in the written or oral parts of the Examination, was nevertheless an important issue for consideration. The Panel considers that biosecurity issues for the proposed development would be relevant, primarily during the construction and decommissioning phases, but it would also be relevant in respect of maintenance and emergency operations during the operational phase.
- 5.7.93 The Panel finds that the Applicant, through the outline CEMP and the proposed appointment of an Agricultural Liaison Officer, had satisfactorily addressed biosecurity concerns which would be secured in Schedule 2 of the Applicant's DCO and Requirement 13 [REP11-018 and REP11-020] and these are carried forward to the Panel's recommended draft DCO in Appendix E.
- 5.7.94 The Panel concludes, that with the proposed mitigation in place, the risk of any increase in local biosecurity issues would be minimised.

### **Quarrying**

- 5.7.95 The Panel concludes that due to the separation distances of the proposed development from designated geological sites and BGS recorded mineral sites, the lack of evidence that the development

would be a constraint on existing quarrying activities or have any impact upon safeguarded mineral resources, there would not be any impact from the development upon quarrying interests.

### **Unexploded ordnance**

- 5.7.96 The Panel notes the results of the Zetica UXO unexploded ordnance pre-desk study assessment and recommendation. The Panel concludes that unexploded ordnance was not an issue in the Examination and it is satisfied that it is very unlikely that any unexploded ordnance would be found during the construction of the project.

### **Option B**

- 5.7.97 The Panel finds that the Applicant, within understandable constraints, tried to accommodate agricultural concerns within option B. The Panel accepts that for a variety of technical and visible reasons not all requests to move pole locations could be accommodated within the Order limits and technical and environmental constraints within the project design.
- 5.7.98 Many APs, as reported in Chapter 8, considered an underground option to be the only option. Some APs, including Emlyn and Nicola Davies [RR-024] and Mr Neville Hughes [REP5-003] for instance, refused to accept either option A or option B.
- 5.7.99 However a considerable number of APs, as reported in Chapter 8, reluctantly favoured option B over option A, if the draft DCO was to be made. There were no APs who, in their representations, stated that they preferred option A.
- 5.7.100 The Panel concludes that all matters discussed in this report section in relation to land-use and land management are equally valid for either option A or option B. However, the Panel concludes that option B is preferable to option A, as it would include mitigation to reduce impacts on farming operations, for numerous landowners and tenant farmers, who have expressed a preference in favour of option B (as well as other reasons discussed in report Section 5.15).

## **5.8 SOCIO ECONOMIC IMPACTS (INCLUDING TOURISM)**

### **INTRODUCTION AND POLICY CONTEXT**

#### **National policy in EN-1**

- 5.8.1 EN-1, in paragraph 3.7.1, notes that new electricity infrastructures may need to be located where no network infrastructure existed, because of the location of many renewable energy schemes, of which wind farms are one example. EN-1, paragraph 3.7.2 expanded on this point by stating that not only would existing transmission and distribution networks need to evolve and adapt but also the

construction of new lines of 132kV or above would also be needed if large scale interruptions to electricity supplies were to be avoided.

- 5.8.2 EN-1, in paragraph 3.7.7, also identifies that this would inevitably mean that new lines would cross areas where little or no transmission exists at present, or in areas where it may be claimed that such areas should be protected from such intrusions. However claims for local protection would need to be balanced against a reliable energy supply network that delivered a national benefit. Paragraph 3.7.10 reiterates the urgent need for new electricity transmission and distribution infrastructure.
- 5.8.3 EN-1, in section 5.12 explains that the construction, operation and decommissioning of energy infrastructure may have socio-economic impacts at a local and regional level. It directs the Applicant, when the project is likely to have an impact on socio-economic impacts at local or regional levels, to undertake and include in their application an assessment of these impacts as part of the Environmental Statement (ES). It then goes on to explain what matters should be included in the assessment of socio-economic impacts. It explains that the decision maker should have regard to the potential socio-economic impacts of new energy infrastructure identified by the Applicant and from other sources that it considers to be relevant and important to its decision.

#### **Welsh policy**

- 5.8.4 The Welsh Government has a statutory duty in relation to sustainable development. This statutory duty underpinned the Planning (Wales) Act, Wales Spatial Plan and Planning Policy Wales (Edition 8, January 2016) (PPW 8). These are referred to in the Applicant's Planning Statement Document Reference 7.4 (paragraph 5.3.1 to 5.3.63) [APP-157].
- 5.8.5 Whilst all three documents recognise that climate change is an urgent and compelling issue, (Wales Spatial Plan, paragraph 12.2 for example) and that Wales needs to move to a low carbon economy by focusing on new renewable energy generation and distribution along with other measures. However PPW 8 paragraph 4.4.3, made the point that development should not produce irreversible harmful effects on the natural environment. This is of particular relevance, since the natural environment forms the basis of important sectors of the Welsh economy especially tourism.

#### **Local planning policy**

- 5.8.6 Denbighshire County Council Local Development Plan 2006-2021 (2013) (DCC LDP) and Conwy County Borough Council Local Development Plan 2007-2022 (2013) (CCBC LDP) address the same issue in relation to renewable energy. DCC LDP Objective 11 (energy) recognises the need for DCC to make a significant contribution to reducing greenhouse gases through supporting renewable energy

resources. CCBC LDP Policy NTE/7 (onshore wind turbine development) recognises that large scale wind farms, defined as wind farms over 25MW, would need to be sited within the Clocaenog Strategic Search Area (SSA).

- 5.8.7 However both LDPs recognised the value of their natural landscape in DCC LDP Policy VOE 1 Key Areas of Importance and CCBC LDP Policy NTE/4- the landscape and protecting special landscape areas. Both Authorities have designated landscapes within their boundaries. Part of the Clwydian Hills Area of Outstanding Natural Beauty (AONB) is within the DCC area and a part of Snowdonia National Park is within the CCBC area.
- 5.8.8 Because of distance, Snowdonia National Park is 20km away from the application area and the AONB is 8km away, the effect of the proposed development on these Designated Landscapes was not an issue in the Examination.
- 5.8.9 However both local authorities agreed that an Assessment of the Significance of the Impact of Development on Historic Landscape Areas (ASIDOHL), was not needed for this proposed development but stressed the importance of Special Landscape Areas (SLAs) to their areas. Though SLAs are local designations, as opposed to national designations, both Local Authorities considered them important to the maintenance of the natural environment and a contributor towards the strength of their tourist economy.
- 5.8.10 The importance of SLAs was mentioned in their written representations (WRs) and Local Impact Reports (LIRs), indeed Denbighshire maintained their concerns about the application on the grounds of harm to their tourism economy till the end of the examination, considering in the LIR that the proposed overhead lines have the potential to have a negative impact on local tourism businesses, which would be detrimental to the local economy [LIR-002].
- 5.8.11 The issue remained unresolved with no agreement reached at the signing of the Statement of Common Ground (SoCG) with DCC still maintaining a concern that the proposed development would have a negative effect on the local tourist economy. [REP9-037, paragraph 4.4.10]. The Applicant's assessment of the impacts of the development upon socio-economic issues was in ES Chapter 11 [APP-102], socio-economic and tourism, document reference 6.1.1 and the subsequent technical appendices document reference 6.23 [APP-143]. An assessment of those local impacts against the national significance of the Application was the focus of the panel's socio-economic and tourism considerations during this part of the Examination.

### **Introduction on socio-economic issues and tourism**

- 5.8.12 The Applicant provided information on the importance of the tourism industry to the two County Councils which would host the

development, should the development consent order (DCO) be made [REP3-036], in response to a question from the Panel at the Issue Specific Hearing on 1 October 2015.

- In 2012, 4,700 or 12.4% of the population of DCC's area was employed in tourism, the eighth highest proportion of Wales's 22 Local Authorities.
- For the same year, 8,200 or 19.7% of the population of CCBC's area was employed in tourism; the highest of all 22 Local Authorities in Wales.

### **Introduction in relation to tourism**

- 5.8.13 Appendix 8 to the consultation report document [APP-084] stated that the area has a variety of attractions, historic and cultural features, attractive scenery and traditional market towns.
- 5.8.14 Against this background, walking, cycling, fishing, golf and other recreational activities take place along with other leisure facilities based on entertainment, visits and coastal resorts. The Snowdon massif is at the western end of the Local Authorities boundaries and the Clwydian Hills with the iconic Moel Famau frames the eastern edge. Both are considered significant attractions in their own right.
- 5.8.15 All these facilities provide opportunities through accommodation, hospitality, attractions and recreational opportunities, in their various forms, form a diverse and economically important tourism industry.
- 5.8.16 Therefore the Panel, during the examination, considered the proposed development on the tourist economy not only on individual tourist businesses within the immediate vicinity of the 4km wide study area but on the tourist economy in its broadest sense.
- 5.8.17 In order to encompass the wider area, the Applicant considered in ES [APP-102, Table 11.14], individual tourism receptors within the study area but also other receptors outside the study area to include Denbigh Castle and Llyn Brenig Visitor Centre.

### **IMPACTS**

#### **Construction, operational and decommissioning impacts on socio-economic and tourism receptors**

- 5.8.18 The assessment of construction effects was considered in the ES [APP-102, paragraphs 11.8.1 to 11.8.12], further detail was provided in the design and construction report [APP-154]. Construction would take place over a 16 month period including pre-construction over a ten month period, overhead line construction over an eight month period and reinstatement over a seven month period. The Design and Construction report [APP-154, Figure 5.1] shows the proposed phases of construction, some of the three phases would overlap.

- 5.8.19 The Applicant stated [APP-102, paragraphs 11.8.1 to 11.8.3], that the assembly of wood pole overhead lines would be a highly specialised activity and that 25 construction staff would work on the project over a sixteen month period.
- 5.8.20 Because of the nature of the proposed development's construction, a small number of suitably skilled and experienced temporary construction workers would be employed; though elements of the construction might require some local input from the local work-force. Local accommodation providers might also benefit during the construction phase along with a modest increase in secondary spending in local shops, garages and cafes.
- 5.8.21 Any operational and maintenance work during the lifetime of the development would be undertaken by existing SP Manweb staff.
- 5.8.22 Employment opportunities during the decommissioning phase would be similar to the construction phase, again with limited opportunity for local employment.
- 5.8.23 Therefore the Applicant assessed the socio-economic effect of the development as minor beneficial during the construction phase, negligible during the operation and maintenance phase and minor beneficial during the decommissioning phase. This assessment was not challenged by any of the Interested Parties (IPs).

### **Tourism impacts**

- 5.8.24 The Applicant's ES chapter on socio-economic impacts and tourism [APP-102] concluded that one business would be within close proximity of the route and may be moderately and hence (significantly) affected by the development. It went on to state that the development would be unlikely to have any significant effects on the overall tourism economy during the construction, operation and decommissioning phases. The overall significance of impacts from the development on socio-economic receptors and tourism providers was considered to be not significant.

### ***The Applicant's business survey***

- 5.8.25 The Applicant commissioned a business survey as part of the ES. It was undertaken in September and October 2014 by Peter Brett Associates, to identify the potential effects of the proposed development on tourism providers. Details of the business survey can be found in the ES Chapter 11 at paragraphs 11.6.1 to 11.6.47 and the associated form in table 11.14 [APP-102].
- 5.8.26 A 4km wide study area was proposed in order to concentrate on local businesses in close proximity to the grid. A total of 41 businesses were identified, predominantly through internet searches and a review of tourist brochures and guidebooks.

- 5.8.27 In addition the town of Denbigh was also included due to its notable concentration of tourism providers and close proximity to the study area. DCC also requested that businesses within the Clwydian Range and Dee Valley AONB should be consulted along with other towns including Ruthin, Corwen and Rhuddlan in order to provide a wider perspective.
- 5.8.28 All 41 businesses were contacted by telephone with a minimum of three attempts in order to maximise response rates. 15 businesses responded to the questionnaire to give a response rate of 37% which according to the applicant was close to average tourist business survey response rate of 40%. 60% of the responses came from either Denbigh or Ruthin and were predominately from businesses offering hotel accommodation, B&Bs or pubs. Self-catering accommodation businesses only accounted for 7% of the total responses.
- 5.8.29 Sightseeing and either short or long walks were the dominant visitor activities. All businesses reported either a stable or increased business performance over the past three years. 71% expected that trend to continue though 29% had a less optimistic view of the future. All respondents commented on the impact they felt the proposed development would have on their business. The Applicant stated that the vast majority at 67% considered that it would have no impact on their business either because it would not be seen from their location, it would be too far away to affect them directly or that visitors may not like overhead lines but it would not put them off coming to the area.
- 5.8.30 Thirteen percent expected either a low or minimal impact; two respondents were concerned that the proposed development would have a high and significant adverse effect on their business. One was located within 2km of the proposed development at Groes and the other in Ruthin. The main reason for their concern was the perceived negative impact of overhead lines on the countryside and that the landscape already contained "*too much clutter*".

### ***Impacts upon users of Public Rights of Way***

- 5.8.31 The location of the proposed development would be crossed by numerous public rights of way and access provisions. These are documented in an overall location plan and master key plan for access and rights of way plans [APP-034] and 13 access and rights of way sheets [APP-035] to [APP-047].
- 5.8.32 Inevitably some of these access provisions would straddle or be adjacent to the proposed development. The Applicant's businesses survey [APP-102, Figure 11.6] shows the importance of walking with 75% of visitors citing short or long walks as one of their main activities.
- 5.8.33 The proposed development would cross the Pilgrim's Way long distance footpath which links the Dee Estuary with the Llyn Peninsula.



Established in 2011 and officially launched in 2014, the footpath is part of Cadw's Heritage Tourism Project and partially funded by Welsh Government.

## **REPRESENTATIONS**

### **Introduction and representations on general socio-economic issues**

- 5.8.34 Both local authorities agreed that an ASIDOHL was not needed for this proposed development but stressed the importance of SLAs to their areas. Though SLAs are local as opposed to national designations, both local authorities considered them important to the maintenance of the natural environment and a contributor towards the strength of their tourist economy.
- 5.8.35 The importance of the tourism industry to the economy of both Local Authorities was not questioned during the examination.
- 5.8.36 The only representation in relation to the socio-economic benefits of the construction phase came from a contribution from Mr Iwan Jones, during the Issue Specific Hearing (ISH) of 1 October 2015 [EV-026]. He suggested that one respondent's positive answer to the tourism survey was prompted by the order of the questions to over-stress the benefit to their business from the opportunity to provide accommodation for construction workers.
- 5.8.37 This was contested by the Applicant in deadline 6, Response to Post hearing Submissions from Interested Parties [REP6-039], by stating that questions 16 and 18, the "*what impact*" questions came before question 21, the "*what potential benefit*", question and as such could not be construed as "*leading questions*" because of the order in which they appeared in the survey. This was confirmed when the Applicant submitted a copy of the Tourism Questionnaire at deadline 3 Section H, Appendix 12 [REP3-036] in response to the Panel's ISH action point 15.
- 5.8.38 During the Examination the Panel received representations from IPs expressing their concern over the impact that the proposed development might have on the tourist economy. Ms Alys Owen [RR-001], quoted a Welsh Government survey with a 48% negativity factor on tourism due to grid infrastructure. Dr Jannine Poletti Hughes [RR-036], Mr David Roberts [RR-014], Mr Simon Peter White [RR-089], and other IPs made similar points, as did Mr Dyfrig Hughes, the Chairman of the Pylon the Pressure Group (PTPG)[RR-080], Clocaenog Community Council [RR-010], Llanrhaeadr Community Council [RR-042] along with other Community Councils and Councillor Sue Lloyd Williams of DCC [RR-016].
- 5.8.39 Some concerns focused on the effect that the proposed development might have on tourism businesses close to the route corridor. Bryn Golau and Caer Mynydd Caravan Parks in Saron, Denbigh County Council Written Representation [REP1-019], Mr John Fleet's retreat at

Pen Park Llwyd [REP9-009] and Mr Conrad Proudlock, of Eriviat Hall, [REP9-001] are examples of tourism businesses in close proximity to the proposed development. Their representations are discussed below.

- 5.8.40 In the ISH held on the 1 October 2015 [EV-026] on socio-economic impacts, the Panel asked the Applicant and IPs if any evidence existed to demonstrate that tourists do not visit areas due to the existence of pylons or wooden poles.
- 5.8.41 Mr David Keddie, consultant at Peter Brett Associates, speaking on behalf of the Applicant, responded [EV-026], his response was summarised in the deadline 3 oral summary and appendices submissions [REP4-036]. Most of the research undertaken had been based on wind farms connected to 275kV/400kV transmission lines with lattice towers. Transmission lines were deemed to be more visually intrusive than wind farms because of their static nature but the primary concern was clear felling of forestry/ tracks in the mountainside.
- 5.8.42 Mr Keddie further explained in the ISH on 1 October 2015 [EV-026] which was subsequently confirmed at deadline 3 [REP-036], that of the surveys undertaken, "*Tourism Impact of Onshore Wind Farms in Wales (February 2014)*", the Scotland to Northern Ireland Interconnector through Ayrshire and Dumfries and Galloway and the Yorkshire transmission line from Lackenby/Teesside to Shipton, predominately lattice tower constructions; all showed a marked difference between pre-construction perceptions and post development outcomes.
- 5.8.43 Irrespective of the percentage concern of respondents on a variety of issues at the pre-construction consultation stage, less than 5% of these concerns resulted in changes in behaviour.
- 5.8.44 However, Mr Iwan Jones in his post hearing submission [REP3-011] considered that the proposed development would lead to a total direct loss to the tourist economy of £68,000, a reduction of £150,000 in turnover per annum and a reduction in capital value of tourism businesses amounting to £490,000.
- 5.8.45 The Applicant, in its response to post hearing submissions [REP3-036], stated that no evidence had been submitted to support the quoted value loss and therefore it should be viewed as an unsubstantiated assertion.
- 5.8.46 At deadline 10, the Applicant signed a SoCG with the Conwy and Denbighshire Groups of the Ramblers Association [REP10-017]. Both parties agreed that the proposed development would oversail the Pilgrim's Way at Croen Llwm Mawr and at Berain as the footpath moves towards the Elwy valley. Both parties agreed that this would result in localised moderate significant visual effects on viewpoint 27 [APP-135] and viewpoint 32 [APP-136]. However with appropriate

mitigation planting and regeneration this residual effect would reduce over time. The Ramblers considered that further mitigation in the form of additional planting was required on ridge crossings near to Peniel, Bwlch and the Clocaenog sub-station.

### **Representations in relation to the Applicant's business survey**

- 5.8.47 The Panel asked the applicant at the Issue Specific Hearing on the 1 October 2015 [EV-026] about the validity of a survey that only included 41 businesses of which only 15 responded. The Applicant acknowledged that a higher response rate would have been preferable but the lack of engagement by tourism businesses showed there was little concern over the effect of the proposed development on their various enterprises.
- 5.8.48 When questioned as to why only 41 tourism businesses had been identified in an area considerably larger than the original 4km study area, the Applicant replied that they had mimicked the behaviour of potential customers, by seeking out information available within the public domain on tourism lists, leaflets and promotional websites. The Applicant conceded that there may have been more self-catering businesses within the study area, but if they have very little or no advertising profile then it would be extremely difficult to locate them.
- 5.8.49 Pylon the Pressure Group (PTPG) at deadline 3, raised concerns about the *"woefully inadequate tourism survey"* undertaken by the Applicant and listed 33 self-catering homes and 13 hotels and guest houses which would be directly in the vicinity of the proposed pylon route [REP3-026]. They stated that the Applicant had made no attempt to evaluate the impact on these of reduced tourism due to unsightly pylons. Mr Peris G Jones, also raised similar concerns, explaining that he runs a holiday letting business, querying why his business was not considered and more generally the reliability of the assessment was questioned [REP3-025].
- 5.8.50 The Applicant responded to the concerns raised by Mr Peris Jones [REP4-035]. His property was not on the list of businesses identified in the initial tourism business audit/search. The Applicant did not maintain that the audit would identify 100% of all such businesses, but rather as many as could reasonably be identified from on-line sources. In relation to PTPG's concerns, the Applicant addressed these in the written summary of oral case at the ISH day 3, paragraph 6.1.2 [REP3-036] considering that the business survey remained valid.
- 5.8.51 Mr Iwan Jones [REP3-011] said that he was aware of at least 10 self-catering businesses within the study area that depend on the landscape to attract customers and repeat customers. The Applicant accepted that Mr Iwan Jones may well be correct due to his local knowledge, but that did not contradict their explanation for not contacting businesses which did not have an advertising profile.

- 5.8.52 Councillor Joe Walsh also queried the low number of businesses contacted and whether the 67% of respondents who thought that the proposed development would have little or no effect on their businesses constituted, a "*vast majority*".
- 5.8.53 Mr Iwan Jones at deadline 4 [REP4-003] claimed that the survey missed the majority of businesses closest to the proposed development and that PTPG had conducted their own business survey to illustrate this point.
- 5.8.54 The Applicant in deadline 6 [REP6-039] replied to a post hearing submission from IPs and contested that statement by stating that 9 out of 15 businesses inside the 2km catchment identified by PTPG had been contacted; 4 out of 6 in and around St Asaph, 15 out of 18 in and around Denbigh and 8 out of 12 in or around Ruthin. Therefore, in their view, the basis of Mr Iwan Jones' claim had no validity.

**Representations in relation to impacts on access and public rights of way**

- 5.8.55 Only John Rudgley, on behalf of Conwy Ramblers Association [RR-081] submitted a representation based specifically on a perceived major detrimental effect on the landscape within a wide corridor of the proposed development with a consequential loss of enjoyment to walkers.

**Representations in relation to the impact upon Eriviat Hall as a tourism business**

- 5.8.56 In response to the Panel's FWQ10.2, the Applicant explained [REP1-056] that the only tourism business that was likely to be moderately (and hence significantly) impacted would be Eriviat Hall. At that time the Applicant considered that there would only be a minor impact on the access to the hall or use of the access road during construction due to the limited number of vehicle movements and no structures were proposed on or immediately adjacent to the access road. It considered that with early engagement with the Affected Persons (APs) and ongoing discussions, the impact on the property and business would be minimised.
- 5.8.57 The Proudlock family, the owners of Eriviat Hall engaged with the Examination towards the end of the Examination period. Mr Conrad Proudlock gave a presentation at the Open Floor Hearing on 9 December 2015 [EV-047]. He followed up his presentation with a hearing submission at deadline 9 [REP9-001].
- 5.8.58 He explained that having bought Eriviat Hall, the family had invested over 3 million pounds in its renovation. It was now generating a substantial turnover with a projected estimated turnover of £657,250 with the potential to rise to £1.5 million.

- 5.8.59 An estimated potential loss of 15% of turnover due to the proximity of the proposed development would lead to an income loss of £100,000 making the business unviable with the consequential loss of 52 jobs.
- 5.8.60 However the Panel noted that of these 52 jobs, 30 are "*others*", taxis, DJs, entertainers who were not employed exclusively by Eriviat Hall. Cleaning, gardening and maintenance generate 7 jobs, while 15 would be employed in catering and bar work, which because of the nature of the enterprise, would not guarantee constant employment.
- 5.8.61 The Applicant noted at deadline 10 [REP10-011] that the figures provided by Mr Proudlock were projected estimated turnover figures and the potential future rise in turnover as the business matures.
- 5.8.62 The Applicant [REP10-011] also identified that the majority of the promotional material available online for the Hall relates to weddings and concentrates on "*sumptuous interior facilities*" rather than exterior grounds. Also the promotional material advertises the Hall as the perfect venue for "*hen*", "*stag*" or "*surprise*" parties.
- 5.8.63 Consideration of the Proudlock family's objection to the compulsory acquisition of rights is provided in report Chapter 8.

#### **Representations in relation to other tourism businesses**

- 5.8.64 John Fleet [RR-037], the owner of Pen Parc Llwyd, Henllan, which is a retreat centre for care staff, raised concerns in relation to the ambience of the retreat that he owns and runs, and therefore its attraction to clients would be compromised by the fact that the proposed development would impinge on their distant view of the Clwydian Hills.
- 5.8.65 Other concerns focused on the effect that the proposed development could have on the wider tourism economy, including DCC [REP1-019], Iwan Jones [REP1-030], Llansannan Community Council [RR-043] and PTPG [REP1-044]. These raised concerns about the potential effect of the proposed development on the scenic quality of the A543, the impact on the viability of the Llyn Brenig Visitor Centre and the attractiveness of the area around Clocaenog Forestry for the setting of the GB Rally. Mr Iwan Jones [REP1-030] and Llansannan Community Council [RR-043] extolled the virtues of the A543 as one of the premier visually attractive routes for drivers in Britain with its panoramic views of the Clwydian Hills. Mr Iwan Jones asserted that the proposed development, crossing the A543 at the boundary of the Denbigh and Conwy Local Authorities and with both "*Welcome to*" signs in close proximity would have a detrimental first impression on any visitor and detract from the visual pleasure of travelling along that route.
- 5.8.66 Mr Iwan Jones [REP3-011], Mr David Tyrer [RR-015], and other IPs including Llanrhaedr Community Council [RR-042], had concerns over the potential effect that the proposed development would have on the

setting of the GB Rally in Clocaenog Forest and that the visual effect of a double pole grid would detract spectators from attending the event.

- 5.8.67 Some of these concerns had already manifested themselves in the Consultation Report Doc Ref 5.1 [APP-081] along with three Consultation Report Appendices Doc Refs 5.2.1 [APP-083], 5.2.2 [APP-084], and 5.2.3 [APP-085] submitted by the Applicant. Of particular relevance was the table in document reference 5.1, section 13.3.4, which was a summary of the 47 responses received. The most regularly raised issues were, landscape issues at 13.5%, calls for undergrounding at 12%, socio-economic at 11.2% and impact on visual amenity at 8.9%. These responses clearly showed a concern for the visual impact of the proposed development and its potential effect on the respondent's quality of life and that of the local economy.
- 5.8.68 These concerns were much stronger in the two southern sections of the proposed development, Clocaenog to Bwlch and Bwlch to Eriviat than the two northern sections Eriviat to Plas Buckley and Plas Buckley to Groesffordd Marli.
- 5.8.69 The Applicant confirmed that the considerable amount of information submitted during the consultation period had been taken into account when forming ES Chapter 11 Socio-Economic and Tourism [APP-102] and the Technical Appendices [APP-143]. In the ISH held on 1 October 2015 on socio-economic impacts, the Panel asked the Applicant and IPs if any evidence existed to demonstrate that tourists do not visit areas due to the existence of pylons or wooden poles.
- 5.8.70 In his post hearing submission [REP4-003], Mr Iwan Jones stated that 170,000 visitors enjoy Llyn Brenig visitor centre's facilities every year.

#### **FURTHER MITIGATION**

- 5.8.71 The Panel is not proposing any further mitigation in relation to socio-economic or tourism impacts arising from the development.

#### **THE PANEL'S REASONING AND CONCLUSIONS**

##### **Tourism**

- 5.8.72 The Panel considers that the Applicant has assessed the effect of the proposed development within the 4km study corridor of the proposed development and in the wider context of the area taking into account the diversity of the tourist industry and the requirements in section 5.12 of EN-1. The Panel accepts the paucity of survey evidence on the impact of renewable energy infrastructure on the tourism industry but notes that existing surveys show little evidence that concern over the visual effect of the infrastructure manifests itself in a change in behaviour.
- 5.8.73 The Panel accepts that the tourism industry is not a homogeneous industry but consists of a number of disparate businesses of various sizes supplying a variety of markets across a wide geographical area.

- 5.8.74 It is not the Panel's role to question the sincerity of the concerns that were raised both in surveys and by IPs in their representations regarding the potential impact of the development on tourist businesses, but it is the Panel's role to examine the validity of the surveys and concerns and identify whether concerns would lead to behavioural changes in tourists and visitors to the relevant north Wales countryside attractions.
- 5.8.75 The Panel noted that on a week day in early December, during an unaccompanied site inspection, the Llyn Brenig visitor centre was well used, despite large areas around the lake having recently been clear felled.
- 5.8.76 The Panel also noted that the proposed development would be approximately 500 metres from Eriviat Hall and not in line of sight of the Hall or its immediate setting. The Panel considers that the guests would only have a fleeting sight of the proposed development at the far end of a long drive as it sweeps down and around a bend towards Eriviat Hall, where the wood pole line would oversail the entrance road. The Panel agrees with the Applicant and the owners of the hall, that some disturbance to access to the Hall would be likely to occur during the construction and decommissioning period due to a limited amount of vehicle movements and construction activities in the vicinity of the hall's access road. The Panel agrees with the Applicant's assessment of potential impacts on this business as moderate and therefore significant during construction (and decommissioning). The panel does not question the attraction of Eriviat Hall for weddings and associated functions. It considers that the level of the current turnover, that may form the basis of a compensation claim, is not a matter for this Examination.
- 5.8.77 The Panel, whilst not questioning the sincerity of IPs views in relation to impacts upon the A543, had reservation as whether a fleeting glimpse of a double pole line would leave such a lasting impression or compromise the scenic enjoyment of travelling along the A543.
- 5.8.78 The Panel, again whilst not questioning the sincerity of IPs views of the potential impact on the GB rally, had reservations as to their validity since the Clocaenog Forest stage of the GB rally normally takes place in October or November, and it considers that the vast majority of spectators would be attracted to the area because of the excitement of the rally car event.
- 5.8.79 The Panel accepts that the proposed development would impinge, in some places, on the network of public rights of way and open spaces used by walkers, but with only localised effect. Of particular note, the panel walked to the summit of Foel Gasyth at the request of Andrew Sumner, DCC's landscape consultant during the Accompanied Site Inspection (ASI) of 22 and 23 September 2015 [EV-005] and considers that, though the views were spectacular, including a very clear view of off-shore and on-shore wind farms, parking provisions were negligible, though the pathways were well maintained and

showed evidence of usage which suggested a valued but only locally important asset.

- 5.8.80 The Panel notes that CCBC in their reply to the Panel's first written questions (FWQ) [REP1-009] stated that, "*The Council does not consider the proposal would have a significant effect on the area's tourism economy*". Whereas DCC in their SoCG at deadline 9 [REP9-037] maintained their concerns about the effect the proposal on their tourism economy.
- 5.8.81 The Panel also notes the business survey methodology as outlined in the ES [APP-102], and accepts that a larger sample size would have been preferable, however the Panel understands the difficulty of locating tourism businesses that have little or no public profile and also getting participants to contribute to the survey.
- 5.8.82 The Panel notes the perceived discrepancy between business data collected by the Applicant and businesses data collected by PTPG but on closer inspection, considers that the discrepancy is both understandable and relatively insignificant. The Panel finds that irrespective of whether 67% of the respondents constitute a "*vast majority*", only 2 of the 15 respondents perceived a threat to their businesses by the proposed development.
- 5.8.83 The Panel also notes the importance of access in its various guises to the tourism industry and accepts that the proposed development would either be adjacent to or would cross rights of ways. These footpath networks are an important asset to their communities but are mainly of local importance.
- 5.8.84 The Panel notes the effect of the proposed development on the Pilgrim's Way and also the SoCG between the Applicant and the Ramblers Association which shows that effects are localised and can be mitigated over time.
- 5.8.85 The Panel visited Pen Parc Llwyd during the ASI that took place on the 22 and 23 September 2015 [EV-005] and noted that an unrestricted view of the Clwydian Hills could be had by walking away down the drive leading to Pen Parc Llwyd towards a minor road, walking half way up an adjacent hill some way away from the immediate setting of the retreat but within the ownership of the retreat.
- 5.8.86 The Panel has considered the effect that the proposed development would have on specific tourism businesses, events and infrastructure specifically Eriviat Hall; A543; the GB Rally; Llyn Brenig visitor centre and Pen Park Llwyd, and has come to a reasoned conclusion as outlined below.
- 5.8.87 The Panel concludes that it is in agreement with the Applicant's assessment of effects on socio-economic and tourism receptors as outlined in Chapter 11 of the ES [APP-102, paragraph 11.10.1], that the proposed development would not lead to significant adverse effect on the overall tourism economy of the area.



## **Socio-economic issues**

- 5.8.88 The Panel agrees with the Applicant's assessment of the socio-economic effect of the development during its construction, maintenance and decommissioning phases. The small number of temporary jobs that the development would create during construction and decommissioning would give rise to a minor positive impact (which is not significant). The Panel concludes that this was a minor issue during the Examination and the development would not have a significant impact on socio-economic interests in the vicinity of the proposed development.

## **Overall conclusions on socio-economic issues and tourism**

- 5.8.89 The Panel agrees with the Applicant in that the development could significantly impact upon one tourism business, that of Eriviat Hall, and those significant impacts would be likely to arise during construction and decommissioning. The Panel finds that there would be no other significant impacts upon socio-economic interests or tourism businesses arising from the development. The Panel considers that the impact on this one tourism provider would be short lived and could be mitigated through negotiation on timings of work to avoid peak business times. The Panel concludes that there is no evidence that any other tourism business would suffer significant harm from the development. The Panel concludes that the need for the development would out-weigh the impact upon one tourism business and finds that there are no reasons relating to socio-economic impacts or tourism which would prevent the DCO from being made.
- 5.8.90 With regard to option B, the applicant, in its Environmental Report in Support of Option B [OpB-003] stated that the potential effects arising from the development on socio-economic and tourism interests do not affect the outcome of the assessment. The Panel agrees with the Applicant and its conclusions in relation to option A also apply to option B.

## **5.9 CONSTRUCTION AND DECOMMISSIONING IMPACTS**

### **INTRODUCTION**

- 5.9.1 This section of the report deals with impacts that would result from the construction and decommissioning of the proposed development. These include:
- the effect of construction and decommissioning traffic and transport;
  - how air quality would be affected by dust and other emissions that would result from construction and decommissioning;
  - the effect on living conditions due to noise and vibration that would result from the proposed construction and decommissioning methods; and
  - how hazardous substances and waste generated during construction and decommissioning would be managed.

- 5.9.2 Within the Environmental Statement (ES) the relevant chapters that address the above construction and decommissioning impacts are Chapter 12 - Traffic and Transport [APP-103] and Chapter 13 - Emissions [APP-104]. In addition other key documents are the Planning Statement [APP-157] and the outline Construction and Environmental Management Plan (CEMP) [REP9-030] which sets out how the Applicant proposes to mitigate the construction impacts.

### **TRAFFIC AND TRANSPORT**

- 5.9.3 This section deals with the impact of the proposed development on the existing highway network and the impact of construction on Public Rights of Way (PRoW) that are crossed by the proposed development.

#### **National policy**

- 5.9.4 Section 5.13 of EN-1 identifies traffic and transport as a topic that should be considered in the assessment of any nationally significant infrastructure project (NSIP). It advocates that *"the transport of materials, goods and personnel to and from a development during all project phases can have a variety of impacts on the surrounding transport infrastructure and potentially on connecting transport networks, for example through increased congestion. Impacts may include economic, social and environmental effects. Environmental impacts may result particularly from increases in noise and emissions from road transport"* (section 5.13.1). The NPS also notes that *"The consideration and mitigation of transport impacts is an essential part of Government's wider objectives for sustainable development"*.

#### **Welsh policy and guidance**

- 5.9.5 Planning Policy Wales (Edition 8, January 2016) (PPW 8) advocates that when determining an application that has transport implications, the determining authority should take into account amongst other things the impact of the proposed development on travel demand and the environmental impacts including noise of the traffic generated with a particular emphasis on minimising the causes of climate change associated with transport.
- 5.9.6 TAN 18 recognises that transport, in particular road traffic can have negative impacts on human health and the environment. To help assess this it sets out thresholds and criteria for assessing new development. Although TAN 18 makes no direct reference to the impacts of construction traffic the Applicant adopted the principles of TAN 18 as part of the construction methodology.
- 5.9.7 The Panel has had regard to the policies set out in EN-1, EN-5, PPW 8 and the guidance contained in TAN 18 in its assessment of the traffic and transport impacts of the proposed development.

## **TRAFFIC AND TRANSPORT IMPACTS**

- 5.9.8 Due to the linear nature of the proposed development and the potential impacts on the existing transport network, this topic was identified as a Principal Issue in Annex C of the Panel's letter of 2 July 2015 [PD-004]. The particular concerns identified in the letter with regard to traffic and transport were:
- routing and timing of Heavy Goods Vehicle (HGV) movements;
  - impacts on PRoWs; and
  - mechanism for the agreement and implementation of monitoring mitigation and a traffic management plan.
- 5.9.9 With regard to option B the Applicant states that the potential effects of traffic and transport including in relation to arrangements and delivery routes would be the same as for option A. The Panel agrees and therefore what follows applies equally to option A and option B.
- 5.9.10 The Panel considers that the operation of the proposed development would have little impact on traffic, transport or PRoW in the area as the overhead line, with the exception of emergency repairs, would require minimal maintenance traffic. Construction and to a lesser extent decommissioning traffic would, however, have the potential to disrupt the local road network and PRoWs.
- 5.9.11 The main impacts would be caused by:
- delivery of plant and materials to Broadleys Farm Compound and the collector sub-station compound at Clocaenog Forest and then from the compounds to individual pole locations;
  - removal of waste generated by erection of poles;
  - disruption to road users caused by closure of roads to allow pulling of cables; and
  - removal of the overhead lines, wooden poles and other equipment when the project life has expired.
- 5.9.12 As the proposal would not have significant transport implications the Applicant has not produced a formal Transport Assessment as part of the overall environmental impact assessment (EIA). Instead Chapter 12 of the ES [APP-103] assesses the likely significant environmental effects that would arise from the construction, operational and decommissioning phases. The assessment of traffic and transport effects was based on information contained within the Design and Construction Report [APP-154].
- 5.9.13 The Panel examined the Applicant's approach to traffic and transport matters by considering the principal issues noted above in the light of the information submitted by the Applicant and the views expressed by Interested Parties (IPs) both in writing and verbally at an Issue Specific Hearing (ISH) and in response to the Panel's written questions.

- 5.9.14 Both Denbighshire County Council (DCC) and Conwy County Borough Council (CCBC) agree in their separate Statements of Common Ground (SoCGs) [REP9-037 and REP9-021] that the baseline; approach to the assessment methodology and significance criteria for traffic and transport; conclusion on assessment of significance (alone and cumulatively) and mitigation are satisfactory and have no objections to the Applicant's conclusions with regard to traffic and transport matters.

## **REPRESENTATIONS**

- 5.9.15 Initially, DCC and CCBC raised concerns regarding traffic and transport impacts [LIR-002 and LIR-001]. Specifically DCC was concerned that traffic volumes associated with construction and decommissioning of the development could be significant. A situation that they considered would be compounded if, given the proposed timetable for implementing the scheme, the works occurred concurrently with the construction of the consented wind farms within the Strategic Search Area (SSA) as this could lead to a cumulative impact on the local highway network and on local road users. CCBC recognised that the proposed contractor's compound was located outside of the borough and therefore that the only roads within Conwy that would be affected by the proposal would be the B5428 (Groes to Henllan), the B5382 (Llansannan to Denbigh) and minor roads in the Cefn Berain area.
- 5.9.16 To understand these concerns further the Panel asked DCC and CCBC a number of written questions [PD-010, FWQ3.2 and 3.3]. In their responses [REP1-018 and REP1-009] both the authorities highlighted concerns about the restricted nature of the rural road network and the effect that construction traffic could have both on the physical capability/capacity of the roads to take the traffic and the effect that this additional traffic could potentially have on other road users.
- 5.9.17 These concerns were similar to those that were expressed by a number of IPs including the Cefn Meiriadog and Glascoed Road Residents and Users Group (CMAGRUG) [REP1-003] who raised specific concerns about the effect of construction traffic on the Groesffordd Marli to Glascoed Road with particular reference to the effect on Cefn Meiriadog CP School. Mr Dafydd I Jones [REP1-011] highlighted the current value of the road network to the local farming community and advocated that delays to farmers as a result of construction traffic using the road network would have economic implications. The Llanrhaeadr-yng-Nghinmeirch Community Council [REP1-037] outlined safety concerns for other road users, residents, tourists and businesses, on the unclassified and B roads and the potential for damage and wear and tear. Mrs Nerys Jones raised similar concerns for the roads around Saron and Peniel which also consist of unclassified and B roads but additionally are on the daily school transport route and therefore she had concerns regarding children's safety [REP1-043].
- 5.9.18 Thus the key concerns of IPs, DCC and CCBC would appear to be:

- the proposed working hours;
- the proposed delivery routes; and
- potential damage to the highway network.

5.9.19 To address these concerns the Applicant has proposed the use of a number of requirements which would manage the construction of the development. These would include:

- Requirement 10 - construction hours;
- Requirement 13 - Construction Environmental Management Plan (CEMP); and
- Requirement 17 - decommissioning.

5.9.20 Finally, a number of IPs [REP1-003, REP1-024, REP1-038] raised concerns about the proposed use of an ancient track between Plas Newydd/Plas Hafod and Groesffordd Marli for construction and maintenance of the overhead line. However, it became clear during the accompanied site inspection (ASI) [EV-005] and was later verified at the ISH on 29 September 2015 [EV-017] that although the Applicant had initially considered using the track and had undertaken the relevant surveys the final proposal used an alternative means of access.

### **Proposed working hours**

5.9.21 Requirement 10 of the Applicant's final draft development consent orders (DCOs) [REP11-018 and REP11-020] would restrict construction work to take place only during core working hours which are defined in Requirement 1 as Monday to Friday 0700 and 1900 during the months of March to October and 0730 to 1730 or during daylight hours whichever is the shorter, during the months January to February and November to December and 0700 and 1300 hours on a Saturday with no works to take place on Sundays or public holidays.

5.9.22 Requirement 10 would also restrict HGV deliveries to Broadleys compound to between 0900 and 1700 Monday to Friday excluding public holidays.

5.9.23 Furthermore the Applicant intends to appoint a Community Liaison Officer who will establish, in conjunction with the relevant highway authority, the road network that is affected by school drop off and pick ups and the period when that road network should not be used by construction traffic (outline CEMP [REP9-030, paragraph 3.8.3]).

5.9.24 In addition Requirement 10 would require the submission of a traffic management plan which amongst other things would include details of the timings of deliveries.

5.9.25 As a result the Panel conclude that subject to the proposed requirements the effect of the proposed working hours, with particular reference to the timing and management of deliveries, would not adversely affect the road network or highway safety.

### **Delivery routes**

- 5.9.26 Requirement 13 would require the submission of a CEMP. The CEMP would include a traffic management plan which would include details of haulage routes for HGVs to use to deliver materials to the authorised development and communication of routes to drivers of the HGVs.
- 5.9.27 In response to the Panel's FWQ3.1 [PD-010] the Applicant provided details of the largest vehicle, a 20 tonne tipper lorry, that they expected to utilise during construction. These would be used to transport suitable backfill material for foundation works to the poles. Recognising the constraints of the road network the Applicant has indicated that backfill material would be unloaded in a convenient location and transported to the pole locations by dumper truck [APP-103, paragraph 12.7.17].
- 5.9.28 At the ISH on 29 September 2015 [EV-017] the Applicant confirmed that they considered that the other proposed vehicles (excavators, 4x4 lorries and 4x4 pick-ups) would be able to negotiate the restricted rural roads. Furthermore the outline CEMP [REP9-030, paragraph 3.8.2 iv] indicates that narrow roads will be accessed using escort vehicles to highlight the approach of larger pole or material carrying vehicles to ensure conflicts are reduced or removed.
- 5.9.29 Therefore on the basis of the information submitted and subject to the proposed requirement the Panel is satisfied that the delivery routes could be managed in such a way that the appropriate vehicles and routes were used to minimise conflict with other road users and congestion on and damage to the rural road network.

### **Potential damage to the highway network**

- 5.9.30 The traffic management plan that would be required by Requirement 13 would include proposals for assessing the existing condition of the affected highways and details for making good any incidental damage to highways by construction traffic associated with the authorised development. The outline CEMP [REP9-030, paragraph 2.3.1] indicates that these assessments would be undertaken following discussions with the relevant local authorities and Natural Resources Wales (NRW).
- 5.9.31 As a result the Panel are satisfied that there would be mechanisms in place to establish the current physical state of the highway network and to ensure any damage that resulted from construction traffic would be repaired.

### **Decommissioning**

- 5.9.32 Whilst decommissioning would be a shorter process than construction it would still require the Applicant to access each of the individual pole positions to effect their removal. As a result the relevant vehicles would need to access the highway network. Requirement 17 would

require the submission and approval of a decommissioning and site restoration scheme which would include a methodology for the management of traffic during the decommissioning and restoration works. Consequently the Panel considers that the effect of the decommissioning and restoration traffic could be managed to minimise the effect on the highway network and other road users.

### **AIR QUALITY, DUST AND OTHER EMISSIONS**

- 5.9.33 Due to the nature of the proposed development, with the exception of electric and magnetic fields (EMFs), which are dealt with in Section 5.12 of this report, concerns regarding air quality, dust and other emissions arise from the construction and decommissioning of the overhead line rather than its operation.

#### **National policy**

- 5.9.34 EN-1 identifies that infrastructure development can have adverse effects on air quality. The construction, operation and decommissioning phases can involve emissions to air which could lead to adverse impacts on health, on protected species and habitats, or on the wider countryside. EN-1 also recognises that many activities involving air emissions are subject to other mechanisms of pollution control.
- 5.9.35 Where a project is likely to have adverse effects on air quality EN-1 advocates that the applicant should undertake an assessment of the impacts of the proposed project as part of the ES which should describe:
- *"any significant air emissions, their mitigation and any residual effects, distinguishing between the project stages and taking account of any significant emissions from any road traffic generated by the project;*
  - *the predicted absolute emission levels of the proposed project after mitigation methods have been applied;*
  - *existing air quality levels and the relative change in air quality from existing levels; and*
  - *any potential eutrophication impact."*
- 5.9.36 EN-5 identifies that when assessing the potential impacts of an energy infrastructure project all the generic impacts identified in EN-1 are likely to be relevant, even if they only apply to certain phases of the development (such as construction or decommissioning) or only apply to one part of the development (such as a substation). Air quality and emissions are not identified in NPS EN-5 for additional technology-specific considerations.
- 5.9.37 The provisions of Part IV of the Environment Act 1995 establish a national network for air quality management, which requires all local authorities in England, Northern Ireland, Scotland and Wales to conduct local air quality reviews. The Act requires these reviews to include an assessment of the current air quality in the area and the

predicted air quality in future years. Should the reviews indicate that the objectives prescribed in the UK Air Quality Strategy for England, Scotland, Wales and Northern Ireland will not be met, the Local Authority is required to designate an Air Quality Management Area (AQMA).

### **Welsh policy and guidance**

- 5.9.38 The Welsh Government's objectives with regard to air quality are amongst other things to:
- maximise environmental protection for people, natural and cultural resources, property and infrastructure; and
  - prevent or manage pollution and promote good environmental practice.
- 5.9.39 Specifically PPW 8 highlights that pollution may result from traffic generated by a scheme and that this should be a material consideration in deciding whether to grant planning permission (paragraph 13.12.1).
- 5.9.40 TAN 8 recognises that transport emissions contribute significantly to poor air quality. When considering a planning application it advocates that a planning authority should take account of statutory air quality objectives together with results of air quality reviews and assessments and any AQMA action plans that may have been prepared.
- 5.9.41 Neither DCC nor CCBC have identified AQMAs within the project area.

### **AIR QUALITY, DUST AND OTHER EMISSIONS IMPACTS**

- 5.9.42 The Applicant explained in Chapter 13 of the ES [APP-104] that potential impacts would arise from dust and airborne particulate matter during construction, as well as emissions from construction traffic. All predicted effects would therefore be temporary (paragraph 13.4.20). As a result they did not undertake an air quality assessment.
- 5.9.43 Since the application documentation was compiled the Institute of Air Quality Management Planning for Air Quality Guidance was updated. The Applicant advised [REP1-056, answer to the Panel's FWQ3.36] that the updated guidance sets out the Stage 1 criteria which need to be met before an air quality assessment is required. The proposed development does not meet any of these criteria and therefore applying the updated guidance would not have resulted in the need for an air quality assessment to be undertaken.
- 5.9.44 Measures to control air quality and dust effects, such as dust suppression measures and wheel washing prior to vehicles leaving the construction compound were identified by the Applicant in the Design and Construction Report [APP-154] and incorporated within the outline CEMP [REP9-030] which advocates that the emissions and creation of dust from on-site vehicles, plant and construction activities will be



minimised as far as is practicable. The details of the outline CEMP would be secured through Requirement 13 of the recommended DCO.

- 5.9.45 In addition to wheel washing and dust suppression other measures proposed in the outline CEMP include:
- ensuring all vehicle movements are kept to a minimum;
  - speed limits for construction vehicles;
  - using low emission vehicles and plant fitted with catalysts, diesel particulate filters or similar devices;
  - using well maintained and serviced plant;
  - vehicles to switch off engines when not in use;
  - minimising use of diesel or petrol powered generators and using mains electricity or battery powered equipment where practicable;
  - not burning waste material; and
  - sheeting vehicle loads during transportation.
- 5.9.46 The Applicant in their response to the Panels FWQs [REP1-056, response to FWQ3.34] that to control emissions of dust from excavations, measures such as sheeting vehicle loads, wheel washing and ensuring that site work areas are regularly cleaned would ensure dust from construction would be kept to a minimum.
- 5.9.47 With regard to the use of local roads by construction traffic during site preparation and construction (and decommissioning) the Applicant explained [REP1-056, response to FWQ3.38] that due to the nature of the proposed development the traffic flows are low and as such air quality and dust effects would be relatively limited.
- 5.9.48 Both DCC and CCBC agree in their SoCGs [REP9-037 and REP9-021] that the baseline; approach to the assessment methodology and significance criteria for emissions and conclusions on assessment of significance (alone and cumulatively) and mitigation are satisfactory and have no objections to report with regard to air quality.

### **Decommissioning**

- 5.9.49 The Design and Construction Report [APP-154, Section 5.23] states that decommissioning would be the reverse of construction, albeit that it would be undertaken in a shorter time frame. As a consequence the effects on air quality and potential creation of dust and other emissions would be very similar to those that would arise during the construction phase.
- 5.9.50 Requirement 17 would manage the process of decommissioning through an approved decommissioning and site restoration scheme. Whilst Requirement 17 in the draft DCO [REP11-018 and REP11-020] contains a number of provisions that the decommissioning and site restoration plan must include it does not list a Decommissioning Environmental Management Plan (DEMP). However, the Panel considers that the requirement could be amended to include a DEMP

and then the same mitigation measures that are proposed under the CEMP for construction would be secured for decommissioning.

### **Conclusions**

- 5.9.51 The Panel considers that the amount of dust and other emissions that would arise as a result of the proposed development would be relatively limited and as a result subject to the proposed mitigation measures set out in the outline CEMP and the inclusion of similar measures to manage decommissioning through a DEMP that the effect on air quality would be very limited. The Panel is therefore satisfied, subject to Requirements 13 and 17 of the recommended DCO, that the proposed development would comply with EN-1 and EN-5.
- 5.9.52 The Panel is also satisfied that the proposed development would meet PPW 8 and TAN 8 requirements.

### **NOISE AND VIBRATION**

- 5.9.53 The Applicant considers that overhead lines can occasionally create some noise but this is typically at a low level and only in certain weather conditions [APP-104, paragraph 13.7.2]. The main sources of noise and vibration would arise from construction and decommissioning and as a result the Applicant has not assessed the operational phase. This was reflected in the scoping opinion [APP-152] which did not require a detailed assessment of operational noise but only an explanation as to why it can be scoped out of the assessment. The Panel agrees with this conclusion and approach.

### **National policy**

- 5.9.54 EN-1 includes a number of requirements with respect to noise and vibration. Section 5.11.1 advocates that *"excessive noise can have wide ranging impacts on the quality of human life, health (for example owing to annoyance or sleep disturbance) and use and enjoyment of areas of value such as quiet places and areas with high landscape quality. The Government's policy on noise is set out in the Noise Policy Statement for England. It promotes good health and good quality of life through effective noise management. Similar considerations apply to vibration, which can also cause damage to buildings."* In line with current legislation the NPS states that references to noise within EN-1 apply equally to assessments of vibration.
- 5.9.55 In addition to potential impacts on humans EN-1 recognises in paragraph 5.11.2 that noise can also have adverse impacts on wildlife and biodiversity. As a result it requires that noise effects on ecological receptors should be assessed in accordance with the Biodiversity and Geological Conservation section of EN-1.
- 5.9.56 EN-5 (section 2.9) recognises that all high voltage transmission lines have the potential to generate noise under certain conditions, however transmission lines are designed so as to minimise noise. The highest

noise levels generally occur during rain when water droplets may collect on the surface of the conductor and initiate corona discharges<sup>9</sup> with noise levels being dependent upon the level of rainfall. However, EN-5 (paragraph 2.9.11) concludes that noise from overhead line is unlikely to lead to the refusal of an application, but depending on the levels appropriate mitigation may be required so as to ensure noise is minimised as far as possible.

### **Welsh policy and guidance**

- 5.9.57 PPW 8 also recognises that noise can affect people's health and well-being and have a direct impact on wildlife and local amenity (paragraph 13.13.1). By controlling where development can take place and what operations may be carried out, it advocates that the planning system has an important role in avoiding or minimising the adverse effects of any environmental risks on present or future land use.
- 5.9.58 Although TAN 11; Noise (2007) deals specifically with noise, its main focus is in assessing the suitability of land for residential development especially where land is affected by noise from transportation and industrial sources. However, it does state that mitigation measures can be used to control the source of/limit exposure to noise and these may include reduction of noise at point of generation (e.g. using quiet machines and/or quiet methods of working); containment of noise generated (e.g. insulating buildings which house machinery and/or providing purpose-built barriers around sites); and the protection of surrounding noise-sensitive buildings (e.g. improving sound insulation in these buildings and/or screening them by purpose-built barriers).

### **NOISE AND VIBRATION IMPACTS**

- 5.9.59 Due to the linear nature of the proposed development, its proximity to housing in some areas and wildlife habitats in other, the noise and vibration that could potentially occur during construction and decommissioning phases was identified as a Principal Issue in Annex C of the Panel's Rule 6 letter of 2 July 2015 [PD-004]. The particular concerns identified in the letter with regard to noise and vibration were:
- noise associated with the construction phase;
  - significance of impacts and proposed mitigation;
  - location and timescales of piling; and
  - mitigation for construction impacts.
- 5.9.60 With regard to option B the Applicant states that the potential effects of noise and vibration would be the same as for option A. The Panel

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<sup>9</sup> Corona discharge is an electrical discharge that is brought on by the ionization of a fluid surrounding a conductor, which occurs when the strength of an electrical field exceeds a certain value, but conditions are insufficient to cause complete electrical breakdown or arcing.

agrees and therefore what follows applies equally to option A and option B.

- 5.9.61 As outlined earlier the Panel consider that the operation of the proposed development would have little impact on noise as the overhead line, with the exception of certain weather conditions, would generate minimal noise. Construction and to a lesser extent decommissioning would, however, have the potential to increase noise levels and affect the living conditions of local residents.
- 5.9.62 The main impacts would be caused by:
- materials being transported to or from the compound to pole locations;
  - construction traffic moving around the local road network;
  - construction noise at individual plant locations;
  - ground borne vibrations caused by movement of heavy construction plant; and
  - piling.
- 5.9.63 Chapter 13 of the ES [APP-104] assesses the likely significant environmental effects that would arise from the construction and decommissioning phases with regard to emissions including noise and vibration. The assessment of emissions effects was based on information contained within the Design and Construction Report [APP-154].
- 5.9.64 The Panel examined the Applicant's approach to noise and vibration matters by considering the principal issues noted above in the light of the information submitted by the Applicant and the views expressed by IPs both in writing and verbally at an ISH and in response to the Panel's written questions.

## **REPRESENTATIONS**

- 5.9.65 Chapter 13 of the ES [APP-104] identified six dwellings where construction noise levels due to proposed piling would exceed 65dB(A), (the level above which noise can affect living conditions). Two of these dwellings, Eriviat Bach Isa and Llechryd Bach, are within Conwy. Subject to amendments to the proposed Requirements 10 (construction hours) and 13 (CEMP) to address noise and vibration CCBC raised no objection [LIR-001].
- 5.9.66 DCC [LIR-002] accepted that good site management practice should control most of the noise associated with the construction stage. They were satisfied that construction impacts could be controlled/mitigated through the CEMP. Although like CCBC this was subject to Requirement 13 being amended to reduce the proposed hours and days of working.
- 5.9.67 DCC also considered that the crackling noise - corona discharge- from the overhead line may, given the predominantly rural nature of the area and its low background noise levels, have a potentially negative

impact on occupiers of properties in close proximity to the line [LIR-002, paragraph 14.5.1].

- 5.9.68 To understand these concerns further the Panel asked DCC and CCBC a number of written questions [PD-010, FWQ3.23]. Both DCC and CCBC reconfirmed their concerns regarding the proposed working hours adversely affecting the amenity of local residents and their request that these be reduced [REP1-009 and REP1-018].
- 5.9.69 These concerns were similar to those that were expressed by a number of IPs including the CMAGRRUG [RR-006, REP1-003 and REP1-006] who consider that the proposed working hours should be amended to make them compatible with residents' minimum requirements for daily living during construction and to take into account school traffic. Lois Williams [REP1-038] raised concerns about noise and disruption particularly in relation to construction traffic using a narrow lane between the hours of 7am until daylight ends seven days a week.
- 5.9.70 Thus the key concerns would appear to be:
- the proposed working hours;
  - noise from construction traffic; and
  - piling.
- 5.9.71 To address these concerns the Applicant has proposed the use of a number of requirements which would manage the construction of the development. These include:
- Requirement 10 - construction hours
  - Requirement 13 - Construction Environmental Management Plan (CEMP)
  - Requirement 14 - piling
  - Requirement 17 - decommissioning

### **Proposed working hours**

- 5.9.72 Following discussions at both sets of hearings regarding the proposed working hours, the Applicant has redrafted Requirement 10 so that work would only take place during core working hours which are Monday to Friday 0700 to 1900 during the months of March to October; and 0730 to 1730 or during daylight hours, whichever is the shorter, during the months January to February and November to December; and 0700 to 1300 hours on a Saturday, with no works to take place on Sundays or public holidays.
- 5.9.73 However, both DCC and CCBC requested that the proposed hours should be 0800 to 1800 Monday to Friday and 0800 to 1300 on a Saturday [REP1-018 and REP1-009]. At the ISH on 10 December 2015 [REF EV-048] the Applicant explained that the additional hours would be required to ensure that the project could be delivered within the agreed timescale. Furthermore, they highlighted that due to the linear nature of the scheme, with the exception of the compound at

Broadleys Farm, work at each of the site locations would be very time limited and therefore the impacts of construction would not be experienced by residents along the route for the whole construction period.

- 5.9.74 As a result, taking into account the construction needs of the Applicant and the relatively limited impacts of the additional hour at the start and end of the working day above that suggested by DCC and CCBC, the Panel conclude that subject to Requirement 10 within the recommended DCO the Applicant's suggested working hours would restrict construction noise so that the living conditions of the surrounding residents would not be adversely affected.

### **Noise from construction traffic**

- 5.9.75 The main noise from construction traffic would arise from vehicles making deliveries to the main compound and to pole locations. Requirement 10 would include a clause that would restrict HGV deliveries to the compound at Broadleys Farm to between 0900 and 1700 Monday to Friday excluding public holidays and would require the submission of a traffic management plan which amongst other things would include details of routes and timings of deliveries.
- 5.9.76 In addition the outline CEMP [REP9-030, paragraph 2.6.5] proposes that the capacity of any potential haulage vehicles would be maximised to reduce the number of trips made.
- 5.9.77 As a result the Panel conclude that subject to recommended DCO Requirements 10 and 13 that construction traffic could be managed in such a way as to minimise noise disturbance to surrounding residents.

### **Piling**

- 5.9.78 For some areas of the route where ground conditions are found to be very poor the Applicant has acknowledged that they potentially would need to use piled foundations.
- 5.9.79 CCBC raised concerns regarding the potential effect on living conditions from noise and disturbance from piling [LIR-001] for two properties (Eriviat Bach Isa and Llechryd Bach). The Applicant considered that these concerns would be addressed by Requirement 14, which would require the submission and approval by the relevant planning authority of a piling method statement and for subsequent piling activities to be carried out in accordance with the approved statement. Furthermore, Requirement 10 would restrict piling activity to take place only between 0900 and 1700 Monday to Friday and excluding public holidays.
- 5.9.80 In their Statement of Common Ground [REP9-021] CCBC have indicated that they are satisfied with the proposed mitigation. Consequently the Panel conclude that subject to Requirement 14 the noise and disturbance from piling could be managed in such a way as to minimise noise and disturbance to surrounding residents.

- 5.9.81 In FWQ3.25 the Panel raised a concern about the potential effects of the use of a hydraulic jackhammer which would only be marginally quieter than sheet piling [APP-104, paragraph 13.5.8]. In response the Applicant [REP1-056] highlighted that there would only be two locations where a hydraulic jackhammer would be used in proximity to a sensitive receptor and that the outline CEMP [REP9-030, paragraph 3.9.3] indicates that the noise generated would be mitigated by the use of a portable noise screen and limitations on the hours of work. The Panel is satisfied that this would address the concerns that they raised and that the proposed mitigation could be successfully delivered through Requirement 10 (construction hours) and Requirement 13 (Construction Environmental Management Plan).

### **Outline Construction Environmental Management Plan**

- 5.9.82 In addition to the above, to ensure noise does not become a nuisance during construction activities the outline CEMP [REP9-030] proposes a number of overarching measures that would be applied wherever possible. These include:

- where practicable, inherently quiet plant will be selected to provide reduction of noise at source;
- controlling noise at source by using effective silencers on machines;
- use, where necessary and practicable, of enclosures and screens around noisy fixed plant;
- where possible locating and orientating plant away from nearest sensitive receptors;
- avoiding the unnecessary running of machinery; and
- adherence to the Code of Construction Practice given in British Standard BS 5228 and the Control of Pollution Act 1974 to minimise noise emissions.

### **Corona discharge**

- 5.9.83 DCC highlighted corona discharge from the overhead line, given the predominantly rural nature of the area and its low background noise levels, as potentially having a negative impact on occupiers of properties in close proximity to the overhead line [LIR-002, paragraph 14.5.1].
- 5.9.84 The Applicant in paragraph 5.2.79 and 5.3.49 of the Planning Statement [APP-157] recognises that overhead lines can occasionally create some background noise. However, they advocate that it is not continuous but is typically low level and only occurs in certain weather. As a result they conclude that noise levels at receptors would be extremely low and would lie below typical background noise levels and consequently would be inaudible. No evidence has been provided to the Panel to contradict this statement and therefore having considered the issue of corona discharge in the context of section 2.9 of EN-5 and the information provided by the Applicant the Panel therefore conclude that noise from corona discharge would be at

a low level and relatively limited and therefore would not adversely affect the living conditions of local residents.

### **Decommissioning**

- 5.9.85 In addition to being a shorter process, no piling would be required as part of the decommissioning process, and therefore the main effect would be construction vehicles accessing the highway network and noise from the plant required to remove the poles. Requirement 17 of the recommended DCO would require the submission and approval of a decommissioning and site restoration scheme which would include a methodology for the management of traffic during the decommissioning and restoration works. Consequently the Panel consider that the effect of the decommissioning and restoration traffic could be managed to minimise the effect on the highway network and other road users.
- 5.9.86 Whilst Requirement 17 would manage construction traffic it does not list a DEMP which would be needed to manage proposed working hours (Requirement 10 controlling only construction hours) and the overarching noise management measures that would be managed through the CEMP for construction. However, the Panel considers that the requirement could be amended to include a DEMP and then the same mitigation measures that are proposed under the CEMP for construction would be secured for decommissioning.

### **Conclusions**

- 5.9.87 With the safeguards set out in the preceding paragraphs the Panel considers that the impacts of noise and vibration from construction and decommissioning of the proposed development on buildings and human receptors would be appropriately and sufficiently mitigated so as not to cause harm.
- 5.9.88 As a result the proposal would be in accordance with the requirements of EN-1, EN-5, PPW 8 and TAN 11 regarding noise and vibration.

### **HAZARDOUS SUBSTANCES, POLLUTION CONTROL AND OTHER ENVIRONMENTAL REGULATORY REGIMES**

- 5.9.89 This section covers the management of hazardous substances including spillage and source protection with particular reference to the potential impacts on groundwater.
- 5.9.90 With regard to option B the Applicant stated that the potential effects of hazardous substances, pollution control and other environmental regulatory regimes would be the same as for option A. The Panel agrees and therefore what follows applies equally to option A and option B.



## **National policy**

- 5.9.91 EN-1 paragraph 4.10.7 advises the decision-maker *"should be satisfied that development consent can be granted taking full account of environmental impacts"* and should be satisfied that potential pollution would be adequately regulated. Paragraph 4.10.3 states that the decision-maker *"should work on the assumption that the relevant pollution control regime and other environmental regulatory regimes...will be properly applied and enforced by the relevant regulator"*.
- 5.9.92 Section 4.13 of EN-1 requires the applicant to assess and mitigate any adverse health impacts of the project and to consider any cumulative impacts. It notes that *"the direct impacts on health may include increased traffic, air or water pollution, dust, odour, hazardous waste and substances, noise, exposure to radiation and increase in pests."*
- 5.9.93 EN-1 sets out a number of requirements of the Applicant that are relevant to this section and which can be summarised below:
- 5.10.8 - minimise impacts on soil quality;
  - 5.15.2 - assess impacts on the water environment; and
  - 5.15.3 - describe the existing characteristics of the water environment.

## **Welsh policy and guidance**

- 5.9.94 As with air quality the Welsh Government's objectives with regard to pollution prevention are amongst other things to:
- maximise environmental protection for people, natural and cultural resources, property and infrastructure; and
  - prevent or manage pollution and promote good environmental practice.
- 5.9.95 PPW 8 advocates that the planning system should guide development to lessen the risk from natural or human-made hazards, including risk from land instability and land contamination (paragraph 13.5.1). Development should be appropriate for its location and the effects of pollution should be taken into account. Where a site is affected by contamination or land instability, responsibility for dealing with it rests with the developer.
- 5.9.96 Paragraph 13.7.4 of PPW 8 states that where a development proposal may introduce changes to a site which may result in land becoming contaminated the onus will remain with the developer to ensure that the development of the site will not result in the land becoming contaminated.

## **Pollution impacts**

- 5.9.97 In the outline CEMP the Applicant has indicated that fuel, oil and chemical storage would only occur at the construction compound and

would be sited on an impervious base within a bund and would be secured [REP9-030, paragraph 2.10.1]. Any other materials that could spill would not be stored along the route alignment but would be stored at the compound. Leaking or empty drums would be removed from the site immediately and disposed of by a registered waste disposal contractor.

- 5.9.98 Wherever possible machinery and equipment would be kept a minimum of 10m from the edge of any watercourse. If the watercourse has an associated floodplain, machinery and equipment would be located 10m from the edge of the floodplain. Soil would only be stockpiled in locations sited at least 10m away from any watercourse or edge of the floodplain [REP9-030, paragraph 2.16.4]. In addition to which, suitable spill kits or absorbent materials would be held in the vicinity of the watercourses during the works and should a spill occur it would be contained and reported.
- 5.9.99 With regard to vehicles, in addition to using well maintained and serviced vehicles, refuelling of all vehicles would take place only at the construction compound; drip trays would be placed under vehicles whilst stationary; and servicing and maintenance of vehicles would only occur at the construction compound [REP9-030, paragraph 2.10.1].

### **Decommissioning**

- 5.9.100 The removal of the overhead line would be the reverse of the construction and as a result has the potential for the same impacts, albeit within a shorter timeframe. Whilst Requirement 12 would manage some aspects of the decommissioning process as drafted by the Applicant [REP11-018 and REP11-020] it would not include a mechanism to control the impacts of decommissioning that would currently be covered by the CEMP for construction. However, the Panel consider that the requirement could be amended to include a DEMP and then the same mitigation measures that are proposed under the CEMP for construction would be secured for decommissioning.

### **The Panel's reasoning and conclusions**

- 5.9.101 The Panel find that with the support of the CEMP and DEMP any threat to ground conditions and water quality for both construction and decommissioning would be capable of satisfactory mitigation. As a result the Panel concludes that the proposed developments would meet the requirements of EN-1 and PPW 8 in relation to pollution prevention.

## **WASTE MANAGEMENT**

### **NATIONAL POLICY**

- 5.9.102 EN-1, paragraph 5.14.4, states that all large infrastructure projects are likely to generate hazardous and non-hazardous waste. In

paragraph 5.14.6, it goes on to explain that the applicant should set out the arrangements that are proposed for managing any waste produced and prepare a site waste management plan. The arrangements described and the management plan should include information on the proposed waste recovery and disposal system for all waste generated by the development and an assessment of the impact of the waste arising from the development on the capacity of waste management facilities to deal with other waste arising in the area for at least five years of operation. The applicant should seek to minimise the volume of waste produced and the volume sent for disposal unless it can be demonstrated that this is the best overall environmental outcome.

5.9.103 It further requires the decision maker to consider the extent to which the applicant has proposed an effective system for managing hazardous and non-hazardous waste arising from the construction, operation and decommissioning of the proposed development. The decision maker should be satisfied that:

- any such waste will be properly managed, both on and off site;
- the waste from the proposed facility can be dealt with appropriately by the waste infrastructure, which is, or is likely to be, available. Such waste arisings should not have an adverse effect on the capacity of existing waste management facilities to deal with other waste arisings in the area; and
- adequate steps have been taken to minimise the volume of waste arisings, and of the volume of waste arisings sent to disposal, except where that is the best overall outcome.

### **Welsh policy and guidance**

5.9.104 Paragraph 12.5.1 of PPW 8 explains that the Welsh Government's general policy for waste management is contained in its overarching waste strategy document Towards Zero Waste and associated sector plans. It goes on to say, in paragraph 12.7.3 that, *"All opportunities should be explored to incorporate re-used or recyclable materials or products into a new building or structure. Information regarding such efforts could be included in the Design and Access Statements"*.

5.9.105 TAN 12: Waste (2014) provides advice on how the land use planning system should contribute towards sustainable waste management and resource efficiency. It recognises that waste is an increasingly important issue in society and there are economic and social imperatives, as well as environmental ones for us all to use non-renewable resources more wisely through resource efficiency measures and the increased use of alternatives. In order to secure resources and extend their use within the economy it advocates the need to prevent waste from arising and where this is not possible to be capturing waste in ways that enable materials to be reclaimed and to be used again, and harnessing waste as a resource in its own right.

## **WASTE ARISING DURING THE CONSTRUCTION PHASE**

- 5.9.106 The outline CEMP [REP9-030], explained in section 2.11 that the Applicant promotes and practices waste minimisation, encouraging beneficial re-use or recycling of materials where feasible. The construction contractor would be required to ensure construction is legally compliant with waste management standards and legislation. SP Manweb prefers recycling and recovery and only uses landfill as a final option. The details of the outline CEMP would be secured through Requirement 13 of the recommended DCO.
- 5.9.107 The outline CEMP states [REP9-030] that embedded mitigation measures would include the following:
- waste arisings would be identified, quantified and where practicable appropriately segregated and recycled;
  - site waste susceptible to spreading by wind or liable to cause litter would be stored in secure containers;
  - no burning of material would be permitted on site;
  - in the event of a spillage, all contaminated material would be removed from the sites to a licensed waste facility;
  - only soil that is to be re-used would be stored on site;
  - any soil moved, handled or stored on site would be treated in accordance with Defra's Construction Code of Practice for the Sustainable Use of Soils on Construction Sites.
- 5.9.108 The Applicant in their answer to FWQ4.2(a) [REP1-056], that on the basis of the assessment work that they had undertaken no contaminated land was expected to be found along the length of the project.
- 5.9.109 The outline Ecological Management Plan (EMP) [REP9-034] explained in section 2.7 that if any invasive plant species were to be identified in the working area, a 7m exclusion zone would be established around all stands of the invasive species. If vegetation clearance would be required within the exclusion zones, cut vegetation would be treated as contaminated waste and appropriately disposed of. Methods would follow standard guidance for the species concerned and this may require disposal at a licenced landfill site.
- 5.9.110 In response to the Panel's FWQ4.1(d) and 7.14(e) [REP1-056] the Applicant explained that the installation of poles in areas of shallow rock would involve the excavation of the shallow rock and replacing it with granular fill. These excavations would be small in volume and result in a similar small amount of excavated rock, which may have to be removed off site and disposed of in accordance with the CEMP.
- 5.9.111 In response to the Panel's FWQ7.15, the Applicant explained [REP1-056] that the only hazardous materials that would be used within the development would be petrol, diesel and hydraulic oil for use in vehicles and machinery, and creosote which would have been used to treat the wood poles at the supplier's premises. Petrol, diesel and

hydraulic oil would be only stored at the construction compound at Broadleys Farm. The Panel considers that of these hazardous substances, the only hazardous wastes that could arise at Broadleys Farm would be waste oil from servicing/maintenance undertaken at the compound. The Panel is satisfied that any such waste oils would be stored in a suitably bunded container and disposed of by a registered waste disposal contractor.

### **SITE WASTE MANAGEMENT PLAN**

5.9.112 The outline CEMP [REP9-031] explained that the project's main contractor would be required to prepare a site waste management plan, which would set out the framework for the management of wastes generated during the construction phase. It would also include details on the following:

- responsibilities within the construction team for waste management;
- the types of waste and quantities likely to be generated;
- measures to be adopted during construction to minimise waste generated;
- opportunities for recycling and/or re-use;
- proposed treatment and disposal sites together with details of their environmental permit; and
- provisions for staff training and use of the site waste management plan.

### **WASTE ARISING DURING THE DECOMMISSIONING PHASE**

5.9.113 The Design and Construction Report [APP-154, Section 5.25] explained that removal of an overhead line is the reverse of the construction, albeit generally all the components are recycled where possible. The conductors would be released and dropped to the ground and then wound up for disposal. Similarly all the conductor fittings, insulators and steel work would be dismantled and removed from site and recycled where possible. Poles will be cut down just above ground level and similarly removed and recycled where possible.

5.9.114 The pole foundations would have to be excavated for complete removal with the excavated ground then being replaced and the land reinstated to its original condition. For those pole sites where granular material was imported, it would be necessary to replace this with a suitable soil backfill to an appropriate depth in order to ensure the ground behaves in a similar way to the surrounding area.

### **Conclusions on waste matters**

5.9.115 The Panel considers that the amount of waste that would be generated by the development would be relatively small and sufficient steps would be taken to ensure that as much of the waste that would be generated was reused or recycled. The Panel concludes that the volumes of waste that would be generated by the development and

would be recycled/disposed at the nearest suitably permitted facilities would not impact upon the capacity of those facilities. The Panel is satisfied that the proposed development would meet the requirements of EN-1 regarding waste management matters, subject to Requirements 13 and 17 of the Panel's recommended draft DCO which would require the submission and agreement of a CEMP, DEMP and EMP.

- 5.9.116 The Panel is also satisfied that the proposals in relation to waste management would meet PPW 8 policy requirements.

## **OVERALL REASONING AND CONCLUSION**

- 5.9.117 The Panel recognises that the impacts from construction and decommissioning were a key concern for both local authorities and a number of IPs. Whilst the ES has highlighted that there would be effects particularly with regard to traffic and transport and noise and vibration, the recommended DCO includes a number of requirements which would mitigate the impacts of construction. Having examined and tested the evidence the Panel considers that subject to these requirements the proposed development would not adversely affect highway safety; the free flow of traffic on the local road network; the flow of agricultural vehicles and general farming practices; or the living conditions of residents of the area. As a result the Panel are satisfied that the proposal would be in accordance with the overarching NPS for Energy (EN-1); the NPS for Electricity Networks Infrastructure (EN-5); PPW 8; and the relevant TANs and local development plan policy.

## **5.10 COMMON LAW NUISANCE AND STATUTORY NUISANCE**

### **INTRODUCTION AND POLICY**

- 5.10.1 EN-1, in section 4.14, directs the decision maker to consider at the application stage of an energy Nationally Significant Infrastructure Project (NSIP), possible sources of nuisance under section 79(1) of the Control of Pollution Act 1990, and how they may be mitigated or limited so that appropriate requirements can be included in any subsequent order granting development consent.
- 5.10.2 EN-1, in paragraph 4.14.3 identifies that the decision maker can dis-apply the defence of statutory nuisance, in whole or part, in any particular case, but in so doing should have regard to whether any particular nuisance is an inevitable consequence of the development.
- 5.10.3 The Applicant submitted a statement of statutory nuisance with the application [APP-087]. The purpose of the document was to explain the relevant potential nuisances as defined in the Environmental Protection Act (EPA) 1990, which would arise as a result of the proposed development.
- 5.10.4 The statement of statutory nuisance described the relevant measures found in the relevant application documents to reduce the relevant

nuisances as defined in EPA 1990, which would have the potential to arise as a result from the proposed development.

5.10.5 In accordance with the emissions environmental impact assessment in the Environmental Statement (ES) (Document reference 6.13) the statement of statutory nuisance considered that the following nuisances under section 79(1) of the EPA 1990 are potentially applicable to the proposed development:

- smoke;
- fumes and gases;
- dust or other effluvia; and
- noise from premises.

5.10.6 The document described best practice methods and mitigation measures that would be followed during the construction of the proposed development. With the proposed best practice methods and mitigation measures in place, the Applicant did not expect that there would be a breach of section 79(1) of the 1990 Act during construction or decommissioning activities. The operation of the proposed development was therefore considered unlikely to cause nuisances as defined in section 79(1).

5.10.7 The Panel notes that the original draft development consent order (DCO) submitted with the application, and every edition thereafter sought a defence to proceedings in respect of statutory nuisance. In the Applicant's final draft DCO [REP11-018] and [REP11-020] this was in Article 35.

## **REPRESENTATIONS**

5.10.8 No representations were received that directly related to this matter. Representations regarding noise and dust arisings during the construction phase are discussed in report Section 5.9.

5.10.9 However, the Statement of Common Ground (SoCG) between the Applicant and Conwy County Borough Council (CCBC) stated that CCBC had agreed to the operative provisions of the DCO (Articles 1-39) [REP9-021]. The SoCG between Denbighshire County Council (DCC) and the Applicant [REP9-037] stated that DCC also agreed to the wording of the operative provisions of the DCO (articles 1-39), save for the matters referred to in paragraph 5. Matters in paragraph 5 did not include any comments in relation to Article 35 or statutory nuisance.

## **REASONING AND CONCLUSIONS**

5.10.10 The Panel is satisfied that the complaints procedure contained within the outline Construction Environmental Management Plan (CEMP) [REP9-030] would provide a method for the recording and management of the causes of any complaints that arose during the construction process in relation to noise, dust or other environmental issues.

- 5.10.11 The Panel also agrees with the Applicant that environmental complaints would be unlikely to arise during the construction phase. The Panel concludes that the wording of Article 35, in relation to defence to proceedings in respect of statutory nuisance in the Applicant's deadline 11 draft DCOs is acceptable and this is included in the Panel's recommended DCO provided in Appendix E to this report.

## **5.11 SAFETY**

### **INTRODUCTION**

- 5.11.1 EN1, in section 4.11, explains that the Health and Safety Executive (HSE) is responsible for enforcing a range of occupation health and safety legislation some of which is relevant to the construction, operation and decommissioning of energy infrastructure. It directs applicants to consult with the HSE on matters relating to safety.
- 5.11.2 The Applicant submitted to the Examination, the response that it had received from the HSE during the pre-application consultation period [REP9-023, action point 20]. This HSE letter, of the 16 May 2014, informed the Applicant that as well as satisfying general health and safety legislation (that is the Health and Safety at Work Act 1974 and the supporting regulations), the proposed design and future operation must comply with the Electricity at Work Regulations 1989 and the Electricity, Safety, Continuity and Quality Regulations 2002 as amended. Generators, distributors, their contractors and others have defined duties in order to protect members of the public from dangers posed by the electrical equipment used. HSE enforces the safety aspects of these regulations.
- 5.11.3 The outline Construction Environmental Management Plan (CEMP) [REP9-031] commits the Applicant to delivering free health and safety awareness sessions to groups or individual landowners/tenant farmers affected by the development, to raise awareness of equipment on the electricity network and the potential dangers of working in close proximity to it. The first sessions would take place prior to the development being energised. In addition, the CEMP stated that the Applicant would provide assistance to landowners/tenant farmers in carrying out their risk assessments.
- 5.11.4 The outline CEMP also provided details of the Applicant's commitments to health and safety through its actions and behaviours and ensuring that health and safety issues are fully considered as an integral part of project management throughout life of the proposed development including construction and decommissioning.
- 5.11.5 The Applicant submitted copies of two HSE guidance papers regarding working in proximity to overhead lines to the Examination, Shock Horror: Working near overhead powerlines in agriculture [REP3-036, appendix 8] and the more recent HSE Guidance Paper GS6, working safely near overhead electric power lines [REP4-025]. The Panel noted that the former document had been removed from the HSE



website before the Issue Specific Hearing (ISH) in early October and had been replaced by the latter. The Panel asked questions about these documents in various hearings.

## **REPRESENTATIONS**

- 5.11.6 During the Examination, the Applicant answered questions from the Panel on health and safety matters. These included the need for structures (such as goalposts and barriers) to minimise the risk of mobile plant or tractors coming into contact with the overhead lines and poles as well as accident and incident rates in the Applicant's operational area arising from the public and farmers/landowners coming in contact with the overhead lines. The Applicant explained [REP9-023, Appendix 14] that it reports injuries or fatalities involving members of the public through the Electricity Safety, Quality and Continuity Regulation 31 reports, not through Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013.
- 5.11.7 The Applicant reported that two fatalities had occurred in 2015 in its operating area. These were detailed in the Applicant's oral summary to ISH day 3 [REP3-036 and REP4-011] and in response to the Panel's SWQ4.6 [REP6-035]. Both of the fatalities were the result of contact with 11kV lines. It explained [REP9-023, Appendix 14] that 11kV lines (and 33kV lines) are at a minimum height of 5.2m, whereas the height of 132kV lines would be a minimum of 6.7m at all points along the route, with the phase conductors at a further 1.1m above the earth conductor (or a minimum of 7.7m to the ground). For these reasons, the Applicant considered that the likelihood of such incidents involving 132kV overhead lines would be lower than that of the 11kV and 33kV lines.
- 5.11.8 The data provided by the Applicant on injuries and fatalities [REP9-023] identified that there had not been any injuries or fatalities in connection with 132kV overhead lines in its operating area between 2012 and 2015.
- 5.11.9 Cllr Alice Jones of Denbighshire County Council (DCC), stated that last year (2014) there were 89 incidents on farmland in north Wales and Merseyside. She was concerned that this was an extremely high number as the harvest and field work involved lasts just over six months of the year [REP3-008]. DCC later confirmed [REP6-001] that the figures that Cllr Jones had referred to had been published in an article in the farm and country section of the Liverpool Daily Post, dated 12 August 2015, and they provided a copy of the press article in their representation. DCC explained that the article related to Applicant exhibition at the Anglesey Show which had the purpose of informing the farming community on the dangers of working near overhead lines.
- 5.11.10 Mr Iwan Jones [REP6-004] considered that goal-post structures under the overhead lines (overhead lines) would probably be needed at harvest time, during activities such as loading trailers with load-alls

and combining. He considered that a bigger problem for most farmers would be avoiding collision with posts and stays especially when contractors are doing field work. He considered that this would be a greater risk on fields with slopes when tractors or machinery can skid. He explained that as he would have one structure (pole) a few metres from a hedgerow and whilst his tractor may fit between the pole and the hedge, a contractor's tractor may not fit, so to negate the risk he would have to put a barrier from the hedge to the posts in order to stop anyone trying to fit between them, but which would lead to a bigger affected area.

- 5.11.11 Mr David Roberts [REP3-041] also expressed concerns about the impacts of pole 147 and its stays on farm safety on a steeply sloping field on his land, near Hafod Dingle. He provided a sketch of the double pole's position on a photo of the land that would be affected. He considered that if he was maintaining the land with large machinery and travelling down the hill, the double poled pylon would be a hazardous risk, especially in slippery conditions. At any point the tractor, or other apparatus could lose control and collide with the infrastructure.
- 5.11.12 Mr Iwan Jones (in the ISH on 1 October 2015) raised a query regarding the likelihood of a 132kV coming down and if it happened, what would be the safety mechanisms to minimise the risk to any people who are in close proximity to it. The Applicant confirmed in its written summary of oral case at the ISH day 3, paragraph 5.4.2(f) [REP3-036] that the risk of a 132kV overhead line coming down was very remote and the safety mechanisms included would ensure that the electricity is shut off within milliseconds. At deadline 4, it provided data on 132kV lines snapping and fires within the Applicant's operational network [REP4-011, Appendix 10]. The Applicant explained that its operational area has 1,332km of 132kV overhead line circuits on both wood poles and steel lattice towers. In the previous five years there had been one grounded 132kV conductor, which is at a rate of 0.2 per year across the 1332km network, which equates to 0.00015 grounded conductors per km per year. Over the previous five years, out of seven incidents affecting 132kV overhead lines, there was only one fire incident, caused by a propane cylinder for a bird scarer placed under the tower, the cylinder ignited and burnt surrounding scrub.

### **FURTHER MITIGATION**

- 5.11.13 As the Applicant offered to provide health and safety training and assistance with risk assessments for the farming community, and this would be secured through the outline CEMP, the Panel did not consider that any further mitigation was necessary.

### **REASONING AND CONCLUSIONS**

- 5.11.14 The Panel understands Interested Parties (IPs) concerns about safety in relation to farm operations. The Panel considered that safety

matters were of considerable importance during the Examination. The matter of two recent fatalities in the SP Manweb area caused the Panel to question and probe the Applicant on matters related to overhead line safety, including incident and accident rates.

- 5.11.15 The Panel noted, on its site inspections, that near the proposed route of the development, in various locations, there are a considerable number of other overhead power lines and overhead infrastructure including telephone poles and cables, which are generally lower than the proposed development would be, if the Order was to be made. The Panel considers that the introduction of a new double wood pole line into this environment would not be introducing a totally new set of hazards and risks into the farming community that would be affected.
- 5.11.16 Nevertheless, the Panel considers that the overhead lines and the poles would create potential hazards and risks to landowners and tenant farmers. However, through undertaking risk assessments and incorporating safe systems of work for farm workers and contractors in the vicinity of the overhead lines, the Panel accepts that risks would be capable of being managed but could not be eliminated entirely (unless the development was put underground), any more than risks associated with farming on steep ground or near water features could be eliminated.
- 5.11.17 The Panel is satisfied that the training and risk assessment assistance that the Applicant would provide to landowners and tenant farmers goes some way towards raising awareness of the issue of the dangers of working in proximity to overhead lines, and would enable the farming community to identify hazards and assess risks, undertaking site specific risk assessments, so that, through the risk assessment process, steps could be taken to minimise the likelihood of accidents and incidents happening in the vicinity of overhead lines.
- 5.11.18 The Panel considers that residual risks of accidents and incidents in relation to farm workers and contractors working in proximity to overhead lines and poles and stays, is not sufficient, either alone, or in combination with other effects, to refuse the application in favour of undergrounding.
- 5.11.19 The Panel is also satisfied that safety matters during the construction phase would be adequately addressed through the outline CEMP.

## **5.12 HEALTH**

### **INTRODUCTION**

- 5.12.1 EN-1 notes, in paragraphs 4.13.1 and 4.13.2, that energy production has the potential to impact on the health and well-being of the population. Where the proposed project has an effect on human beings, the Environmental Statement (ES) should assess these effects for every element of the project, identifying any adverse health impacts, and identifying measures to avoid, reduce or compensate for those impacts as appropriate.

- 5.12.2 In paragraph 4.13.5, it explains that some aspects of energy infrastructure which are most likely to have a significantly detrimental impact on health are subject to separate regulation (for example air pollution), which will constitute effective mitigation of them, so that it is unlikely that health concerns will either constitute a reason to refuse consents or require specific mitigation under PA2008. It goes on to explain that the decision maker will want to take account of health concerns when setting requirements relating to a range of impacts such as noise.
- 5.12.3 EN-5, in section 2.10, describes electric and magnetic fields (EMFs) and their effects. It states that the levels of the extremely low frequency EMFs produced by power lines in normal operation are usually considerably lower than the International Commission on Non-Ionizing Radiation Protection (ICNIRP) reference levels and the related EU recommendation of 1999 adopted by the Government.
- 5.12.4 It explains, in paragraphs 2.10.6 to 2.10.8 that the balance of scientific evidence over several decades has not proven a causal link between EMFs and cancer or any other disease. Also, the Department of Health's Medicines and Healthcare Products Regulatory Agency does not consider that transmission line EMFs constitute a significant hazard to the operation of pacemakers. It also states that there is little evidence that exposure of crops, farm animals or natural ecosystems to transmission line EMFs has any agriculturally significant consequences.

## **IMPACTS**

- 5.12.5 The Applicant's ES contained a chapter on electric and magnetic fields [APP-105]. It explained that EN-5 provides a simplified route map for dealing with EMFs for overhead lines with voltages of 132kV and below that comply with the relevant exposure limits. It goes on to say that EN-5 does not require evidence to be provided for overhead lines of 132kV or below as they are deemed to comply with the exposure limits.
- 5.12.6 The ES explained that the Government has developed a code of practice with the electricity industry that specifies the evidence acceptable to show compliance with the adopted ICNIRP guidelines.
- 5.12.7 It acknowledged that during the consultation phases, concerns were raised in relation to EMFs. Consultation responses from government agencies also requested calculations on EMF levels for the overhead line. It went on to explain that the Applicant would be carrying out an assessment of the EMF levels to provide evidence that the proposed development complies with the exposure guidelines.
- 5.12.8 The Applicant's consultants calculated the maximum EMFs using the worst case conditions. The calculations were provided in the technical appendix on EMFs [APP-148] and the results were provided in tabular form in the ES. Paragraph 14.7.5 of the ES [APP-105] stated that the

EMFs produced by the proposed overhead line decrease rapidly with distance from the line. The maximum EMFs produced by the proposed 132kV overhead line, at 1.589kV/m (the maximum electric field at nominal voltage) and 15.36uT (the maximum magnetic field at pre-fault continuous loading) would be less than the relevant public exposure limits of 9kV/m and 360uT and they therefore meet the relevant exposure guidelines.

- 5.12.9 No mitigation was considered to be required as the development would comply with the current public exposure guidelines as detailed in EN-5. The ES concluded that the development would be fully compliant with the UK Government policy, specifically all fields would be below the relevant exposure limits. Therefore there would be no significant EMF effects resulting from the proposed development. It also considered cumulative impacts from the wider scheme and other developments and concluded there would be no significant EMF effects resulting from the development in combination with the wider scheme, wind farms and other developments identified as part of the cumulative assessment.

## **REPRESENTATIONS**

- 5.12.10 A considerable number of Interested Parties (IPs) raised concerns about impacts from EMFs on the local communities, including, but not limited to Mr John Mars Jones [RR-068], Cyffylliog Community Council [RR-011], Llanrhaedr Community Council [RR-042], Llanefydd Community Council [RR-041], Ms Alys Owen [RR-001], Mr Gordon Owen [RR-029], Cyngor Cymuned Llanrhaedr-yng-Nghinmeirch [RR-013], Ms Eirian Jones [RR-020 and RR-021], Mr Richard Mars Jones [RR-082], Iona Jones [RR-033] and Ms Elin Mars Jones [RR-023]. Ms Margaret Parry Jones [RR-047] expressed concerns regarding power lines being associated with lower milk yields and abortions in animals.
- 5.12.11 John Fleet [REP3-013] who runs a retreat centre at Pen-Parc-Llwyd, considered that putting a 17km length of "pylons" across a beautiful landscape was polluting to the heart and mind and would be a possible cause of ill-health to those who live in and visit the Vale of Clwyd.
- 5.12.12 Denbighshire County Council's (DCC's) written representation (WR) [REP1-019] wished its concerns to be noted over potential impacts to human health from exposure to EMFs arising from the power lines. However, it also stated that it deferred to Public Health England (PHE) for more informed comment on the effects of EMFs including exposure to non-ionising radiation.
- 5.12.13 PHE including PHE's centre for radiation, chemical and environmental hazards (Wales), in their relevant representation (RR) [RR-079], stated that they were satisfied with the conclusions drawn in the ES. PHE noted the conclusion that potential human health impacts from the development would not be significant and any environmental impacts would be mitigated through the implementation of measures outlined in the outline Construction Environmental Management Plan

(CEMP). On the basis of the submitted information, PHE accepted that the operational and regulatory controls would be adequately managed by Local Authorities (LAs) and Natural Resources Wales (NRW) to ensure that the development would not cause a significant impact on public health. PHE was satisfied that the development's potential on public health had been adequately addressed, and where necessary, suitable mitigation had been proposed.

5.12.14 The Applicant submitted a Statement of Common Ground (SoCG) between itself and the Local Health Board for North Wales (Betsi Cadwaladr University Health Board) [REP2-024]. It explained that the Local Health Board's remit is public health, so it does not offer any comments on other aspects of the development. In it, the local health board is satisfied with the environmental impact assessment (EIA) methodology adopted in the ES and with the conclusions of the ES that the proposed development will not give rise to a significant effect on public health (including noise and vibration and aerial emissions).

5.12.15 It went on to explain that with specific reference to the issue of impacts on health from EMFs, the Local Health Board for north Wales is satisfied:

- that the methodology adopted in the ES is compliant with the Department of Energy and Climate Change (DECC) code of practice 'Power Lines: Demonstrating Compliance with Public Exposure Guidelines'; and
- with the conclusion of the ES that the proposed development would not give rise to exposure to EMFs above the maximum levels set out in DECC's code of practice.

5.12.16 The SoCG confirmed that the local health board had no objection or points of disagreement with the Applicant in relation to the application.

5.12.17 The Panel's SWQ4.4 [PD-016] asked IPs (who had originally commented upon the potential risks arising from EMFs) to state whether they were satisfied with the conclusion stated in the SoCG with the local health board, and to provide reasons if they were not satisfied. No responses on this matter were received. However, in the December Examination hearings, Mr John Mars Jones reiterated his family's concerns about EMFs.

### **FURTHER MITIGATION**

5.12.18 The Panel does not consider that any further mitigation in relation to health or EMFs is necessary.

### **REASONING AND CONCLUSIONS**

5.12.19 The Panel understands the concerns that were raised by IPs regarding potential impacts upon the local communities from EMFs and farm animals. However it considers that concerns about EMFs impacting on farm animals were unfounded.

- 5.12.20 In view of the low levels of EMFs that are predicted to occur in the ES and its technical appendix, as well as the representations from PHE and the SoCG with the local health board, the Panel is satisfied that the Applicant's conclusions identify that the levels of EMFs would fall below the maximum levels given in the relevant code of practice. It also takes comfort from the SoCG with the Local Health Board and concludes that the development would not give rise to a harmful level of exposure to EMFs to local communities. These conclusions apply equally to both option A and option B.

## **5.13 CIVIL AND MILITARY AVIATION AND DEFENCE INTERESTS**

### **INTRODUCTION**

- 5.13.1 EN-1 explains that civil and military aerodromes, aviation technical sites and other types of defence interests can be affected by new energy development. In paragraph 5.4.6 it explains about the military low flying system which covers the whole of the UK, identifying that a considerable amount of military flying for training purposes is conducted as low as 30m in designated areas in mid Wales. In addition, military helicopters may operate down to ground level. It identifies that new energy infrastructure may cause obstructions in Ministry of Defence (MoD) low flying areas.
- 5.13.2 It goes on to say, in paragraphs 5.4.10-11, that where a proposed development may have an effect on civil or military aviation and/or other defence assets an assessment of potential effects should be set out in the Environmental Statement (ES). The applicant should consult the MoD, the Civil Aviation Authority (CAA), National Air Traffic Service (NATS) and any aerodrome - licensed or otherwise -likely to be affected by the proposed development in preparing an assessment of the proposal on aviation or other defence interests.

### **IMPACTS**

- 5.13.3 The Applicant explained in its response to the Panel's first written questions (FWQ) FWQ4.15 [REP1-056], that it did not consider that any mitigation measures were needed, so none were proposed. It did not consider that the height of the development would cause concern to the MoD. It explained that it did not have any lighting or markers on any 132kV wood pole lines or any 132kV steel tower lines across the whole of its distribution network.

### **REPRESENTATIONS**

- 5.13.4 A Statement of Common Ground (SoCG) between the Applicant and the CAA [REP1-057] stated:

*"The proposed overhead line and supporting structures (which, from the documentation provided would appear to have a maximum height of approximately 20m above ground level) would not constitute aviation en-route obstructions for civil aviation purposes. Similarly the proposed sub-stations structure would not constitute en-route*

*obstructions. I have therefore few associated observations other than to highlight that the need for planning deliberations to take into account any relevant aerodrome specific safeguarding issues as dictated by Government Circular 1/2003. Note that responsibility for aerodrome safeguarding rests in all cases with any relevant aerodrome operator not the CAA.*

*Additionally, I am aware that, in respect of military aviation operations, the Ministry of Defence (MoD) has expressed generic concerns associated with overhead power lines. It is consequently possible that the MoD would make recommendation related to the lighting of the towers and marking of the wires. PINS should be aware that in general the CAA would support your effort to clarify the MoD recommendation concerning enhancement to wire conspicuity. Clearly, it is essential that the MoD have been given the opportunity to comment upon the subject application."*

- 5.13.5 It explained that subject to the observations set out, it has no specific objection or points of disagreement with the Applicant regarding aviation safety in relation to the application.
- 5.13.6 The CAA's representation [REP3-001] stated that they had no comments on the changes to the project as described. They explained that Article 219 of the UK Air Navigation Order applies with respect to obstruction lighting in relation to areas away from aerodromes. It requires that for en-route obstructions (that is away from aerodromes) lighting only becomes legally mandated for structures of a height of 150m or more. Typically, structures of less than 150m height and away from the immediate vicinity of an aerodrome are not routinely lit for civil aviation purposes. However, structures of lesser height may need aviation obstruction lighting if, by virtue of their location and nature, they are considered a significant navigational hazard. The developer should contact CAA two weeks before the use of any tall cranes on site.
- 5.13.7 The Applicant explained [REP4-036] that this representation references the same matters that were contained within the SoCG.
- 5.13.8 The NATS wrote to the Applicant, in response to the Panel's SWQ4.10(b) stating that they did not anticipate any impact from the proposed development [REP6-035].
- 5.13.9 The Panel invited the MoD to become an Other Person for the Examination, but no representations were received from them. The Applicant confirmed [REP6-035], that they also had not received any response from the MoD. The Applicant explained that it had sought to enter into a SoCG with the MoD, and had contacted them in July 2015 and again in August 2015 [REP1-056, response to FWQ4.15]. They considered, in the context of experience that the Applicant has gained from constructing similar projects, that a maximum structure height of 18.4m (including the 2m vertical limits of deviation) is not likely to pose any concern to the MoD.



## **REASONING AND CONCLUSIONS**

- 5.13.10 The SoCG with the CAA and the representation from NATS have provided the Panel with sufficient detail for it to conclude that the development would not pose any risk to civil aviation interests. It also agrees with the Applicant that, in view of the relatively low height of the development, there would be no risk to military or other defence interests.
- 5.13.11 These conclusions apply equally to either option A or option B.

### **5.14 DECOMMISSIONING**

- 5.14.1 This section considers the issues surrounding decommissioning, it does not consider the potential effects of decommissioning such as traffic and air quality which are dealt with in the relevant sections elsewhere in this report. Nor does it consider the effects of decommissioning in terms of mitigation which is examined in Sections 5.4 (Historic Environment) and 5.2 (Landscape and Visual Impact) of this report. The need for the proposed development, including the length of time that the line would remain in-situ, is considered in Chapter 4.
- 5.14.2 There are no specific national or local policies with regard to decommissioning of electricity network infrastructure.

#### **DECOMMISSIONING IMPACTS**

- 5.14.3 Decommissioning was identified as a principal issue at Annex C of the Panel's letter of 2 July 2015 [PD-004]. The particular concerns identified in the letter with regard to decommissioning were:
- the operational life of the wind farms; and
  - the decommissioning of the development.
- 5.14.4 With regard to option B the Applicant states that the potential effects of decommissioning would be the same as for option A. The Panel agrees and therefore what follows applies equally to option A and option B.

#### **REPRESENTATIONS**

- 5.14.5 The original draft development consent order (DCO) [APP-076] did not include a requirement to decommission the proposed overhead line. Conwy County Borough Council (CCBC) highlighted this as a concern in their Local Impact Report (LIR) [LIR-001] and requested that a new requirement be included in the recommended DCO that would result in the consent expiring 30 years from the date of grant of consent and requiring the overhead line to be dismantled and removed.
- 5.14.6 In response to the Panel's first written questions (FWQ) FWQ2.11 and 12.23 [REP1-056] the Applicant explained that they did not consider that it was appropriate for the DCO to be subject to a time limited

requirement to decommission as they considered that the life of the connection should be linked to its utility as a network asset and not to the particular generating assets that it would be originally developed for. The Applicant considered that this was reasonable and necessary because given the area is defined within TAN 8 as a Strategic Search Area (SSA), if the original wind farms were decommissioned it was possible that a new generation asset were to come forward within the SSA and therefore a connection would still be required.

- 5.14.7 However, the Applicant acknowledged that it would not be appropriate for the proposed development to be left in situ if it was not being used for the purposes of carrying electricity and therefore subsequent drafts of the DCO included a requirement to decommission [REP2-020, REP3-031, REP6-012 and 014, REP9-026 and 028].
- 5.14.8 The subject of decommissioning and the wording of the proposed requirement was also discussed at a number of Issue Specific Hearings (ISH) including the 29 September 2015 [EV -016], 2 October 2015 [REF EV-029a] and 10 December 2015 [EV-048] and was the subject of a further written question (SWQ12.9) from the Panel [PD-016].
- 5.14.9 As a consequence of the concerns raised by the Interested Parties (IPs) the Panel the final draft DCO submitted by the Applicant at deadline 11 [REP11-018 and 020] included a decommissioning requirement (Requirement 17) and introduced a time limit of 30 years for the proposed development (Requirement 19). As a result of these two requirements the proposed development would need to be removed and the Order land restored 30 years from the commencement of the authorised development.

### **The Panel's reasoning and conclusions**

- 5.14.10 Proposed Requirements 17 and 19 are considered to address the concerns raised by CCBC in the signed Statement of Common Ground (SoCG) [REP9-021] and the Panel's concerns regarding decommissioning and the impacts of the overhead line if it were to be retained in perpetuity.

## **5.15 OPTION A AND OPTION B**

- 5.15.1 In this report section, the Panel summarises the differences between the option A and option B proposals in relation to environmental impacts and compulsory acquisition (CA) matters. It then weighs all important and relevant matters on this issue in the balance, before it concludes upon which option it concludes is preferable, in the event that the development consent order (DCO) is made.
- 5.15.2 Chapter 2 identified that the Applicant submitted option B details to the Examination on 16 September 2015 and these were accepted by the Panel in a procedural decision on 2 October 2015 [PD-013]. As a result option B was considered alongside option A for the rest of the Examination, both as a whole and as potential alternatives to individual sections of alignment. The Applicant submitted separate

draft DCO's for both option A (the original application) and option B during the Examination at deadlines 6, 9 and 11. The last versions of the Applicant's draft DCO for options A is [REP11-018] and for option B is [REP11-020].

- 5.15.3 There was no interest in a hybrid solution consisting of a part of option A with the remainder of option B (or vice versa) during the Examination process. The Panel has considered the impacts that would arise from a hybrid solution, compared to option A or option B and considers that there is no difference in impacts that would arise from a hybrid solution. The Panel concludes that the hybrid solution does not require further consideration.
- 5.15.4 The option B compulsory acquisition report [OpB-002] provided the details of the locations where the option A pole locations would be changed and additional land would be sought. The Environmental Report in Support of Option B (ERISOB) [OpB-003] provided a review of environmental impact assessment matters in relation to the revised pole locations where the changes were outside the limits of deviation (LoD) for option A.
- 5.15.5 There were eight option B pole location changes which included changes outside the LoD for option A. For these changes, the option B environment report considered the following topics:
- ecology and biodiversity;
  - landscape and visual;
  - historic environment;
  - flood risk and water resources;
  - land-use and agriculture;
  - socio-economic and tourism;
  - transport and traffic;
  - emissions; and
  - electric and magnetic fields.
- 5.15.6 The option B environmental report [OpB-003] identified that for flood risk and water resources; socio-economic and tourism; transport and traffic; emissions; and electric and magnetic fields there were no changes of impacts for the Order limits as identified for option A (or any changes were relatively minor) from the pole location changes and so they did not affect the outcome of the original assessment. The changes to the Order limits in option B would not result in any changes to the assessment of effects for these matters.
- 5.15.7 The remaining issues that were considered in relation to option B were ecology and biodiversity; historic environment; land use and agriculture; and landscape and visual effects. These are considered in the relevant sections of this report in 5.1 (ecology and biodiversity), 5.4 (historic environment), 5.7 (land use and agriculture) and 5.2 (landscape and visual effects). Matters in relation to the CA of rights regarding option B are considered in Chapter 8 of this report.

- 5.15.8 The Panel is satisfied that the Applicant's option B documentation suitably assessed all matters that arose in respect of option B changes. The Panel is also satisfied that Interested Parties (IPs) did not raise any issues in respect of option B that had not been raised in respect of option A.

***Ecology and biodiversity***

- 5.15.9 The Panel concludes that there are no reasons relating to biodiversity effects from the proposed development that would prevent the DCO from being made, provided the proposed environmental monitoring surveys are undertaken and mitigation that is proposed is delivered. This includes the mitigation as set out in the environmental management plans that would be secured through Requirement 13 and ecological management methodology in respect of decommissioning secured through Requirement 17 in the Panel's recommended DCO.
- 5.15.10 The Panel also concludes that in relation to option B, apart from a very small increase in hedgerow that would be impacted, compared to option A, which is not a significant increase in effects, the conclusions given in the paragraph above apply equally to option B.

***Historic environment***

- 5.15.11 The Panel concludes that there is no difference in impacts on the historic environment between option A and option B.

***Land use and agriculture***

- 5.15.12 The Panel concludes that option B has less impact on a number of land-owners and tenant farmers and is favoured by a significant number of IPs over option A. The Panel considers that there are significant advantages to the local farming community in choosing option B and concludes that option B is the preferred option in relation to land-use and agricultural matters.

***Landscape and visual effects***

- 5.15.13 In report Section 5.2 the Panel concludes that, in respect of one residential receptor (Plas Hafod), option B is preferred. There are no other reasons why option B is preferred over option A in relation to landscape and visual impacts. There are no reasons in relation to landscape and visual impacts why option A should be preferred over option B.

**Conclusions**

- 5.15.14 The Panel concludes that there are significant benefits to the farming community and others in option B, compared with option A. There are no significant dis-benefits to the environment or other receptors in choosing option B over option A. The Panel therefore concludes that option B is preferred and forms the basis of its recommended DCO

that is attached at Appendix E to this report, but this decision is subject to the Panel's recommendations in relation to modifications to the articles and requirements of the draft DCO, which are considered in Chapter 9.

## **6 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS**

### **6.1 INTRODUCTION**

- 6.1.1 The Secretary of State for Energy and Climate Change is the competent authority for the purposes of the Council Directive on the conservation of natural habitats and of wild fauna and flora (92/43/EEC) (the Habitats Directive), the Council Directive on the conservation of wild birds (2009/147/EC) (the Birds Directive), and The Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitats Regulations), for applications submitted under the Planning Act 2008 (as amended) (PA2008). The Habitats Regulations provide for the protection of European sites, which include Special Areas of Conservation (SACs) designated under the Habitats Directive, and Special Protection Areas (SPAs) classified under the Birds Directive. The UK Government has also chosen to apply the same provisions to Ramsar sites, which are designated under the Ramsar Convention on Wetlands of International Importance 1971 (as amended) (the Ramsar Convention). The Panel's findings and conclusions set out in this report in relation to European sites are intended to assist the Secretary of State in performing her duties under the Habitats Regulations.
- 6.1.2 The Applicant provided with the Development Consent Order (DCO) application, under Regulation 5(2)(g) of the Applications: Prescribed Forms and Procedures Regulations, a Habitats Regulations Assessment No Significant Effects Report (HRA NSER) [APP-089] which included screening matrices, and was accompanied by an appendix containing associated figures [APP-090, Appendix 1]. The purpose of the screening matrices is to set out, in tabular form, information that will assist the Panel and Secretary of State to fulfil the requirements of the Habitats Regulations. The matrices contain information on the features of the European sites considered in the assessment, summarise the Applicant's conclusions on the likely effects of the proposed development on those features, and reference where the relevant evidence is provided in the application documents.
- 6.1.3 The NSER was considered sufficient for the purposes of acceptance of the application for Examination. It concluded that there would be no likely significant effects on any of the European sites and their qualifying features and that an appropriate assessment by the competent authority would not be required. In relation to the proposed option B changes to the proposed development submitted during the Examination by the Applicant, the Panel is satisfied that sufficient information has been provided by the Applicant for the purposes of the HRA.
- 6.1.4 Revised screening matrices have not been requested by the Panel or provided voluntarily by the Applicant during the Examination. The matrices included in Section 5 of the NSER [APP-089] remain valid for the purposes of the HRA, including in relation to option B.

- 6.1.5 The Applicant did not identify any potential impacts of the proposed development on European sites in other European Economic Area States, and it was concluded in both the first and second transboundary screenings by the Secretary of State [OD-001] that the proposed development was not likely to have a significant effect on the environment in another European Economic Area State.
- 6.1.6 The NSER, Environmental Statement (ES) Chapter 6 [APP-097], other relevant documents provided by the Applicant, including additional information on option B, and submissions made by other parties including Natural Resources Wales (NRW) and the Welsh Government, informed the Report on the Implications for European Sites (RIES) [PD-021] prepared by the Panel in relation to this application. The purpose of the RIES is to document and signpost information provided with the application and throughout the Examination (up to 11 December 2015) in relation to potential effects on European sites, and to assist the Secretary of State in considering Habitats Regulations matters.

## **6.2 PROJECT LOCATION**

- 6.2.1 There are no statutorily designated European sites within or adjacent to the application site. The nearest SAC is Coedwigoedd Dyffryn Elwy/Elwy Valley Woods) (hereafter referred to as the Elwy Valley Woods SAC), which is about 0.7km from the application site, and is designated for its Tilio-Acerion forest. The nearest SPA is Bae Lerpwl/Liverpool Bay (hereafter referred to in this report as the Liverpool Bay SPA), which is about 8km from the application site, and is classified for its over-wintering red-throated diver and common scoter. The nearest Ramsar site is the Dee Estuary, which is about 20km from the application site and designated for intertidal sand and mud flats, breeding natterjack toad, and a number of bird species including waterfowl and waders.
- 6.2.2 During pre-application consultation NRW drew the Applicant's attention to potential impacts of the proposed development on the Elwy Valley Woods SAC, and the Welsh Government raised the potential for impacts on the Aber Dyfi/Dyfi Estuary SPA (hereafter referred to in this report as the Dyfi Estuary SPA), about 68km from the application site, and its overwintering population of Greenland white-fronted geese (GWfG). The Applicant identified in the NSER SACs within 15km of the application site, on the basis that SACs beyond 15km were unlikely to be affected due to the nature of the development proposed, and SPAs and Ramsar sites within 70km of the application site, as a consequence of including the Dyfi Estuary SPA in the assessment. This resulted in 22 European sites being screened in to the assessment, comprising four SACs, thirteen SPAs, and five Ramsar sites. The names and locations of the European sites are identified in the NSER in Tables 3.1 and 3.2, and on Figure 1.xx in NSER Appendix 1 [APP-090].

- 6.2.3 In response to the Panel's first written questions (FWQ) [PD-010] about apparent discrepancies in the tables and the accompanying figure the Applicant provided updated Tables 3.1 and 3.2, an additional Table 3.2(a) which separated out the Ramsar sites from the SPAs [REP1-056], and an updated Figure 1.xx [REP1-071] for deadline 1.
- 6.2.4 In response to the Panel's questions at the Issue Specific Hearing (ISH) on 30 September 2015 about apparent discrepancies in the updated Table 3.1 and the additional Table 3.2a, the Applicant made further amendments to these tables and submitted updated versions [REP3-037] for deadline 3. The Panel are satisfied that the final versions of the three updated tables reflect the European sites that were screened in to the assessment and remain valid in relation to the proposed option B changes.
- 6.2.5 The proposed development is not connected with or necessary to the management for nature conservation of any of the European sites considered within the Applicant's assessment.

### **6.3 HABITATS REGULATIONS ASSESSMENT IMPLICATIONS OF PROJECT**

- 6.3.1 The Panel's FWQs [PD-010] included a question (FWQ6.3) to Interested Parties (IPs) on whether they were satisfied that the features of the European sites included in the NSER had been correctly identified. NRW, in their combined written representation (WR) and response to the Panel's FWQs [REP1-042], confirmed that they were satisfied that the correct features had been identified. No IP identified prior to or during the Examination any other European site or site feature which they considered could be potentially affected by the proposed development.
- 6.3.2 It was stated by the Applicant in the NSER [APP-089] that as a result of the particular interest features of the European sites identified, the intervening distance between the sites and the application site, and the lack of potential pathways, they did not consider that there was any potential for the proposed development to have a likely significant effect on any European site and their qualifying features, alone or in combination with other plans and projects. The NSER and screening matrices [APP-089], and subsequent Examination documents, as listed in Annex 1 of the RIES [PD-021], were provided by the Applicant in support of this conclusion. It is indicated in the NSER that the Elwy Valley Woods SAC and the Dyfi Estuary SPA were taken forward by the Applicant for further consideration in order to address the pre-application consultation responses from NRW and the Welsh Government, respectively.
- 6.3.3 NRW, in their pre-application consultation response, noted that the proposed route alignment at that time overlapped the Elwy Valley Woods SAC boundary, and that therefore there was potential for an effect on the SAC, and that a HRA would be required [REP1-080,



Appendix 9.1a]. The NSER indicated that there were two alternative routes under consideration by the Applicant at that time, one of which was closer to the boundary of the SAC than the route that is proposed in the present DCO application. The NSER also reports that NRW subsequently stated at a meeting with the Applicant in September 2014 that they considered that a NSER would be appropriate. NRW stated in their relevant representation (RR) [RR-075] that they were consulted (pre-application) by the Applicant on their draft NSER. They confirmed that they concurred with the conclusions of the report and considered that significant effects on European sites, either alone or in combination with effects from other plans or projects of which they were aware, were unlikely to occur as a result of granting consent for the proposed development.

- 6.3.4 The Welsh Government, in their pre-application consultation response [REP1-080, Appendix 9.1b], raised a concern that the area in which the proposed development would be located can be overflowed by migratory geese, and that if the power line was to be over-grounded an appropriate assessment under the Habitats Regulations would be required in respect of the Dyfi Estuary SPA and its overwintering GWfG and other overwintering goose populations to the south. The Panel's FWQ6.1 [PD-010] requested the Welsh Government's views on the findings of the NSER (in light of their consultation comments).
- 6.3.5 In their response [REP1-098], Welsh Government stated that subject to NRW being content their only concern was in relation to the potential migration route of GWfG to the SPA. They expressed the view that the Applicant's conclusion in the NSER that the migratory route of the GWfG was across Ireland and over the North Atlantic only applied to the return journey, and their approach to the UK was instead from the north. They referred to a radio tracking exercise (survey details not provided) which in their view suggested that landfall could be plausible at any point on the North Wales coast and which might include birds en route to the Dyfi or beyond. However, they acknowledged that there had not been any such monitoring over inland North Wales, and concluded that 'General precautions in respect of large birds would probably minimise any risk to this endangered and iconic species'.
- 6.3.6 The Welsh Government did not provide any further details of what they considered the potential effects on GWfG might be or explain what they meant by 'general precautions'. They did not submit any further comments in response to a request in the Panel's second written question (SWQ) SWQ6.1 [PD-016] for them to provide further information about their concerns. However, they did provide a response for deadline 11, [REP11-023] in which they stated that the Welsh Government agreed with NRW that there are not likely to be any significant effects on any European site alone or in combination with other plans and projects. This is reported in further detail below.
- 6.3.7 The Applicant, in their response to the Panel's FWQ6.5 [REP1-056], which requested justification of their statement in the NSER about the

migratory route of GWfG, set out their view that the majority of GWfG fly from their breeding grounds on the west coast of Greenland to over-wintering sites in Ireland and reference the publication on which this is based, concluding that the migration route from mid-Wales to Greenland would not pass over the application site. They also addressed this point in their comments on the responses to the Panel's FWQs [REP2-014], and their response to the WRs [REP2-015].

- 6.3.8 NRW reiterated prior to and throughout the Examination, in their RR [RR-075], combined WR and response to the Panel's FWQs [REP1-042], and response to the Panel's SWQs [REP6-007], that they had noted the Welsh Government's concerns in relation to GWfG but that they were satisfied that the proposed development was not likely to have significant effects on the Dyfi Estuary SPA and overwintering GWfG or any other European site or feature.
- 6.3.9 Potential impacts on European sites, with particular reference to the Dyfi Estuary SPA, were examined on Day 2 (30 September 2015) of the ISH. The Applicant's written summary of their oral case [REP3-037] sets out the Applicant's position. They made reference to their desktop study which included bird data for a 5km buffer along the route corridor, and autumn/winter bird and vantage point surveys undertaken in two locations between 2012 and 2013, none of which recorded any GWfG. The Applicant noted that the Welsh Government had suggested that reflectors could be put on the overhead line to address potential collision risk of GWfG with the overhead line. They acknowledged that the GWfG migration route to and from the SPA is unclear, and considered that it is possible that they could collide with the poles and the overhead line in the event that they were forced down in very bad weather conditions. However, the Applicant suggested that the GWfG fly at very high altitude, and restated their view that collision risk was highly unlikely and that therefore bird deterrents were disproportionate and unnecessary.
- 6.3.10 Further information on the winter bird and vantage point surveys is provided in ES Chapter 6 [APP-097] and its accompanying appendices. The Panel's FWQ6.22 [PD-010] requested the views of NRW and the local authorities on the methodology and results of the ecological assessments contained in ES Chapter 6. NRW, Conwy County Borough Council (CCBC), and Denbighshire County Council (DCC) each confirmed that they were satisfied with the methodology applied by the Applicant and the results of the assessments [REP1-042].
- 6.3.11 NRW, in their response to the Panel's SWQs [REP6-007], issued subsequent to the ISH on 30 September 2015, reiterated that they were satisfied that the proposed development was not likely to have significant effects on the Dyfi Estuary SPA and overwintering GWfG. They referred to the distance of the SPA from the application site; the consequent considerably high altitude at which the birds would be flying; the lack of evidence of birds from any GWfG population, not only the Dyfi Estuary SPA, roosting in the area around the application site; insufficient evidence to demonstrate which route birds from the

Dyfi Estuary SPA would use for migration (also bearing in mind that energy optimisation would favour the straightest route possible, which from Greenland or Iceland would not pass over the proposed development); and the low likelihood of collision risk. As a result, NRW did not consider that an additional requirement (in the DCO) to fit diverters on the overhead line in order to make it more visible to birds was necessary. No other IPs, during the Examination, disputed the Applicant's conclusion of no likely significant effects on any of the European sites identified and their qualifying features.

- 6.3.12 A signed Statement of Common Ground (SoCG) between the Applicant and NRW [REP11-015] was submitted in January 2016 for deadline 11. Part 3.4 records that the conclusions in the NSER are agreed between the two parties in relation to the significance of effects, and specifically that the proposed development is unlikely to have any significant effects on the Dyfi Estuary SPA GWfG, and that there are no outstanding issues to be addressed.
- 6.3.13 A SoCG between the Applicant and the Welsh Government [REP11-008], signed by the Welsh Government on 27 January 2016, was submitted on 28 January 2016 for deadline 11. Part 4.5 records that with regard to the NSER, the Applicant and the Welsh Government agreed the baseline, the approach to the assessment methodology, the conclusions in relation to significance, and that there were no outstanding issues to be addressed. However it cross-referred to paragraph 6.15 of the Welsh Government's response [REP1-098] to the Panel's FWQs [PD-010], in which the Energy Wales Unit of the Department for Economy, Science and Transport of the Welsh Government stated that they had concerns about GWfG. A letter to the Applicant dated 28 January 2016, also from the Energy Wales Unit of the Department for Economy, Science and Transport of the Welsh Government, is contained at Appendix A of the SoCG and refers to a draft version of the SoCG. It repeated the statements made in the Welsh Government's response to the Panel's FWQs, and also noted that the Government is now funding tracking work to help clarify some of the uncertainties around the flight patterns of GWfG.
- 6.3.14 The Energy, Water and Flood Division of the Department for Natural Resources of the Welsh Government also submitted for deadline 11 a letter, dated 27 January 2016, containing comments on the RIES [REP11-023]. It stated that it was provided in order to make completely clear the views of the Welsh Government on the potential impacts of the proposed development on the GWfG. It confirmed that the Government are funding research to monitor GWfG movements, and clarified that, in light of that, the Welsh Government concurred with NRW that there are not likely to be any significant effects on any European site, including the Dyfi Estuary SPA, alone or in combination with other plans and projects. It also confirmed that the Welsh Government did not consider that a requirement to fit diverters on the overhead line to make it more visible to birds was necessary.

- 6.3.15 No other IPs submitted any representations to the Examination in relation to potential effects on any European sites.

#### **6.4 ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS RESULTING FROM THE PROPOSED DEVELOPMENT**

- 6.4.1 The Applicant's assessment contained in the NSER concluded that the proposed development would have no likely significant effects on the Elwy Valley Woods SAC or the Dyfi Estuary SPA and their qualifying features, or any of the other European sites and their qualifying features identified in the NSER, either alone or in-combination with other plans and projects. Consequently, they did not provide information to inform an appropriate assessment by the Secretary of State as the competent authority.
- 6.4.2 The Welsh Government provided limited information prior to and during the Examination in relation to their concern about potential effects of the proposed development on GWfG, a feature of the Dyfi Estuary SPA. They did not state at any time prior to and during the Examination that they consider that there is likely to be a significant effect on this feature. The signed SoCG between the Welsh Government and the Applicant [REP11-008], submitted for the final Examination deadline, indicated that all HRA matters were agreed, although both the record of agreement therein cross-referenced to the Welsh Government's response [REP1-098] to the Panel's FWQs, and the letter from the Welsh Government appended to the SoCG by the Applicant, expressed concerns about potential effects on GWfG. However, the last submission from the Welsh Government, which is from a different department, is a letter containing their comments on the RIES [REP11-023], also submitted for the final deadline, which confirmed that they concurred with NRW that there are not likely to be any significant effects on the Dyfi Estuary SPA and its features, alone or in combination with other plans and projects.
- 6.4.3 NRW stated at application stage and maintained throughout the Examination that they did not consider that the proposed development is likely to have a significant effect on any European site, either alone or in combination with other plans and projects. They made explicit reference in their submissions to the concerns of the Welsh Government about the GWfG, and confirmed their view that the proposed development is unlikely to have a significant effect on the Dyfi Estuary SPA and GWfG.
- 6.4.4 There is no evidence of any ecological connectivity between the European sites identified in the NSER and the application site and surrounding area. The winter bird and vantage point surveys undertaken by the Applicant did not find evidence of any birds associated with any of the European sites using or over-flying the application site.

## **6.5 CONCLUSION**

- 6.5.1 Having had regard to the findings set out above, the views of the statutory nature conservation body, the lack of connectivity between any European site and the application site, and the likely effects of the proposed development, the Panel is satisfied that there is sufficient evidence to allow the Secretary of State to conclude that the proposed development is unlikely to have significant effects on any European site or their features, either alone or in combination with other plans and projects. The Panel is also satisfied that the proposed option B changes to the proposed development submitted during the Examination by the Applicant do not result in any changes to their conclusions on the potential effects of the proposed development on European sites and their features. Accordingly, in accordance with the National Policy Statement (NPS), the Panel is content that such information has been provided, as is reasonably required, for the Secretary of State to determine that an appropriate assessment is not required.
- 6.5.2 The Panel is satisfied that the Applicant's HRA NSER and matrices [APP-089], and subsequent documents that updated the NSER (as identified in the RIES [PD-021]), suitably identified European sites to be considered in the HRA, and that the resulting conclusions are appropriate. In view of the Applicant's SoCG with NRW and their continued assurances that, in their view, there would be no significant effect upon any European site or feature, the Panel is satisfied that there is no need for any mitigation in respect of any European site, GWfG or any other features of European sites. The Panel concludes that there are no HRA matters which would prevent the Secretary of State from making the DCO.

## **7 THE PANEL'S CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT**

### **7.1 INTRODUCTION**

- 7.1.1 The main issues in relation to this proposed development were discussed in Section 4.1 of this report. They include issues which were identified in the Panel's initial assessment of principal issues; those which were raised at the Preliminary Meeting (PM), Open Floor Hearings (OFHs) and in written and oral representations, as well as all matters raised in the two Local Impact Reports (LIRs).
- 7.1.2 All of these issues have been explored and considered during the course of the Examination and reported upon in Chapters 4, 5 and 6. Matters in relation to the compulsory acquisition (CA) of rights and imposition of restrictions will be discussed and reported upon in Chapter 8 and the drafting of the development consent order in Chapter 9.
- 7.1.3 In Chapter 2 of this report, the Panel draws attention to the proposed change to the application, which introduced option B, which was submitted by the Applicant on 16 September 2015 and accepted by the Panel in its procedural decision on the 2 October 2015 [PD-013 and PD-014]. The Panel considers these options in Chapter 5 and concludes that option B is preferred, and the Panel's recommended draft development consent order (DCO) in Appendix E is based on the Applicant's final draft DCO for option B [REP11-020].

### **7.2 NATIONAL POLICY STATEMENTS**

- 7.2.1 EN-1, paragraph 3.7.10, states that there is an urgent need for new electricity transmission and distribution infrastructure to be provided. However, it acknowledges that in most cases there will be more than one technological approach by which it is possible to make such a connection or reinforce the network. The advice given is that the costs and benefits of these alternatives should be properly considered as set out in EN-5 before any overhead line proposal is consented.
- 7.2.2 The Panel consider that the Applicant has satisfactorily demonstrated that there is a need for the proposed development to provide a connection for the life of the wind farms, and that having considered a number of alternatives the proposed 132kV overhead line would present the most appropriate connection. As a result the proposal would comply with the requirements of EN-1 and EN-5.

### **7.3 THE NEED FOR THE PROPOSED DEVELOPMENT AND THE CONSIDERATION OF ALTERNATIVES**

- 7.3.1 In Section 4.2 the Panel considers the Applicant's need case and concludes that it is compelling. The proposed development would contribute to meeting the need for new electricity transmission infrastructure identified in EN-1 and therefore in principle the Panel is

satisfied that the need for the development has been adequately demonstrated.

7.3.2 Chapter 4 of this report considered alternative connection solutions such as undergrounding or a single pole system (Section 4.5). The Panel considers the costs and benefits of these alternative solutions have been fully examined. Having heard all the evidence the Panel accepts that the Applicant would not at present be able to deliver a connection through a single pole system and that the benefits of undergrounding the connection would not be clearly outweighed by the extra costs involved.

7.3.3 Therefore the Panel conclude that there is a clearly demonstrated need for the proposed development to connect the wind farms to the electricity network and that there are no policy or legal requirements that would lead the Panel to recommend that consent be refused for the proposed development in favour of another technological alternative.

#### **7.4 THE IMPACTS OF THE PROPOSED DEVELOPMENT**

7.4.1 Chapter 5 of this report provides a detailed analysis of the potential impacts of the proposed development. This section provides a conclusion on the key impacts considered in Chapter 5.

##### **BIODIVERSITY, ECOLOGY AND GEOLOGICAL CONSERVATION**

7.4.2 The Panel is satisfied that the Applicant has assessed and reported the effects on habitats and protected species in sufficient detail and that the development would not impact on any Sites of Special Scientific Interest (SSSIs) or internationally designated sites. The ecological mitigation that would be needed would be delivered through the Construction Environmental Management Plan (CEMP) and the environmental management plans which would be secured through a requirement.

7.4.3 The Panel concludes that there would be no adverse impacts on any geological conservation sites.

7.4.4 The proposed development would result in the loss of both trees and hedgerows including 1.1ha of ancient woodland and 0.5ha of other deciduous woodland in Local Wildlife Sites and 12m of important hedgerows, which the Panel acknowledges would result in significant harm. However, the Panel is satisfied that suitable measures in terms of replacement tree and hedgerow planting are included in the proposed mitigation measures and that the need for the Nationally Significant Infrastructure Project (NSIP) is sufficient to justify the loss of the small but significant areas of ancient woodland and Local Wildlife Sites.

7.4.5 The Panel has had regard to the policies set out in Planning Policy Wales (Edition 8, January 2016) (PPW 8) and the Welsh Government Technical Advice Note 5, Nature Conservation and Planning (TAN 5) as

well as the policy within EN-1 and EN-5 in its consideration of the biodiversity, ecology and geological conservation and concludes that there are no reasons relating to biodiversity effects from the proposed development that would prevent the recommended DCO from being made provided the mitigation that is proposed is delivered and the proposed environmental monitoring surveys are undertaken.

## **LANDSCAPE AND VISUAL**

- 7.4.6 The landscape and visual impacts of the proposed development were a key concern for both the Panel and others involved in the Examination and having heard all of the evidence the Panel accept the Applicant's conclusions that no landscape or visual receptors would experience a major impact from the development. The Panel is satisfied with how the Applicant applied the Holford Rules and that the consideration of alternatives was proportionate and met the tests set out in EN-5 and takes into account biodiversity and landscape considerations in accordance with PPW 8.
- 7.4.7 Furthermore, the Panel acknowledge that the proposed mitigation and enhancement planting would assist in softening and reducing the effects of the proposed development for the latter part of the life of the development.

## **GOOD DESIGN**

- 7.4.8 The Panel recognises that overhead lines, by their very nature, will have an impact. However, having examined and further tested the evidence submitted by the Applicant with regard to the proposed use of a double wooden pole design the Panel accepts, having regard to all other matters, that this would be the most appropriate form of connection in this location. Consequently it would comply with the aims of good design set out in EN-1 and EN-5, PPW 8 and TAN 12 (Design).

## **HISTORIC ENVIRONMENT**

- 7.4.9 The Panel is satisfied that the harm that would arise as a result of the proposed development has been considered against EN-1 policy which is consistent with the aims of PPW 8 and the Welsh Office circular 61/96 Planning and the Historic Environment: Historic Buildings and Conservation Areas (1996). The Panel conclude that the proposed development would not cause substantial harm or loss to either the listed buildings (in particular Berain and Plas Newydd), their setting, or Eriviat Hall parkland.
- 7.4.10 With regard to potentially undiscovered assets, the Panel is satisfied that these would be adequately protected through the proposed archaeological mitigation in Requirement 12 of its recommended draft DCO in Appendix E.



## **LAND USE AND LAND MANAGEMENT**

- 7.4.11 The Panel accepts the importance of conserving Best and Most Versatile (BMV) land. However the BMV land affected by the proposed development would only amount to approximately 2.5 hectares and the loss would not be permanent as Requirements 17 and 19 of the recommended DCO (Appendix E) would lead to the restoration of the order land. Therefore whilst the Panel accept that this loss would be contrary to Welsh policy in PPW 8, as the route of the development would be restored when development is decommissioned, it would not be a permanent loss and the need for the development is considered sufficient to outweigh the PPW 8 policy constraint.
- 7.4.12 The Panel acknowledges that the proposed development would lead to the need for landowners and tenant farmers to modify existing farming practices. However, as mitigation the Applicant proposes to appoint an Agricultural Liaison Officer to assist in minimising the impacts on the farming community, and the constraints on farming systems and practices would be limited to 30 years.
- 7.4.13 Finally, option B was developed to address, where possible, agricultural concerns. Whilst not all these concerns could be accommodated, for land use and land management matters the Panel consider that option B is preferable to option A, as it would include mitigation to reduce impacts on farming operations.

## **SOCIO ECONOMIC**

- 7.4.14 The main socio economic impacts would be experienced during construction and decommissioning with the tourism business at Eriviat Hall experiencing a significant impact. However, the Panel consider that the impact on this provider would be short term and could be mitigated through negotiation on timings of the proposed works to avoid key business periods. The Panel found that there was no evidence that any other tourism business would suffer significant harm as a result of the proposed development and that the need for the development outweighed the impact on Eriviat Hall.

## **CONSTRUCTION IMPACTS**

- 7.4.15 The Panel acknowledges that the impacts from construction including traffic and transport; air quality; noise from traffic and construction and waste management have the potential to impact adversely on the living conditions of residents within the area.
- 7.4.16 The outline CEMP [REP9-030] demonstrates that the impacts from these activities could be comprehensively mitigated in particular through the restriction on working hours; appropriate controls of hours and routes for deliveries; rigorous pre and post commencement highway condition surveys and appropriate pollution control measures. The CEMP would be secured by means of Requirement 13 of the recommended DCO (Appendix E) which would ensure that the measures proposed and any other considered necessary by the

discharging authority would be applied during the construction process.

- 7.4.17 The Panel therefore concludes that the construction impacts have been satisfactorily addressed and that no additional mitigation would be required. As a result the Panel are satisfied that the proposal would be in accordance with the overarching NPS for energy (EN-1), the NPS for electricity networks infrastructure (EN-5), PPW 8, and the relevant TANs and local development plan policy.

### **SAFETY**

- 7.4.18 The Panel understands the concerns about safety in relation to farm operations and whilst it was aware that there are a considerable number of other overhead power lines and overhead infrastructure (including telephone poles and cables) along the proposed route it acknowledged that the proposed development could create potential hazards and risks to landowners and tenant farmers. However, the Panel accepts that the risks could be managed through training and risk assessment which would be delivered through the CEMP which would minimise the likelihood of accidents and incidents happening and any residual risk would be insufficient to refuse the application in favour of undergrounding.
- 7.4.19 The Panel is satisfied that safety matters that may arise during construction and decommissioning would be adequately managed through the CEMP and Decommissioning Environmental Management Plan (DEMP).

### **HEALTH**

- 7.4.20 Whilst the Panel understands the concerns that were raised regarding potential impacts from electric and magnetic fields (EMFs) upon the local community and farm animals, in view of the low levels of EMFs that are predicted to occur the Panel is satisfied that they would fall below the maximum levels given in the relevant code of practice and that the concerns about EMFs impacting on farm animals were unfounded.

## **7.5 HABITATS REGULATIONS ASSESSMENT**

- 7.5.1 The Panel considers that the Secretary of State can rely on the Applicant's Habitats Regulations Assessment No Significant Effects Report (HRA NSER) [APP-089] which included screening matrices, which confirms no likely significant effects on any of the European Sites and identified their identified qualifying features and that an appropriate assessment by the competent authority identified will not be required.
- 7.5.2 The Panel finds that, having regard to the Applicant's HRA NSER, Environmental Statement (ES) and subsequent information, representations from Natural Resources Wales (NRW) (the statutory nature conservation body in Wales) and the Welsh Government, as

well as the Statement of Common Ground (SoCG) between the Applicant and NRW, the lack of connectivity between any European site and the application site, and the likely effects of the proposed development, it is satisfied that there is sufficient evidence to allow the Secretary of State to conclude that the proposed development is unlikely to have significant effects on any European site, either alone or in combination with other plans and projects. The Panel is also satisfied that the proposed option B changes do not result in any changes to their conclusions on the potential effects on any European sites. The Panel is satisfied that there is no need for mitigation in relation to Greenland whitefronted geese (GWfG), or any other feature of the European sites considered. The Panel concludes that there are no HRA matters which would prevent the Secretary of State from making the DCO.

## **7.6 CONCLUSION AND DEVELOPMENT CONSENT**

- 7.6.1 The legal and policy context for the Examination of the application has already been set out in Chapters 3 and 4 of this report. This has provided a framework for the Panel's subsequent findings and conclusions.
- 7.6.2 These conclusions apply equally to both option A and option B, unless otherwise stated. However, the Panel has considered and concluded upon option A and option B in report Section 5.15 where it concludes that, for various reasons, option B is preferred over option A.
- 7.6.3 Having regard to the overarching national policy statement for energy (EN-1), paragraph 4.1.2, and the Panel's findings in relation to need and alternatives, it starts with a presumption in favour of granting consent for the Application. The Panel has considered and applied, the more specific and relevant policies set out in EN-1 and National Policy Statement for Electricity Networks Infrastructure (EN-5) in report Chapters 4 and 5. There are no other national policy statement policies that clearly indicate, that in the case of the proposed development, the DCO should not be made in favour of an alternative (underground or single wood pole) proposal.
- 7.6.4 The Panel has taken into consideration the potential benefits of the proposed development, primarily its contribution to meeting the needs for energy infrastructure to connect wind farms in north Wales to the electricity network.
- 7.6.5 The Panel has concluded upon the various potential adverse effects of the proposed development during construction, operation and decommissioning. It has given careful consideration to the impacts on residential properties, listed buildings, farming interests and other commercial interests along the proposed route. The Panel has weighed the potential adverse impacts that would arise from the proposed development against the benefits of the scheme.

- 7.6.6 The Panel has weighed in the balance, the potential harm to the setting of the listed buildings at Berain and the historic parkland at Eriviat Hall, the latter could be considered by Cadw for inclusion in the Welsh register of historic parks and gardens.
- 7.6.7 The Panel has also taken into account PPW 8 which has a policy presumption against the loss of any BMV land. The Panel accepts that the loss of 2.5ha of BMV land would be contrary to Welsh policy in PPW 8, but concludes that as the route of the development would be restored when the development would be decommissioned, it would not therefore be a permanent loss.
- 7.6.8 The Panel has considered alternative routes and alternative solutions (i.e. undergrounding and single poles) in report Section 4.5. Whilst other overground routes would have been technically possible, many crossed land with nationally important environmental designations. All other overhead line routes would have been significantly longer than the proposed development. The Panel concludes that the need for the development is sufficient to outweigh the PPW 8 policy constraint in relation to BMV land and considers that agricultural land classification has been given due weight within the Examination.
- 7.6.9 During the course of the Examination it was evident to the Panel that there were no issues raised in relation to persons who share a relevant protected characteristic and persons who do not.
- 7.6.10 Having regard to EN-1, paragraph 4.1.3, the Panel finds it necessary to weigh in the overall balance the adverse impacts of the development against its benefits. The Panel has assessed the potential adverse impacts, including any long term and cumulative impacts. It has taken into account the mitigation proposed, and in some instances, has proposed additional measures within the Panel's recommended draft DCO (Appendix E) to assist in minimising identified adverse impacts that would arise from the development.
- 7.6.11 These are the conclusions that the Panel has reached for option B. It has identified in report Section 5.15 that on many issues there is no difference in impacts on nearby receptors between option A and option B. However, having regard to the effect of option A on the farming community and a residential receptor, the Panel concludes that there are strong reasons for concluding that option B is preferred over option A. In the event that the Secretary of State disagrees with this view, and concludes that option A should be preferred, then the additional impacts of the proposed development upon the farming community and residential receptors would need to be weighed in the overall balance. Although the Panel has expressed its preference for option B, it does not consider that additional impacts associated with option A would be sufficient to alter the overall balance of the case.
- 7.6.12 The Panel concludes, that for the reasons set out, and incorporating the changes proposed, that development consent should be granted, as set out in the Panel's recommended draft DCO in Appendix E.

## **8 COMPULSORY ACQUISITION AND RELATED MATTERS**

### **8.1 INTRODUCTION**

- 8.1.1 The application draft Development Consent Order (DCO), submitted on 20 March 2015 [APP-076] and all subsequent versions submitted by the Applicant included provisions intended to authorise compulsory acquisition (CA) of new rights and the imposition of restrictions over the Order land. This chapter of the report discusses whether the evidence before the Examination justifies the grant of CA for the new rights and the imposition of restrictions sought, having regard to statutory and other requirements, and the representations made by Affected Persons (APs).

### **8.2 STATUTORY AND OTHER REQUIREMENTS FOR COMPULSORY ACQUISITION**

- 8.2.1 Compulsory acquisition powers can only be granted if the conditions set out in sections 122 and 123 of the Planning Act 2008 (as amended) (PA2008) are met.
- 8.2.2 Section 122(2) states 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 or is replacement land which is to be given in exchange for the Order land under section 131 or 132 PA2008. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate.<sup>10</sup>
- 8.2.3 Section 122(3) requires that there must be a compelling case in the public interest, which means that the public benefit derived from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, compulsory acquisition must be justified in its own right. But this does not mean that the compulsory acquisition proposal can be considered in isolation from the wider consideration of the merits of the project. There must be a need for the project to be carried out and there must be consistency and coherency in the decision-making process.
- 8.2.4 Section 123 requires that one of three conditions is met by the proposal<sup>11</sup>. The Panel is satisfied that the condition in section 123(2)

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<sup>10</sup> Guidance related to procedures for compulsory acquisition DCLG September 2013

<sup>11</sup> (1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that one of the conditions in subsections (2) to (4) is met.

(2) The condition is that the application for the order included a request for compulsory acquisition of the land to be authorised.

(3) The condition is that all persons with an interest in the land consent to the inclusion of the provision.

(4) The condition is that the prescribed procedure has been followed in relation to the land.

is met because the application for the DCO included a request for CA of the land to be authorised.

8.2.5 Other more general requirements must also be satisfied. In summary these are:

- there must be a need for the project to be carried out;
- the applicant must have a clear idea of how it intends to use the land;
- all reasonable alternatives to CA must have been explored;
- the applicant must demonstrate that adequate funds are likely to be available to enable the CA within the statutory period following the Order being made and that the resource implications of a possible acquisition resulting from blight notice have been taken into account; and
- the decision maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficient to justify the inevitable interference with the human rights of those affected.

8.2.6 The Applicant's draft DCO sought CA powers to create and acquire new rights and impose restrictions across all of the land described in the Book of Reference (BoR) and shown on the Land Plans (excluding temporary possession powers and Crown interests in Crown land plots, shown on the Crown Land Plans where a lease from the Welsh Ministers would be obtained).

8.2.7 The DCO seeks to incorporate the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981, with some modifications.

8.2.8 Crown land is involved at various locations along the route of the development. The Crown agencies responsible for these land interests are:

- Natural Resources Wales (NRW) as land agents for the Welsh Ministers; and
- The Crown Estate Commissioners

Where Crown interests arise, the relevant plots are listed in Part 4 of the BoR.

8.2.9 In relation to statutory undertakers (SUs) interests in land, in addition to the consideration of sections 122 and 123 PA2008, and where applicable, the requirements of sections 127 and 138 PA2008 also have to be met. As the tests under these sections are different from those under sections 122 and 123 they are considered separately in this chapter.

8.2.10 The Statements of Reasons (SoR) explain that there is no Special Category Land affected by the proposed development [APP-078] and [OpB-004], and as such, Part 5 of the BoR is without items. This was confirmed by the Applicant at deadline 3 [REP3-035] when it confirmed that no land is categorised as Commons, Open Space Land

or National Trust Land. The Panel is also satisfied that there is no fuel or field garden allotment land identified within the BoR.

8.2.11 The Applicant's Funding Statement [APP-079, paragraph 2.5.7] states that it is, *"fully confident that land acquisition costs and potential compensation claims for blight can be fully met from either the four wind farm developers or from its own sources as and when they fall due"*. The situation regarding two of the wind farm developers withdrawing from the project and the effect this has upon the funding of CA liabilities is discussed below.

8.2.12 In response to the Panel's first written question (FWQ) FWQ11.8 [PD-010], the Applicant confirmed that no claims for statutory blight were expected, and as such it is not anticipated that a blight notice will be served by a party with a legal interest in the land affected by the development [REP1-056]. However, the Panel notes that some written representations (WRs) considered that blight would be an issue including those in relation to:

- Eriviat Hall [REP9-001];
- Hafod Olygfa [REP1-028];
- Hafod [RR-062]; and
- Gwaenynog Estate including Pandy [REP5-002].

### **8.3 APPLICATION DOCUMENTS RELATING TO COMPULSORY ACQUISITION**

8.3.1 The Order land included in the DCO is described in Section 6 of the option A and option B SoR [APP-078] and [OpB-004]. The BoR was submitted with the application documents [APP-080]. The Applicant also provided a Funding Statement [APP-079], Land Plans [APP-006 to APP-019], and Crown Land Plans [APP-048 and APP-049] as part of the application documents.

8.3.2 The BoR was updated several times during the examination including, for option A, at deadline 1 (BoR Parts 1-5 version 2) [REP1-060]. The BoR for both option A and option B were updated at deadline 6 [REP6-018] and [REP6-020] and at deadline 10 for option A [REP10-009] and for option B [REP10-021]. A tracker document for the BoR was provided for deadline 1 [REP1-078] and updated for deadline 6 [REP6-037]. At deadline 10 track changed editions of the BoR for option A [REP10-010] and for option B [REP10-022] were submitted.

8.3.3 The Crown Land Plans sheets 1-3 were updated initially in response to the section 55 PA2008 Acceptance of Applications checklist (provided by the Planning Inspectorate in April 2015 [PD-002]), in July 2015 [APP-172, APP-173, and APP-174]. The Applicant also provided a BoR and Land Plans tracker at deadline 1 [REP1-078]. The Land Plans were updated at deadline 3 [REP3-038] and [REP3-039] and again at deadline 6 for option A [REP6-032] and option B [REP6-033]. An addendum to the Funding Statement was submitted for deadline 7 [REP7-008].

- 8.3.4 The Applicant submitted option B documents into the Examination on 16 September 2015 and these were accepted into the Examination by the Panel on 2 October 2015 [PD-013]. The Panel also issued a letter to Interested Parties (IPs) notifying them of the decision [PD-012]. The option B documents included a SoR (4.1v2) - option B [OpB-004], a CA document - option B [OpB-002], a BoR schedule of changes for option B [OpB-005], a revised BoR parts 1-5 for option B [OpB-006], revised Land Plans for option B [OpB-016 and OpB-017] and a Crown Land Plan - key plan to sheet 3 for option B [OpB-015].
- 8.3.5 Option B did not affect any new landowners or tenants, when compared to option A, but some of the plots and the description of land differed to those in the option A BoR in the option B BoR [OpB-006], as the option B route was not identical to the option A route.

#### **8.4 WAS THERE A REQUEST FOR COMPULSORY ACQUISITION POWERS?**

- 8.4.1 The application form [APP-002] confirmed that CA powers were sought.
- 8.4.2 The request for CA powers in relation to the creation and acquisition of new rights and the imposition of restrictions was made in the application documents. The request for the creation and acquisition of new rights and the imposition of restrictions will be abbreviated to the "request for the CA of rights" in this report section. The DCO also includes provision for temporary possession, which itself may be an alternative to CA.
- 8.4.3 The land for which powers of CA of rights and/or imposition of restrictions are sought would be used for the construction, installation, operation and maintenance of the overhead double wood pole line. Article 19 of the Applicant's final draft DCO for option A [REP11-018] and for option B [REP11-020], would authorise the Applicant to create and acquire compulsorily the following rights and to impose the following restrictions:
- Class 1: rights for the installation, maintenance and use of the proposed development and the imposition of restrictions to protect the proposed development;
  - Class 2: rights to use land as a temporary laydown area, construction working area, access for construction and for landscaping measures and the imposition of restrictions to enable the unimpeded construction of the proposed development;
  - Class 3: rights for landscaping and the imposition of restrictions to protect the landscaping; and
  - Class 4: rights for tree felling.
- 8.4.4 The plots shaded brown on the Land Plans relate to access rights for the construction, operation, maintenance and decommissioning phase. These include Class 1c to i rights which would grant access rights for



each phase of the development. These rights are described in Table 4 of the SoR [APP-078] and [OpB-004].

- 8.4.5 The main component of the proposed development would be a new, approximately 17.4km 132,000volt (132kV) overhead line from the proposed north Wales wind farm collector substation near Clocaenog Forest and which terminates in a field to the south of Trebanog, Groesffordd Marli (which is located approximately 1.8km from St Asaph substation).
- 8.4.6 The Applicant stated that it is seeking powers of CA of rights or temporary possession over the land shown on the Land Plans. However, in the event that the Secretary of State prefers option B to the March 2015 application proposals for option A, then the Applicant would be seeking such powers over the land shown on the Land Plans for option B [OpB-004]. It explained that it is not seeking powers of CA over both sets of Land Plans, rather it would be over one or the other, depending on which was considered acceptable to the Secretary of State.
- 8.4.7 The Funding Statement for option A [APP-079], and the SoRs for both option A [APP-078] and option B [OpB-004] explained that the Order limits would also include the land from an un-named highway to the south of Trebanog, Groesffordd Marli to the terminal point of the 132kV overhead line, which is at the northern end of the Order limits. The Applicant's final draft DCOs for option A [REP11-018] and option B [REP11-020] included powers for the acquisition of the land rights needed to install (and keep installed), retain, use, inspect, maintain, renew, remove and relocate an underground cable in this land, in land plots 110 and 111. The DCO application did not include an application for the development consent for this underground cable as the Applicant considered that the underground cable and other works at St Asaph substation would be associated development, of a type not permitted in Wales under section 114(4) PA2008. Matters in relation to the request for the CA of rights over this northern section of the development where the cables would be undergrounded are discussed further below in report Section 8.13.
- 8.4.8 The land over which the Applicant had made a request for the CA of rights, is primarily agricultural land with some areas of hedgerows and woodland. There are also a number of rights of way that would be crossed.

## **8.5 THE ORDER LAND**

- 8.5.1 The land included within the Order limits is described in this chapter as the Order land. The Order land for option A covers 899,238m<sup>2</sup> and for option B covers 900,664m<sup>2</sup> (both options are therefore approximately 90ha)[OpB-003]. It is mostly privately owned agricultural land located entirely within Denbighshire County Council (DCC) and Conwy County Borough Council (CCBC) areas.

- 8.5.2 The Applicant sought CA powers in respect of all of the Order land. The Order land includes Crown land and statutory undertakers land, to which, special considerations apply. Crown land and statutory undertakers land are discussed and concluded upon in report Section 8.16 and Section 8.18 respectively. No land in the Order limits is categorised as Commons, Open Space Land or National Trust Land or fuel or field garden allotment land.

## **8.6 THE CASE FOR THE PROJECT TO BE CARRIED OUT**

- 8.6.1 The Panel has shown in the conclusion to the preceding sections of this report, that it has reached the view that development consent should be granted for the proposed development.
- 8.6.2 The question that the Panel addresses in the remainder of this chapter is the extent to which, in the light of the factors set out above, the case is made that the CA powers that are being sought are necessary to enable the Nationally Significant Infrastructure Project (NSIP) development to proceed.

## **8.7 HOW THE PANEL EXAMINED THE CASE FOR COMPULSORY ACQUISITION**

- 8.7.1 The Panel included questions concerning CA of rights over land in its FWQs [PD-010]. They included questions on matters regarding Crown land, unidentified APs in the BoR, alternatives to CA and progress on negotiations with affected landowners as well as a range of other matters. The majority of the questions on these matters were addressed to the Applicant.
- 8.7.2 The Applicant responded to the questions from the Panel on these matters at deadline 1 [REP1-056] with appendices to the answers in relation to CA matters at [REP1-074] to [REP1-079]. In response to the Panel's FWQ11.7, in relation to land with unknown owners, the Applicant provided a table identifying unknown land interests [REP1-077].
- 8.7.3 During the Examination, the Panel requested further details of the financial arrangements being proposed by the Applicant for the payment of compensation for the CA of rights over the Order land. A summary of these matters is set out below.
- 8.7.4 Three Compulsory Acquisition Hearings (CAHs) were held during the examination, on the 24 September 2015, 25 September 2015 and 9 December 2015. At the first two CAHs in September 2015, the Panel sought updates and further details from the Applicant in relation to:
- Crown land;
  - uses and rights sought in the DCO;
  - protective provisions in relation to statutory undertakers land and apparatus;
  - voluntary negotiation of easements and rights with APs outside the CA process;

- the funding statement including the securing of the funds required for the total contingent needed for the CA of rights sought;
  - land of unknown ownership;
  - temporary possession and permanent rights; and
  - Human Rights tests.
- 8.7.5 On both of these CAH days, APs and their agents gave oral evidence to the Panel when they were given the opportunity to object or raise concerns to the Panel about the CA of rights over their land.
- 8.7.6 Written summaries of cases made at the first two days of CAHs were received from the Applicant [REP 3-035], land agents (on behalf of APs), Mr Dafydd Jones [REP3-003] and Mr Eifion Bibby [REP3-009] and from APs including Mr Iwan Jones [REP3-010] and Mr John Mars Jones [REP3-016].
- 8.7.7 The Panel prepared a draft schedule of APs who were objecting to the CA of rights over land. This was published as an annex to the Panel's second written questions (SWQs) [PD-017]. The Applicant and APs were requested to provide comments on the content and accuracy of the draft table at deadline 6.
- 8.7.8 At the third CAH held on 9 December 2015, the Panel asked for updates on the following matters:
- agreement with the Highways Authority (HA) in relation to draft articles 10-16;
  - unknown land interests;
  - Crown land and the lease with NRW;
  - temporary works;
  - matters in relation to detail within the Panel's table of interested parties who are objecting to the CA of rights;
  - protective provisions; and
  - voluntary agreements with protected persons.
- 8.7.9 Following the third CAH, representations on CA matters were received at deadline 9 from the Applicant [REP9-024], Mr Eifion Bibby [REP9-003] and [REP9-004], Mr Simon P White [REP9-040] and Dwr Cymru Welsh Water (DCWW) [REP9-041].
- 8.7.10 The Panel has examined all of the submissions made by APs (and their agents), both in writing and orally at the CAHs, all relevant representations (RRs) and all written representations, and the responses of the Applicant, including all of the evidence which was produced and the discussions which have taken place at the CAHs.
- 8.8 IS THE LAND OVER WHICH RIGHTS ARE REQUESTED REQUIRED FOR THE DEVELOPMENT? DOES THE APPLICANT HAVE A CLEAR IDEA AS TO HOW IT WOULD BE USED?**
- 8.8.1 The SoRs for both option A [APP-078] and option B [OpB-004] include the following:

*"3.2.40 ...there is a total of 170MW of new generation contracted to connect to the SP Manweb distribution network for the North Wales Wind Farms Connection Project (within TAN 8 SSA A). The connections are to be made from 2017 onwards.*

*3.2.41 This level of generation cannot be connected locally and therefore the SP Manweb network must be extended to accommodate the connection. This would involve extending the existing 132kV network to the locality of the proposed generation."*

8.8.2 Report Sections 2.4 and 4.2 provide details of two of the four wind farm operators withdrawing from contracts with the Applicant to supply a connection for their wind farms. The funding of the connection, in relation to the two remaining wind farms is discussed below.

8.8.3 The SoR for both option A [APP-078] and option B [OpB-004] also states the following:

*"6.2.2 The Proposed Development includes the following principal elements, all of which are either the NSIP or form part of the NSIP:*

*(1) Construction of an approximately 17km 132kV overhead electricity distribution connection between Clocaenog Forest and the Terminal Point, located south of Glascoed Road, B5381, near to St Asaph, both in Denbighshire. The 132kV Overhead line would comprise conductors supported by double wood poles. The wood poles are generally no larger than 470mm in diameter, and will range between 11m and 16.6m in length. Taking into account that the nominal depth of the poles is 2.5m and the steel bracing and insulators add typically 2.3m to the length, the net result is that the actual conductor height above ground (at pole positions) is about 0.2m less than the pole length referred to. The average span between poles is 79m.*

*(2) A temporary construction compound at Broadleys Farm, A453, Denbighshire and temporary storage or 'laydown areas' along the alignment, without which the 132kV Overhead Line could not be constructed;*

*(3) Access points for pedestrians and vehicles along the length of the 132kV Overhead Line. These accesses are either just required for the duration of the construction period or are required for construction and, once the 132kV Overhead Line is operational, maintenance. Where the accesses are required for maintenance purposes, the accesses are created for the relevant maintenance period and then the land restored (in other words, the access works are temporary in nature and can be carried out and the land restored at any time during the operational life of the 132kV Overhead Line). Without these accesses, the 132kV Overhead Line could not be constructed or maintained;*

*(4) Landscaping and ecological measures to restore trees, hedgerows and other vegetation that have been removed during construction;*

*(5) Landscaping to mitigate any adverse effects of the maintenance and operation of the 132kV Overhead Line;*

*(6) Other integral works such as site preparation and clearance, earthworks, alteration of existing services, vegetation removal/planting and minor street works all required in order to construct and install, operate and maintain the 132kV Overhead Line.*

*6.2.3 The Order Limits for the Proposed Development contain a limit of deviation (LoD), within which the 132kV Overhead Line would be located. The LoD provides a degree of flexibility to ensure that any environmental constraints, technical constraints or landowner requests can be accommodated. The LoD varies between 20m in areas with good ground conditions to 40m in areas with poor ground conditions."*

- 8.8.4 The final versions of the BoR, for option A [REP10-009], and option B [REP10-021] included details of which sub-class of rights to be compulsorily acquired were required. For example, land plot 24C is described as, "Class 3a, b, c, d in 1127 square metres, or thereabouts, of agricultural land, hedgerow and woodland situated to the west of Tan y Garth, in the County of Denbighshire."

#### **Panel conclusion**

- 8.8.5 It is clear to the Panel that the rights over land that would be compulsorily acquired are required for the development to proceed. Temporary possession powers which are being sought by the Applicant are discussed further below. The Panel is aware that the Applicant has removed as much of the temporary works as was possible from the CA Article within the Applicant's final draft DCO for option A [REP11-018] and for option B [REP11-020], (Article 19) and in the BoR. Instead these are covered by Articles 28-29 in relation to the temporary use of land, in the Applicant's final draft DCO, which are renumbered Article 27-28 in the Panel's recommended draft DCO. This matter is discussed below.
- 8.8.6 In relation to all plots the Panel is satisfied that the land identified in the BoRs as being subject to the CA of rights and imposition of restrictions is required for the development, or required to facilitate, or is incidental to that development and the Applicant has given clear indications why the land is required. Land which is incidental to the development is considered and concluded upon in report Section 8.13.

#### **8.9 IS THE LAND TAKE NO MORE THAN IS REASONABLY REQUIRED?**

- 8.9.1 The SoRs [APP-078] and [OpB-004] (paragraph 8.2.3), stated that the Applicant would not exercise the CA power in respect of the creation and acquisition of rights and imposition of restrictions over the whole of the area shown coloured blue on the Land Plans (the 20m to 40m limits of deviation (LoD)), but would seek likely maximum easements of between 9.2 and 19m width, depending upon the type of pole and stays that would be needed. It explained that the LoD were reduced

as much as possible, but the Applicant needed to make allowances for some flexibility to make a lateral move if necessary due to ground conditions following the micro-siting process.

8.9.2 Some of the APs considered that the land take proposed was more than was reasonably required, in terms of the number of poles, pole locations and number and location of stays, including:

- Mrs Carol Ann Owen [RR-071];
- Mr Iwan Wynne Jones [RR-066];
- Mr David Gwynfryn Davies [RR-060];
- Mr Rheon Evans [RR-070];
- Mr Berwyn Maelor Roberts [RR-057];
- Mrs Jonette Lloyd Jones [RR-072]; and
- Mr Dewi Clwyd Jones [RR-058].

8.9.3 The Applicant addressed some of these concerns, where it was able to, through the option B proposals submitted to the Examination, these are discussed and concluded upon in report Section 8.12.

#### **Panel conclusion - land take**

8.9.4 The Panel has considered all submissions made by APs (and their agents), both in writing and orally at the CAHs, all relevant representations and all written representations, and the responses of the Applicant, including all of the evidence which was produced and the discussions which have taken place at the CAHs. It accepts that the Applicant had reduced the impact upon farming activities by adopting changes to the location of poles and stays, wherever possible in option B. The Panel concludes that the land required for the CA of rights is no more than is reasonably required to deliver the NSIP.

### **8.10 WERE ALL REASONABLE ALTERNATIVES TO COMPULSORY ACQUISITION EXPLORED?**

8.10.1 The DCLG Guidance<sup>12</sup> (paragraph 8) requires that:

*"The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored..."*

8.10.2 The Panel has considered this in terms of the selection of the site, the scale of the development proposed, the specific characteristics and scale of the development and then in relation to alternatives to the proposed acquisition of rights over land.

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<sup>12</sup> Guidance related to procedures for compulsory acquisition DCLG September 2013

## THE SITE SELECTED

- 8.10.3 The strategic options report [APP-156] outlined the system options which were considered and assessed in the pre-application project stages. It reviewed several connection options, at both 33kV and 132kV, to the existing network infrastructure. It concluded that the preferred option was for a 132kV circuit to be constructed from the Welsh Assembly Government Planning Technical Advice Note (TAN) 8 Strategic Search Area A (SSA A) northwards to the St Asaph substation. It explained that this option was selected as being technically capable of accommodating all of the contracted generation and had the shortest 132kV connection of all of the technically viable options that do not require any development at 400kV. Shorter options were preferred as they minimise impacts and costs, unless a longer alternative offered sufficiently reduced environmental impact compared with the shorter route. This report explained that, *"Overall the costs of a fully underground solution were unacceptable to SP Manweb and therefore this solution was not taken forward for the Proposed Development."*
- 8.10.4 In identifying and evaluating options, due regard was given to the key criteria of developing and maintaining an *"efficient, co-ordinated and economical system of electricity transmission"*, as well as the Applicant's duty under Schedule 9 of the Electricity Act 1989 [APP-156]. Other options were deemed to be technically viable but were not taken forward for further study due to additional costs and/or environmental concerns such as new infrastructure within nationally designated sites.
- 8.10.5 During pre-application consultations, the Applicant consulted on three broad route corridors for an overground connector between the TAN 8 SSA A and St Asaph [APP-094]. The chosen route for the application was a hybrid of two of the earlier consultation routes. The consultation option routes and the Panel's consideration of alternative solutions are described in further detail in Section 4.5 of this report.

## THE SPECIFIC CHARACTERISTICS OF THE SITE

- 8.10.6 Other factors which informed the choice of the preferred project design and route, as discussed in the strategic options report [APP-156] included:
- use of a double wood pole design, rather than pylons;
  - avoiding the Clwydian Range Area of Outstanding Natural Beauty (AONB);
  - avoiding Snowdonia National Park;
  - avoiding villages and settlements;
  - minimising the length of the connection; and
  - the recent establishment of a grid supply point (GSP) at Bodelyddan, which is adjacent to the Applicant's Bulk Supply Point (BSP) at St Asaph. Therefore any subsequent reinforcement of the 132kV network to accommodate the SSA A

wind farms would be likely to be minimal when compared to the other options that were considered.

### **THE SCALE OF THE PROPOSED DEVELOPMENT**

- 8.10.7 The iterative design process looked at various routes and options which would have had varying degrees of environmental effects on sensitive receptors and additional costs.
- 8.10.8 The Applicant is not seeking the acquisition of any land. Rather the acquisition and creation of rights and imposition of restrictions are being sought.
- 8.10.9 The Panel considers that the type of development proposed (a double wood pole overhead line), the route chosen and the area of land over which rights would be required are proportionate and reasonable and considers that all reasonable alternatives were explored.

### **ALTERNATIVES TO THE PROPOSED ACQUISITION OF RIGHTS OVER LAND**

- 8.10.10 The Applicant confirmed in the CAH held on the 9 December 2015 [EV-044], that progress was being made on negotiating voluntary agreements and heads of terms for easements outside the CA process. By deadline 9, the Applicant had agreed heads of terms with six landowners and terms with four agricultural tenants [REP9-024, paragraph 6.36]. The Applicant's deadline 11 spreadsheet (version 2) summarising negotiations to date, [REP11-014] showed some further progress:
- agreements in principle (subject to the granting of the DCO and compensatory matters) with seven APs;
  - heads of terms agreed (in principle), solicitors instructed with four APs;
  - heads of terms (in discussion) with 22 APs; and
  - in discussions with 36 further APs.
- 8.10.11 Despite progress being made on the negotiation of some of the voluntary agreements, in parallel with the negotiations, the Applicant sought to compulsorily acquire rights in land through the DCO. This was to ensure that in the event that agreements were not reached, the project could be delivered unimpeded without potential delay should the voluntary acquisition of land rights be ultimately unsuccessful. Incorporating CA powers in the DCO was also considered to be important [APP-078] and [OpB-004], in order to provide a fall-back position should the voluntary agreements fail. The Applicant considered that including all interests in the draft DCO would also allow all rights and restrictions to be obtained in the same way and through one process, potentially by General Vesting Declaration. This was considered by the Applicant to be an effective way of compulsorily acquiring rights and restrictions in land from multiple owners. It also avoided any risks of failure to disclose a relevant interest.



- 8.10.12 The Panel notes that paragraph 25 of the DCLG Guidance<sup>13</sup> confirms that for long linear schemes, such as the proposed development:

*"it may not always be practicable to acquire by agreement each plot of land. Where this is the case it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset."*

**PANEL CONCLUSION - WHETHER ALL REASONABLE ALTERNATIVES TO COMPULSORY ACQUISITION WERE EXPLORED**

- 8.10.13 Section 4.5 of this report considers alternative routes, designs and solutions for delivering the connection for the wind farms. Paragraph 4.3.1 of the overarching national policy statement for energy (EN-1) states that, *"From a policy perspective this NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option."*
- 8.10.14 It then goes on to describe the consideration of alternatives in the Environmental Statement (ES). It explains in paragraph 4.4.3 that the decision maker should be guided by various principles when deciding the weight to be given to alternatives, which include:
- the consideration of alternatives should be carried out in a proportionate manner;
  - whether there is a realistic prospect of the alternative delivering the same infrastructure capacity (including energy security and climate change benefits) in the same timescale as the proposed development; and
  - alternatives not among the main alternatives studied by the applicant (as reflected in the ES) should only be considered to the extent that the decision maker thinks they are both important and relevant to the decision.
- 8.10.15 The Panel is satisfied that alternatives to the proposed development and project design were explored as part of the project design and reported in the ES and later Examination documents. Whilst there would be other locations and technical solutions available to the Applicant for delivering the connection, other than option A, option B, or a hybrid of those two alternatives, other locations and/or technical solutions were not proposed by the Applicant and were therefore not before the Panel for consideration.
- 8.10.16 The Panel is also satisfied that the Applicant has progressed private negotiations with relevant landowners, tenant farmers and other APs, as far as possible during the Examination timescale, in order to secure voluntary agreements for easements across much of the route,

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<sup>13</sup> Guidance related to procedures for compulsory acquisition DCLG September 2013 (paragraph 25)

outside the CA process. However, CA powers would still be required in order to ensure the delivery of the development.

- 8.10.17 The Panel concludes that all reasonable alternatives to CA were explored in order to deliver the wind farms connection.

## **8.11 WILL AN ADEQUATE COMPENSATION FUND BE AVAILABLE?**

- 8.11.1 DCLG Guidance<sup>14</sup> requires applications to be accompanied by a statement explaining how it will be funded. This statement should provide as much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required. The timing and availability of funding is also likely to be a relevant factor. Regulation 3(2) of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 allows for five years within which any notice to treat must be served, beginning on the day that the Order granting development consent is made, though the Secretary of State does have the discretion to make a different provision in an order granting development consent.

### **THE FUNDING REQUIRED**

- 8.11.2 The Panel is satisfied that the sum of money proposed by the Applicant to cover all CA land liabilities for option A (£1.7m), has been reviewed and agreed by a competent independent advisor [REP6-023]. It was also confirmed (by the same independent advisor), that the same sum would be sufficient for option B or any hybrid scheme combining sections of option A and sections of option B [REP6-035 (response to SWQ0.4)] and [REP6-023].
- 8.11.3 The Panel asked IPs whether there was any evidence that the total sum identified by the Applicant to cover all CA liabilities for option A or option B (or a hybrid of the two options) was insufficient, on several occasions during the Examination, [PD-010 (FWQ11.15); PD-016 (SWQ0.4); EV-006; EV-031]. No evidence was submitted to the Examination which identified that the sum of money proposed by the Applicant to cover all CA liabilities was insufficient.
- 8.11.4 The Panel therefore considers that there is no evidence before it to indicate that the sum proposed is not sufficient or adequate for either option A or option B (or a hybrid of the two options).

### **THE SOURCE AND SECURING THE FUNDING**

- 8.11.5 The funding statement [APP-079] stated that, "*The Proposed Development is developer funded, which includes acquiring the necessary rights, and the terms of the funding for each developer is set out in their respective connection agreements.*"

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<sup>14</sup> Guidance related to procedures for compulsory acquisition DCLG September 2013 (paragraph 17)

- 8.11.6 It also stated, *"All funding required by SP Manweb from the four wind farm developers has been provided to SP Manweb so far. SP Manweb is satisfied that the remaining funding required to meet the estimated implementation costs will be made available by the four wind farm developers"*. It also gave details of the Applicant's parent company, the Iberdrola Group, one of the world's top five energy companies, a global company with distribution, generation, renewables and engineering operations in 40 countries worldwide. The Applicant company has a regulatory asset value of over £1.5bn and it stated that it was confident that the costs referred to in section 2.4 of the funding statement (in relation to land acquisition and capital costs) can be met from its own financial resources. The parent company, the Iberdrola Group has a total asset value of EUR92.4bn. The Applicant was fully confident that land acquisition costs and potential compensation claims for blight could be fully met from either the wind farm developers or from its own sources when it falls due.
- 8.11.7 In its written summary of oral case put at the CAHs in September [REP3-035], the Applicant explained how the proposed development would be funded. It stated (paragraph 10.2.2) that within the connection agreement, payment is provided by way of 'milestones'. It confirmed that it would not start the construction of the 132kV line until it was in receipt of the necessary milestone payment relating to construction. This payment would include the liabilities for CA. The Applicant was therefore confident that it could meet any acquisition costs and claims.
- 8.11.8 In November 2015, the Applicant submitted an addendum to its explanation on how the proposed development would be funded [REP7-008]. It confirmed that the NSIP would remain a fully customer funded project. At that time there were only two remaining wind farm developers that required a connection:
- RWE Innogy UK in respect of Clocaenog wind farm; and
  - Brenig Wind Ltd in respect of Brenig wind farm.
- 8.11.9 The Applicant's November 2015 funding statement addendum [REP7-008], explained that both of these developers had signed and accepted a connection offer for their respective wind farms. The main change that the contract termination from the two other wind farms would bring about, is that the costs would be shared between the wind farm developers for the Clocaenog and Brenig wind farms alone. The two remaining wind farm developers had issued letters to the Applicant confirming their commitment to the respective projects and maintaining the contractual payments in respect of the proposed development. Those letters were attached to the funding statement addendum [REP7-008]. The statement concluded that the termination notice for the Derwydd Bach wind farm would have no effect on the Applicant's ability to recover the costs through the connection agreements at a later stage.

- 8.11.10 The Applicant's final draft DCO Article 23 for both option A and option B [REP11-018] and [REP11-020], requires the Applicant to demonstrate to the Secretary of State that it has received sufficient funds in order to cover the liability of the undertaker to pay compensation in relation to the CA of rights, before it exercises the powers provided within Parts 3, 4, 5 and 6 of the DCO. These include powers to alter layout of streets, surveying and carrying out investigations on the land, the CA of rights and the felling or lopping of trees and the removal of hedgerows. Whilst this would mean that the Applicant could not impose the required rights over the land before it has demonstrated to the Secretary of State that the funds are available, the Panel considers that this Article should be modified to ensure that the Applicant also provides the required funding for the CA liabilities through a guarantee or bond (or similar mechanism) in order to give certainty to the APs that the CA liabilities would be secured and ring-fenced to fund the CA liabilities at the due time. The proposed wording for this amendment to Article 23 is provided in the Panel's recommended draft DCO in Appendix E, where it now appears renumbered as Article 22.

#### **PANEL CONCLUSION**

- 8.11.11 The Panel is satisfied that the Applicant has demonstrated that adequate funding is likely to be available from the remaining wind farm developers to enable the CA of rights over the land in the statutory period following the Order being made, for either option A or option B (or indeed if a hybrid solution was preferred). The Panel recommends that its proposed wording for Article 22 is used, to make provision for a guarantee (or other financial security mechanism) to secure the funding needed to pay compensation for the CA of rights and imposition of restrictions prior to the specified works commencing.

### **8.12 DOES THE CASE FOR COMPULSORY ACQUISITION IN THE PUBLIC INTEREST OUTWEIGH ANY PRIVATE LOSS?**

#### **THE PUBLIC BENEFIT**

- 8.12.1 The effect of section 122(1) and section 122(2)(a)(b) and (c) PA2008 is to provide that the land to be subject to CA must be required for or to facilitate or be incidental to the development to which the development consent relates, or is replacement land to be given in exchange for certain types of land to be acquired; effectively that the land needs to be acquired, or rights over, or under it, acquired or impediments upon it removed, in order that the development can be carried out.
- 8.12.2 In reaching its judgement on this matter, the Panel has examined various matters:
- the case which has been made for the grant of CA powers in respect of each and every plot included in the BoR;
  - the justification for including the plots in the SoR;

- the type and extent of interests sought;
- the stated use of the Order land and whether there are clear and necessary proposals in relation to each plot sought; and
- the potential effects and consequences of the acquisition of rights over the land plots.

8.12.3 In considering whether there is a compelling case in the public interest, the Panel considered a number of issues in balancing the public interest against the private loss that would occur. The pressing need for energy infrastructure is recognised in the overarching national policy statement for energy (EN-1). The scale and urgency of need for new electricity infrastructure is identified in paragraphs 3.7.4 to 3.7.10 of EN-1. It identifies that in most cases, there will be more than one technological approach by which it is possible to make such a connection or reinforce the network (for example by overhead line or underground cable), and the cost and benefits of these alternatives should be properly considered as set out in the national policy statement for electricity networks infrastructure (EN-5) before any overhead line proposal is consented.

8.12.4 EN-5 reiterates the need and urgency for new energy infrastructure to be consented and built with the objective of contributing to a secure, diverse and affordable energy supply and supporting the Government's policies on sustainable development in particular by mitigating and adapting to climate change. It explains that the new electricity generating infrastructure that the UK needs to move to a low carbon economy while maintaining security of supply will be heavily dependent on the availability of a fit for purpose and robust electricity network.

8.12.5 Section 4.5 of this report discusses and concludes on EN-5 policy requirements in relation to the consideration of alternatives to the overhead line. It considers that there are no policy or legal requirements that would lead it to conclude that consent be refused for the proposed development in favour of another alternative (partial or full undergrounding), to provide a connection for the life of the wind farms.

8.12.6 The Panel is satisfied that, subject to consideration of the position of APs, there would be a compelling case in the public interest for the development, in order to contribute to the objectives of national policy to facilitate the supply of renewable energy through the provision of electricity connection infrastructure.

### **PRIVATE LOSS - THE AFFECTED PERSONS**

8.12.7 The Applicant submitted a BoR with the application documents on 20 March 2015 [APP-080] which, in accordance with the Infrastructure Planning (Applications Prescribed Forms Procedure) Regulations 2009 (the APFP Regs), included details of persons with interests in the Order land (the Affected Persons (APs)). The Applicant's certificate of compliance under section 59 PA2008 [OD-005] confirmed that the APs

were those named in the attached BoR [OD-007]. The Applicant also submitted later editions of the BoR for both option A and option B. These are detailed in report Section 8.3.

- 8.12.8 All known APs were invited to attend the Preliminary Meeting (PM) by way of the Panel's Rule 6 letter [PD-004 and PD-005], as required by section 88 PA2008, and were given the opportunity to participate in the Examination by submitting written representations or asking to be heard at the CAHs. Whilst only a limited number of APs participated in the CAHs in person, agents acting for a substantial number of APs attended and participated in the various CAHs and representations and objections were received from a substantial number of the APs either directly or through their agents during the Examination.
- 8.12.9 To assist the Examination, the Panel prepared a list of IPs who were objecting to the CA of rights, and this was consulted upon with the Panel's SWQs, as Table 1 [PD-017]. Responses in relation to the accuracy of Table 1 were received from the Applicant and a land agent acting on behalf of approximately seventeen of the APs. The Panel updated Table 1 at the end of the Examination, taking into consideration all representations that were received on or by deadline 11. The updated Table 1 is attached as Appendix D to this report.

**IS THE ACQUISITION OF INTERESTS OF AFFECTED PERSONS WHO DID NOT PARTICIPATE IN THE EXAMINATION JUSTIFIED?**

- 8.12.10 In the absence of any representations from some of the APs, the Panel has no evidence of any private loss that would outweigh the proven public interest in carrying out the development. However, the Panel is aware that the tests in section 122(3) PA2008 apply to all land whether the APs participated in the Examination or not, and have considered those interests in their conclusions.

**Panel conclusion - Affected Persons who did not participate**

- 8.12.11 The Panel has considered the evidence in relation to the plots under the ownership of APs who did not participate in the Examination as well as other APs who have an interest in one or more of the plots that would be affected by the CA of rights. The Panel is satisfied that the CA powers that are requested in relation to these plots is justified.

**IS THE ACQUISITION OF INTERESTS OF AFFECTED PERSONS WHO DID NOT OBJECT OR WITHDREW THEIR OBJECTIONS TO THE COMPULSORY ACQUISITION OF RIGHTS OVER LAND DURING THE EXAMINATION JUSTIFIED?**

- 8.12.12 This section of the chapter considers APs who submitted a RR or WR to the Examination, but did not object to the CA of rights over land. It also considers APs who withdrew their objections during the Examination.

8.12.13 The following APs provided a RR or a WR to the Examination but did not specifically object to the CA of rights in relation to their land interests:

- The Welsh Government/NRW;
- The Crown Estate Commissioners;
- Denbighshire County Council (DCC);
- Conwy County Borough Council (CCBC);
- Dwr Cymru Welsh Water (Dwr Cymru Cyfyngedig) (DCWW);
- BT; and
- Mr David Tyrer and Mrs Gillian (Jill) Tyrer.

#### **The Welsh Government/ Natural Resources Wales**

8.12.14 Section 135(1) PA2008 provides protection for interests in Crown land held for the time being by or on behalf of the Crown. Further, the Welsh Government's land interests are protected under Article 21 of the Applicant's final draft DCO [REP11-018] and [REP11-020]. The Welsh Ministers are the appropriate Crown authority (under section 135(1) PA2008 in relation to Plots 1, 1A, 1B, 3 and 3A.

8.12.15 On the 28 August 2015, the Welsh Government confirmed that NRW is authorised to provide consent on behalf of the Welsh Ministers in the proposed development consent order of a provision or provisions authorising the CA interests in Crown Land. It also confirmed that the application for development consent includes land which is considered to be Crown land and the Welsh Ministers are the appropriate Crown Authority [REP1-098].

8.12.16 On 9 December 2015 [EV-041], NRW confirmed in a note, that section 135(1) PA2008 does not apply in this case as the development consent order, as drafted would not include any Crown land for which the Welsh Ministers are the appropriate Crown authority, in which there is a third party interest. It also explained that NRW provides its consent to the Applicant in respect of the development consent order for the North Wales Wind Farms Connection Project under section 135(2) PA2008. This consent is in respect of two options currently before the Examining Authority (ExA) known as option A and option B and indeed any hybrid scenario should the ExA wish to make a recommendation for a development consent that includes part of option A and part of option B.

8.12.17 This was superseded by a note from NRW for deadline 10 [REP10-004], which accepted the view of the Applicant at that time, that there were third party rights over Crown land for which the Welsh Ministers are the appropriate Crown authority, in plots 1,1A,1B, 3 and 3A and so it therefore gave consent under section 135(1) PA2008 for both options A and option B as well as any hybrid option, should the ExA be minded to recommend that the DCO contains parts of option A and parts of option B.

- 8.12.18 The Applicant, in its written summaries of oral evidence from the CAH of 9 December 2015 [REP9-024, paragraph 6.17] explained that the lease that is to be obtained from NRW (acting as land agent on behalf of the Welsh Ministers) is agreed in principle and the Applicant is in the process of agreeing the terms with NRW. The Applicant, at deadline 11 [REP11-013], explained that it was at that time, awaiting feedback from NRW on its heads of terms for the lease. The specific terms of the lease were confidential. There was nothing further received from either NRW or the Applicant regarding the finalisation of the lease.
- 8.12.19 The Panel is recommending, in its recommended draft DCO, at Article 18 (Compulsory Acquisition of Rights) (which was Article 19 in the Applicant's final draft DCOs for option A [REP11-018] and option B [REP11-020], a new paragraph at Article 18(6) to clarify that the DCO would not authorise the acquisition of rights over, or imposition of restrictions affecting an interest which is for the time being held by or on behalf of the Crown.

### **The Crown Estate**

- 8.12.20 The Crown Estate Commissioners are the appropriate Crown authority in respect of plots: 1, 1A, 1B, 2, 2A, 3, 3A, 4, 4A, 5, 5A, 6, 6A, 7, 7A, 8, 8A, 8B, 9, 9A, 9B, 10, 10A, 11, 11A, 12, 12A, 13, 13A, 13B, 14, 14A, 19, 19A, 19B, 19C, 21A and 21B for option A and for option B, as option A, together with additional land plot 5B [REP11-016].
- 8.12.21 The Crown Estate Commissioners wrote to the Applicant on 9 December 2015 confirming that they provide consent pursuant to section 135(1) and (2) PA2008 in respect of both option A and option B [REP9-020]. The approval provided in the letter was conditional upon the draft DCO remaining materially the same as that submitted to the Secretary of State on 18 November (DCO for option A (v.4) and DCO for option B (v.1)) and including the proposed article in respect of Crown Land, the wording for which was included in the letter.
- 8.12.22 The Panel is satisfied that the wording of the proposed article in respect of Crown Land was included as Article 21 (Crown Rights) in the final editions of the draft DCOs submitted at deadline 11, [REP11-018] and [REP11-020]. However, the wording of Article 21 on Crown Rights was not entirely the same as in the editions of the Applicant's draft DCO before the Panel issued its letter of consultation on the draft DCO [PD-022]. The Applicant had agreed with the Panel that the word, 'take' should be removed from Article 21(1)(a) in its final draft DCO for option A [REP11-018] and option B [REP11-020]. The Secretary of State may therefore wish to consult with the Crown Estate Commissioners that the wording in the Article on Crown Rights in Applicant's final draft DCO remains acceptable to the Crown Estate Commissioners.
- 8.12.23 On the 25 January 2016, Wardell Armstrong LLP wrote to the Applicant explaining that it had been appointed by the Crown Estate to



act on its behalf in respect of negotiations between The Crown Estate and the Applicant to acquire the necessary property interests required by the Applicant to construct and operate the proposed development [REP11-016].

- 8.12.24 Wardell Armstrong confirmed in their letter [REP11-016], that they had agreed Heads of Terms for an agreement between The Crown Estate and the Applicant whereby The Crown Estate will allow the Applicant, to the extent that the structures (poles) once installed, affect Her Majesty's minerals in any way, to install and retain those structures on the land for the lifetime of the development and will agree that Her Majesty's minerals lying beneath and adjacent to those structures will remain in their natural state and unworked for the lifetime of the development. The relevant agreement was, at that time, being drafted by the Applicant's solicitor.

### **Dwr Cymru Welsh Water**

- 8.12.25 Dwr Cymru Welsh Water (DCWW) is a statutory undertaker (SU) and its interests are covered by a Protective Provision in the draft DCO [REP11-018] and [REP11-020]. In its representation of 7 December 2015 [REP9-041], it stated that it withdraws all representations it has made to the Secretary of State and the ExA in respect of the Applicant's application for the construction, installation, operation and maintenance of a 132 kV overhead line between Clocaenog Forest and a terminal pole located south of Glascoed Road, B5381, near to St Asaph. Its letter stated that it had reached agreement with the Applicant on the protective provisions for its benefit. The agreed form of protective provisions was contained in Part 2 of Schedule 9 to the draft North Wales Wind Farm Connection Order (version 3, 16 October 2015, examination library reference [REP3-031]). DCWW confirmed that it would not be making any further representations objecting to the Order or to any provision of the Order in its current form. This is discussed further below.

### **Denbighshire County Council**

- 8.12.26 Denbighshire County Council (DCC) is one of two local authorities within whose boundaries the proposed development would be routed and also acts as Highways Authority. In the Statement of Common Ground (SoCG) between DCC and the Applicant [REP9-037] DCC agreed the wording of the operative provisions of the DCO (articles 1-39) save for matters referred to in paragraph 5 (which related to (1) the grade of agricultural land; (2) cumulative impacts of the proposed development; and (3) Requirements 5, 6, 7, 10, 11 and 13 where DCC had requested amendments to a number of requirements in relation to landscaping, replacement planting, construction hours, contaminated land and the CEMP).
- 8.12.27 DCC also confirmed agreement for the purposes of section 150 PA2008 to powers being contained within the DCO to allow for:

- (a) the temporary prohibition or restriction on streets under sections 14-15 of the Road Traffic Regulation Act 1984;
- (b) any traffic regulation order or order under section 32 of the Road Traffic Regulation Act 1984;
- (c) any removal of hedgerows required pursuant to the Hedgerows Regulations 1997; and
- (d) the disapplication of section 109 of the Water Resources Act, section 23 of the Land Drainage Act 1991 and any potential bylaws

which would otherwise require consent from DCC.

### **Conwy County Borough Council**

- 8.12.28 CCBC is the other local authority through which the proposed development would be routed and also acts as Highways Authority. In the SoCG between CCBC and the Applicant, [REP9-021], CCBC agreed the wording of the operative provisions of the DCO (Articles 1-39).
- 8.12.29 CCBC also confirmed agreement for the purposes of section 150 PA2008 to powers being contained within the DCO to allow for:
- (a) the temporary prohibition or restriction on streets under sections 14-15 of the Road Traffic Regulation Act 1984;
  - (b) any traffic regulation order or order under section 32 of the Road Traffic Regulation Act 1984;
  - (c) any removal of hedgerows required pursuant to the Hedgerow Regulations 1997; and
  - (d) the disapplication of section 109 of the Water Resources Act, section 23 of the Land Drainage Act 1991 and any potential bylaws,

which would otherwise require consent from CCBC.

### **British Telecommunications PLC**

- 8.12.30 On 17 November 2015 Open Reach (a British Telecommunications (BT) group business) wrote to the Applicant's legal advisors stating that they had reviewed the draft protective provisions, being the protective provisions, *"For the Protection of Operators of Electronic Communications Code Networks"* which are contained in the draft DCO (version 3 dated October 2015). BT confirmed that it was in agreement with the draft protective provisions referred to above [REP6-045].

### **Mr David E Tyrer and Mrs Gillian (Jill) Tyrer**

- 8.12.31 These APs have a tenancy interest in respect of Plots 15 and 15A. They did not specifically object to the CA of rights over their land. However their written representations [REP2-003] and [REP2-009], together with their response to the Panel's FWQ [REP1-017], identified concerns over the comparative costs of undergrounding, impacts on

landscape and visual impact from their property and identified that they farm rare sheep and assist other rare sheep farmers with advice.

**Panel conclusion - Affected Persons that did not object or withdrew their objection**

- 8.12.32 The Panel is satisfied that the CA of rights in relation to land in which APs have an interest in land, who did not object or withdrew their objections during the Examination, is proportionate and justified in order to ensure the delivery of the NSIP.
- 8.12.33 Turning to Crown land managed by NRW, the Panel acknowledges that, to deliver this NSIP, the Applicant would need the benefit of a lease from the Welsh Ministers. By the end of the Examination, the Panel had no evidence to suggest that the lease details had been agreed with NRW (acting as agent for the Welsh Ministers). The Secretary of State may wish the Welsh Ministers (or NRW and the Applicant) to provide evidence that the lease in favour of the Applicant in respect of Crown land is finalised prior to issuing the decision on the DCO.

**IS THE ACQUISITION OF INTERESTS OF AFFECTED PERSONS THAT MAINTAINED THEIR OBJECTIONS OR CONCERNS JUSTIFIED?**

- 8.12.34 Land plots and pole numbers are included in this section of the report, wherever possible. Where the AP is a landowner or tenant farmer, for clarity, the first line of their address is also given. Only a summary of each case is given here. The Panel has considered the full cases put forward by the APs and the Applicant, when concluding on these matters and has not relied solely upon the summaries provided here.
- 8.12.35 The Panel has examined the objections against the tests set out in section 122 and section 123 PA2008, having regard to the guidance and with regard to the provisions of the Human Rights Act 1998.
- 8.12.36 Many of the plots of land would be subject to both CA powers as well as powers of temporary possession under Articles 27 and 28 of the Panel's recommended draft DCO. This overlap occurs, for example where land is required for construction work but is also needed as part of the footprint of the development for the poles, tracks or mitigation planting.
- 8.12.37 Numerous APs who objected to the CA of rights or imposition of restrictions, stated that they wished the development to be placed underground, including:
- Mrs Carol Ann Owen [RR-071] and [REP5-006];
  - Mr Hugh Morris Parry [RR-064];
  - Mr Dafydd Richard Owen [[REP5-006];
  - Mr Iwan Wynne Jones [REP5-006] and [REP11-004];
  - Mr David Gwynfryn Davies [REP5-006];
  - Mr John Evan Davies [RR-067] [REP1-106] and [REP3-009];

- Mr Elwyn Rheon Davies [REP5-006];
- Mr Berwyn Maelor Roberts [REP5-006];
- Mrs Jonette Lloyd Jones [REP5-006];
- Mr Dewi Clwyd Jones [REP5-006];
- Mr Aled Alun Owen [REP5-006];
- Mr Arthur Elwy Morris Owen [REP5-006];
- Mrs Nerys Jones [RR-076] and [REP3-003];
- Mr Richard Glynne Jones [REP1-028] and [EV-012];
- Mr Iwan Thomas Jones [REP5-003];
- Mr Emyr Wynne Hughes [REP5-006];
- Mr Hefin Wynne Hughes [REP5-006];
- Emlyn and Nicola Davies [REP5-003];
- Mr Neville Hughes [REP5-003];
- Mr John Mars Jones [REP3-016] [REP3-021a] and [REP11-005];
- Mrs Helen Parry [REP9-003];
- Mr Huw Lloyd Evans [RR-092],[REP1-032] and [REP1-033];
- Mr Simon Peter White [REP9-040];
- Mr Robert Lloyd Thomas [RR-095]; and
- Mrs Janie Wynne Smith [REP5-002];

- 8.12.38 Mr John Mars Jones' representation at deadline 3 [REP3-021a] was a questionnaire signed by various APs who stated that they wished the development to be placed underground. This matter is not reported on an individual case basis below, but it is discussed in the conclusions of this report Section.
- 8.12.39 The following section considers objectors to CA in the order that they appear in the table of objectors to the CA of rights and imposition of restrictions attached to this report as Appendix D. Where an AP objected to the CA of rights on behalf of other family members, as well as themselves, for ease of reference, the name of the person who submitted the representation is normally used in this report. Where more than one family member has provided representations about the impacts of the development on the same land plots, the representations are grouped together.
- 8.12.40 Many of the issues raised by objectors have also been considered by the Panel when considering the planning issues arising in relation to consideration of the grant of the DCO. The Panel's conclusions in relation to all of the objectors to the CA of rights and imposition of restrictions are reported together at the end of this report section.
- 8.12.41 This chapter refers to representations from Mr Iwan Wynne Jones (Groesbach) and Mr Iwan Thomas Jones (Penygerddi). For clarity, their middle names will be used in this report section, in order to differentiate between the two Messrs Iwan Jones. For information, Mr Iwan Jones, who participated in the hearings and whose representations are reported upon in Chapter 5 and elsewhere in this report was Mr Iwan Wynne Jones.

### **Melin Wynt Hafodty Ddu Cyf.**

- Land Plots: 6, 6A
- Pole Numbers: 8, 9, 9b

- 8.12.42 Melin Wynt Hafodty Ddu Cyf. lease an area of land for the purpose of operating a wind turbine. It was considered that the proposed route may affect this leased area and may therefore affect the business now and possibly in the future [RR-052].
- 8.12.43 This objection was expanded in the company owner's (Mr Richard Glynne Jones of Hafod Olygfa, whose personal objections are reported below). Their WR [REP1-028] explained that the property over which the pylons would be located is prime wind turbine development land. Other developers had approached the owner of this land with a view of offering the land to lease for wind turbines. If the electricity pylons were to be erected then this would prevent the development of land for wind turbines. The owner of this company also attended the second CAH on 25 September 2015 and gave oral evidence which expanded on his concerns explaining that the draft lease he has been offered by these other developers has a restrictive covenant attached which prevents anything within 200m of the turbine location being greater than 5m in height [EV-012].
- 8.12.44 The Applicant [REP1-053] stated that with respect to this Affected Person's identified impact on future expansion plans, the Applicant was not aware of any submitted planning applications or permissions for this site. It had made enquiries and had checked the planning application registers but has no evidence that applications exist which relate to these plans. As part of the landowner discussions, the Applicant stated that it has enquired regarding these future expansion plans with the relevant parties but concrete plans and details have not been presented. At deadline 11 [REP11-013], the Applicant reported that it had had discussions with this objector and their agents in relation to potential for future development of another wind turbine on the leased area and stated that they would be able to safely construct and maintain the proposed development with the existing turbine in situ. Discussions in relation to the proposed additional wind turbine on the leased area were ongoing.

### **Mrs Carol Ann Owen (Croenllwm Farm)**

- Landplots: 83, 83A, 85, 85A, 85B, 85C
- Pole numbers: Poles 175-177

- 8.12.45 The objectors' relevant representation [RR-071] stated that the principal points of concern related to the electricity apparatus being proposed to be sited above ground rather than below ground. Moreover the current alignment and location of the apparatus above ground would impact on proposals for the erection of a new rural enterprise dwelling on owned land which is located, significantly, adjoining the existing farmstead (which is tenanted), being the long

term intention to support the prospects of the family farming business given the need for on farm labour for, amongst other reasons, livestock welfare requirements (eg calving of dairy cattle). Also the route would traverse productive agricultural land rather than along the roadside boundary of the affected land parcels and the number and frequency of poles and stays proposed is more than considered necessary and accordingly does not mitigate interruption to agricultural operations and enterprise.

- 8.12.46 In response to the option B proposals [REP5-006, page 16/23] the AP confirmed that first and foremost it is their preference for the proposed infrastructure to be sited underground. In the event of development consent being granted for the above-ground scheme, then the option B proposal is favoured over option A. The objection would remain subject to there being reasonable consensus of terms for voluntary agreement in respect of which discussions are ongoing (including confirmation that roadside tree planting would not take place).
- 8.12.47 The Applicant [REP1-053] stated it was not aware of any submitted planning applications or permissions for this site. It had made enquiries and had checked the planning application registers but no applications existed which relate to these plans. As part of the landowner discussions, the Applicant states that it has inquired regarding these future expansion plans with the relevant parties but concrete plans and details had not been presented.
- 8.12.48 However option B included changes to poles to accommodate Mrs Owen's concerns, so that the realignment in option B would be closer to the public road. The Applicant's Written Summary of Oral Evidence (CAH 9 December 2015) [REP9-024], explained that Mr Aled Alun Owen is joint owner with Mrs Owen. However [RR-071] only references Mrs C A Owen, so Mrs Owen is identified as the objector in this case. Mr A A Owen's farming interests are considered separately below.

**Mr Hugh Morris Parry (Plas Hafod)**

- Landplots: 104, 105, 105A, 105B, 105C, 105D, 106, 106A
- Pole numbers: 204 - 213

- 8.12.49 Mr Parry's RR [RR-064] stated that the principal points of concern related to the electricity apparatus being proposed to be sited above ground rather than below ground. The route traverses productive agricultural land rather than along the roadside boundary of the affected land parcels and the number and frequency of poles and stays proposed is more than considered necessary and accordingly does not mitigate interruption to agricultural operations and enterprise.
- 8.12.50 In his representation, [REP1-105] Mr Parry explained his request to reduce the impact of the development on Plas Hafod, which would mean that the route of the poles, including poles 212 and 213 were

moved as far as possible due east towards the field boundary. He also requested that no trees should be planted in the roadside boundary due to concerns regarding highway safety and future maintenance costs.

- 8.12.51 Mr Parry confirmed at deadline 6 [REP5-006, page 23/23] that option B was favoured over option A, but his objection would remain subject to there being reasonable consensus to terms for voluntary agreement.
- 8.12.52 The Applicant explained [REP6-035] that in relation to the option B proposals, the poles would be moved to the southeast away from Plas Hafod, and stated that, *"visually, this would be an improvement"*.

**Mr Dafydd Richard Owen (Tyddyn Bartley)**

- Plot numbers: 83A, 83B, 83C, 85D, 89, 91, 91A, 91B, 91C
- Pole numbers: 179 and 180

- 8.12.53 Mr Owen had asked for poles 179 (together with stays) to be re-located within the neighbouring wooded parcel to the east (in the direction of pole 178) to reduce the significance of impact on agricultural land (and interference with the roadside gateway to the land parcel). Also he requested that no trees should be planted on the roadside perimeters of the IPs property, including the south of Tyddyn Bartley driveway, due to highway safety concerns and the future costs of maintenance (albeit hedge plants within gapped areas along the boundary would be permitted) [REP3-009].
- 8.12.54 [REP5-006, page 12/23] states that in the event of a development consent order being granted for the proposed scheme to involve above-ground apparatus, option B would be an improvement over option A, albeit the desire remains for pole 179 and stays to be sited slightly due south east in the adjoining woodland glade (avoiding impacting on agricultural land). The objection would remain subject to there being a reasonable consensus to terms for voluntary agreement (including confirmation that there would be no roadside planting).
- 8.12.55 At deadline 6 [REP6-022] the Applicant explained that this AP's request for moving angle pole 179 had been partially accepted in option B. It was moved to the boundary of the adjacent property (east by 22m), but further relocations of this pole could not be accommodated due to technical constraints relating to the minimum allowable span between new pole position 179 and existing pole position 178.

**Mr Hywel Meirion Jones (Bryn Llyfanen)**

- Plot numbers: 58, 58A, 58B, 58C, 59, 59A, 59B, 59C, 60, 60A, 61, 61A, 61B, 61C, 62, 62A
- Pole Numbers: 124-132

- 8.12.56 Mr Hywel Jones' concerns were that the route would traverse productive agricultural land; the number and frequency of poles and stays being more than considered necessary and does not mitigate interruption to agricultural operations and enterprises [RR-069]. In the written representation [REP1-107] this Affected Person explained that he was seeking refinements to the proposed pole route so as to reduce the significant impact on the agricultural use of the land. He also requested that no trees are planted along the roadside (and within internal boundaries), due to concerns about highway safety and the liability of future maintenance costs. He later confirmed [REP5-006, page 13/23] that option B is favoured over option A, but he was disappointed that further requests could not be satisfied.
- 8.12.57 The Applicant explained that the AP had asked for various poles and stays on these plots to be moved. Three of the requests were rejected on technical grounds, due to the length of the span that would result or engineering constraints relating to the maximum angle of deviation allowable for the design of the 132kV overhead line at this location. The requests for moving pole 129 to the hedgerow and removing the stays on structure 127 were accepted in option B. There was a possibility that one of the requested changes (removing stays from structure 128) could be accommodated through a revised design that would remove pole 128 and reposition pole 129 onto the hedgerow. Whilst these changes were not shown in option B, they would be feasible within the proposed limit of deviation for either option A or option B [REP6-022].

**Mr David Elvet Jones (Ty Gwyn)**

- Plot numbers: 67, 67A, 68, 68A, 68B, 68C, 69, 69A
- Pole numbers: 142-146

- 8.12.58 Mr David Jones' RR [RR-059] stated that the route would traverse productive agricultural land; the number and frequency of poles and stays being more than considered necessary and does not mitigate interruption to agricultural operations and enterprises. His WR [REP3-009] expressed concerns regarding the impact on grade 3 agricultural land with the land being used for mixed livestock/forage cropping production. [REP5-006, page 15/23] explained that the objection would remain subject to there being reasonable consensus to terms for voluntary agreement.
- 8.12.59 The Applicant explained [REP6-022] that four requests were received for changes to pole configuration, in relation to Mr David Jones' land, three were for moving poles (143, 144, and 145) and the fourth was for removing pole 146. All requests were refused on technical grounds including low ground clearance issues and maximum allowable spans being exceeded.



**Mr Iwan Wynne Jones, Mr John Gwynfor Jones and Mrs Meinir Hedd Jones (Groesbach)**

- Plot numbers: 46, 46A, 49, 49A, 50, 50A
- Pole numbers: 109 and 110

- 8.12.60 Mr Iwan Wynne Jones' RR [RR-066] stated that the route would traverse productive agricultural land and the number and frequency of poles and stays were more than considered necessary and did not mitigate interruption to agricultural operations and enterprises. His WR [REP1-030] raised concerns regarding proposed tree planting in locations where there had been a number of accidents on the A543. His later WR [REP3-009] explained that the land is used for dairy production and the specific representations concerned the impact of potential roadside tree planting on highway safety and future maintenance liability. At deadline 5 [REP5-006 page 10/23] he confirmed the objection would remain subject there being reasonable consensus to terms for voluntary agreement.
- 8.12.61 At the first CAH, Mr Iwan Wynne Jones explained [EV-010] that that he is an organic dairy farmer with about 200 acres. He further explained that his family, as landowners, had struggled at times to pay for the land, having bought it some ten years ago. He raised concerns about long term liabilities that would arise from having poles and stays on his land, as at that time the Applicant was negotiating voluntary agreements that would have been 'in perpetuity'.
- 8.12.62 At deadline 9, Mr Jones stated that if the DCO is for 30 years, then the CA of rights would have to match that timescale [REP11-004].
- 8.12.63 The Applicant explained [REP6-022] that Mr Iwan Wynne Jones had requested that poles 109 and 110 were moved as near to the hedge as possible. The suggestion was rejected on technical grounds, due to the impact that this would have on the spans between poles 108 and 109 being less than 50m and the span between poles 109 and 110 exceeding the maximum span allowed in this location of 85m.

**Mr David Gwynfryn Davies (Prion Ucha)**

- Plot numbers: 11, 11A, 12, 12A
- Pole numbers: 24 and 25

- 8.12.64 Mr Davies' representation [RR-060], stated that the route traverses productive agricultural land and the number and frequency of poles and stays were more than considered necessary and did not mitigate interruption to agricultural operations and enterprises. At deadline 3 [REP3-009] he raised concerns in relation to the impacts upon land used for mixed livestock and the agricultural land classification based on historic map details from 1961. [REP5-006, page 1/23] explained that in the event of a development consent order being granted to involve above ground apparatus, option B is preferred over option A. The objection would remain however, subject to there being reasonable consensus to terms for voluntary agreement.

- 8.12.65 The Applicant explained that this AP had requested the relocation of pole 24 closer to the field boundary [REP9-038]. The change was within the Limit of Deviation and was accepted as part of the option A or option B design.

**Mr John Evan Davies (Tan y Garth)**

- Plot numbers: 24, 24A, 24B, 24C, 24D, 24E, 24F, 25, 25A, 26, 26A
- Pole numbers: 59-63

- 8.12.66 Mr Davies' RR [RR-067] raised concerns regarding the route traversing productive agricultural land and the number and frequency of stays and poles being more than is considered necessary and does not mitigate interruption to agricultural operations and enterprise. His written representations [REP1-106], [REP3-009] and [REP5-006 page 4/23] explained that in the event that it would not be feasible to underground the proposed scheme apparatus, pole 59 and its stays should be sited 8 metres away from the neighbouring field boundary, so it does not impact upon the existing field track, which is sited on a level plateau leading between adjoining field parcels. This would be very significant as the rest of the field is sloping and the existing track traverses in a strategic position. [REP5-006 page 4/23] also explained that in the event of the DCO being granted for above ground apparatus, option B is preferred over option A. The objection would remain however subject to there being reasonable consensus to terms for voluntary agreement.

- 8.12.67 The Applicant explained [REP9-038] that it had been able to adopt Mr Davies' proposal in relation to the relocation of pole 59 in order to maintain safe access to the field. This was included in the option B design. Negotiations at that time were ongoing and the Applicant stated that it believed that the details proposed in revised plans would assist Mr Davies in understanding the requirements of the DCO and may progress the voluntary agreements. The Applicant also stated that it would continue to liaise with the agent in respect of voluntary agreements.

**Mr Elwyn Rheon Evans (Ty'n y Ffrith)**

- Plot numbers: 16, 16A, 16B, 16C, 16D
- Pole numbers: 38-42

- 8.12.68 Mr Evans' RR [RR-070] raised concerns regarding the route traversing productive agricultural land and the number and frequency of stays and poles being more than is considered necessary and does not mitigate interruption to agricultural operations and enterprise. In his WR [REP3-009], he asked for pole 38 to be moved due south adjoining the field with pole 39 moved more centrally within the same field and an additional H pole being located on the next boundary due north, removing the need for stays to be attached to pole 40 (leaving poles 41 and 42 in the same position). In response to the option B

proposal he stated [REP5-006, page 2/23] that in the event that it is not feasible to underground the proposed scheme apparatus, option B is favoured over option A (on the interpretation that the requirements in the earlier representations regarding pole locations are satisfied). The objection would remain however subject to there being reasonable consensus to terms for voluntary agreement.

- 8.12.69 The Applicant explained [REP9-038] that within either option A or option B, SP Manweb would be able to incorporate the changes suggested by Mr Evans to reduce the impact on his normal agricultural practices. Pole 38 was moved south to the field boundary, pole 39 would be repositioned to a new central position in the field, a new H pole 38B would be required and this would be located next to the boundary removing the stays on pole 40.

**Mr Berwyn Maelor Roberts (The Old Farmhouse, Dyffryn Maelor)**

- Plot numbers: 18, 18A, 18B, 18C, 19, 19A, 19B, 19C, 20, 20A, 20B, 20C, 21, 21A
- Pole numbers: 46-50

- 8.12.70 Mr Roberts' RR [RR-057] raised concerns regarding the route traversing productive agricultural land and the number and frequency of stays and poles being more than is considered necessary and does not mitigate interruption to agricultural operations and enterprise. His written representation [REP3-009] raised concerns regarding the Applicant's agricultural land classification and the fact that his land is used for mixed livestock/cropping production. In response to option B, [REP5-006 page 3/23], he confirmed that it is preferred for the infrastructure to be sited underground. The objection would remain subject to there being reasonable consensus to terms for voluntary agreement. Also there is a need for clarity on the areas required permanently for proposed enhancement and planting.

- 8.12.71 The Applicant explained that changes within the option B design would not affect land owned by Mr Roberts [REP9-038].

**Mrs Jonette Lloyd Jones (Bodeiliog Isaf)**

- Plot numbers: 38, 38A, 39, 39A, 39B, 39C, 45, 45A, 45B, 45C, 46, 46A, 47, 47A, 52, 52A, 52B, 52C, 52D, 52E
- Pole numbers: 87-91, 108

- 8.12.72 Mrs Lloyd Jones' RR [RR-072] raised concerns regarding the route traversing productive agricultural land and the number and frequency of stays and poles being more than is considered necessary and not mitigating interruption to agricultural operations and enterprise. The WR [REP3-009] made specific representations that no trees or hedge vegetation should be planted along the roadside boundaries owing to concerns regarding the effects on highway safety (particularly given that the field gateway already poses significant difficulties for agricultural traffic entering onto a busy public road) and raised

concerns about the liability of future maintenance costs for the trees. There was concern that they would also reduce productivity owing to canopy shading of prime agricultural land which is used for mixed livestock/cropping production.

- 8.12.73 In response to the option B proposal, Mrs Lloyd Jones stated [REP5-006, page 8/23] that in the event that it is not feasible to underground the proposed scheme apparatus, the request for a slight adjustment to pole 108, so that it would be moved as close as possible to the A543 roadside perimeter boundary, was reconfirmed. The objection would remain however subject to there being reasonable consensus to terms for voluntary agreement. Also there was a need for clarity on the areas that are required permanently for proposed enhancement and tree planting.
- 8.12.74 The Applicant's deadline 9 written summaries of oral evidence (CAH 9 December 2015), Action Point 11 [REP9-024], provided a table clarifying information that was submitted to the Examination regarding the Panel's table of Objectors to the CA of rights. It explained that Mrs J L Jones provided the representations, but the property is owned jointly by Mrs J L Jones and Messrs DC and AL Jones. In [REP6-022], it explained that these APs had asked SP Manweb to move pole 108 north about 16m into the fenced strip of land. This was rejected on technical grounds, due to the minimum allowable span of 50m within the specification. The proposed position of pole 108 would create a 36m span.

**Mr Dewi Clwyd Jones (Bodeiliog Isaf)**

- Plot numbers: 38, 38A, 39, 39A, 39B, 39C, 45, 45A, 45B, 45C, 46, 46A, 47, 47A, 52, 52A, 52B, 52C, 52D, 52E
  - Pole numbers: 87-91, 108
- 8.12.75 Mr Dewi Clwyd Jones' [RR-058] principal points of concern were that the apparatus was proposed to be sited above (instead of below) ground and the route would traverse productive agricultural land rather than along the boundary of the affected field parcels. The number and frequency of stays and poles being more than is considered necessary and would not mitigate interruption to agricultural operations and enterprise.
- 8.12.76 [REP5-006 page 8/23] explained that the specific requests in the WR [REP3-009] were for poles 88 to be moved due east, 3 metres away from the hedge (in the direction of pole 87) and pole 90 to be relocated slightly due south to straddle the hedge line. In response to the option B proposal, they stated [REP5-006] that it was confirmed that option B proposal was favoured over option A. The objection would remain subject to there being reasonable consensus to terms for voluntary agreement. Also there was a need for clarity on the areas required for proposed enhancement and replacement planting.

- 8.12.77 The Applicant's deadline 9 written summaries of oral evidence (CAH 9 December 2015), Action Point 11, [REP9-024] provided a table clarifying information that was submitted to the Examination regarding the Panel's table of Objectors to the CA of rights. This explained that Mr Dewi Clwyd Jones' RR [RR-058] related to a separate interest, which is a sole tenancy appertaining to Mr D C Jones. The Applicant also explained in [REP6-022] that the requests to move poles 88 and 90 east were accepted in option B proposals.

**Mr Aled Alun Owen (Croenllwm Farm)**

- Plot numbers: 83, 83A, 85, 85A, 85B, 85C, 86, 86A, 86B, 86C, 87, 87A, 87B, 87C, 88, 88A, 88B, 89, 94, 94A, 94B, 94C, 94D, 94F, 98, 98A, 98B, 98C, 98D, 108, 108A, 108B, 108C, 109, 110
- Pole numbers: 175-177, 181-188, and 217-218

- 8.12.78 Mr Owen raised concerns about the route traversing productive agricultural land and the number and frequency of stays and poles being more than is considered necessary and would not mitigate interruption to agricultural operations and enterprise [RR-055]. In his written representation [REP5-006, pages 19-20], he identified the requests that had been made to modify the scheme in relation to reduce the significant impact on the agricultural use by moving poles 182 due north to the hedge, pole 184 to the next boundary line, pole and stays 185 due north closer to the next boundary line, pole 186 due north and 187 to be excluded.

- 8.12.79 Mr Owen's representation [REP5-006, page 19/23], explained that in the event that it is not feasible to underground the proposed scheme apparatus, option B is favoured over option A. The objection would remain however subject to there being reasonable consensus to terms for voluntary agreement. Also there is a need for clarity on the areas that are required permanently for proposed enhancement and tree planting.

- 8.12.80 The Applicant stated [REP9-038] that they have been able to adopt some of the changes suggested by Mr Owen and his agent in the option B design. It explained that Mr Owen is the tenant of this land, which is part of the Cefn Estate.

**Mr Arthur Elwy Morris Owen (Bodysgaw Isa)**

- Plot numbers: 94E, 99, 99A, 99B, 99C, 99D, 101, 101A, 101B, 101C, 101D, 101E, 108, 108A, 108B, 108C, 109, 110
- Pole numbers: 189-202 and 217-218

- 8.12.81 Mr Owen, in his RR [RR-056], raised concerns about the route traversing productive agricultural land and the number and frequency of stays and poles being more than is considered necessary and would not mitigate interruption to agricultural operations and enterprise. [REP1-103] and [REP3-009] identified the requests that were made to modify the scheme in relation to reducing the significant impact on the agricultural use of the silage/arable land. This included a request to

adjust the siting of poles 193 slightly due north to the hedge line and even more significantly poles and stays 196 due east outside the forageable land (as close as possible to the field boundary adjacent to the 'old quarry').

- 8.12.82 [REP5-006, page 21/23] explained that first and foremost it was preferred for the infrastructure to be sited underground. In the event that it is not feasible to underground the proposed scheme apparatus, the desire remains for pole 196 to be sited slightly due east outside the forageable land (as close as possible to the old quarry) so as to avoid impacting on productive agricultural land. The site adjustment proposed in respect of pole 218 and stays due west was considered favourable. The objection would remain however subject to there being reasonable consensus to terms for voluntary agreement. It was also explained that there was a need for clarity on the areas that are required permanently for proposed enhancement and tree planting.
- 8.12.83 The Applicant explained that Mr Owen is a tenant of part of the Cefn Estate. Feedback relating to the repositioning of poles 193 and 196 into alternative locations had been rejected as part of the option B assessment for technical engineering reasons [REP9-038].

**Mrs Nerys Jones (Tan'r Allt, also known as Tan Yr Allt)**

- Plot numbers: 21A, 21B, 22, 22A, 22B, 22C
  - Pole numbers: no poles, temporary use and landscaping only
- 8.12.84 Mrs Jones' representations [RR-076] and [REP3-003] explained that the property known as Tan'r Allt would suffer material detriment if the overhead line proposal goes ahead. She considered that the proposal would be contrary to EU law as it interferes with human rights of the occupant of Tan'r Allt. There would be an unacceptable impact on her right to quiet enjoyment of the property.
- 8.12.85 The Applicant explained [REP9-038] that Mrs Jones' land would be for temporary use and landscaping. However, the Applicant's response to the Panel's table of Objectors to the CA of rights, showed the land in which Mrs Jones has ownership interests to be the location of poles 51-57. The Panel notes that Mrs Jones' interest in the BoR for plots 21A and 21B is identified as a Category 1 interest<sup>15</sup> in respect of subsoil excluding mines and minerals. Her interest in plots 22, 22A, 22B, 22C is identified in the BoR as a Category 2 interest.
- 8.12.86 The Applicant stated that it met with Mrs Jones' agent in May 2015 who confirmed that she did not wish to enter into discussions with SP Manweb at this time and the Applicant stated that it would continue to

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<sup>15</sup> Category 1 and Category 2 interests are defined in section 57 PA2008. Generally Category 1 persons are owners, lessees or tenants and Category 2 persons have an interest in the land or have power to sell and convey the land or to release the land

respect her wishes. Tan'r Allt land would not be affected by the option B design.

**Mr Richard Glynne Jones (Hafod Olygfa)**

- Plot numbers: 2, 2A, 3, 3A, 4, 4A, 5, 5A, 6, 6A, 7, 7A, 8, 8A, 8B, 9, 9A, 9B, 10, 10A (for Plots 9 onwards Mr Jones is identified as a Category 2 owner in the BoR)
- Pole numbers: 7-23

8.12.87 Mr Jones' RR [RR-028] stated that he owns land over which approximately 1km of the overhead line would go. The line would impede on his farm business plans for the future development of wind turbines. His written representation [REP1-028] is partially reported above, in relation to the impact that the development would have upon his proposals for a future wind turbine in relation to his company, Melin Wynt Hafodty Ddu cyf. This representation explained that his property (Hafod Olygfa) is situated near the land. The erection of a number of electricity pylons would affect the property and its value and the view from the property would be blighted. Mr Jones advocated that the proposed erection of the pylons would be a breach of his human rights, namely article 1, 6 and 8. The electricity line could be placed underground, which Mr Jones would not oppose. There are also other routes which would not impact upon Mr Jones' property which are shorter routes. Mr Jones reiterated these concerns at the CAH of 25 September 2015 [EV-012].

8.12.88 The Applicant [REP9-038] explained that Richard Glynne Jones owns land on which poles 7-20 would be located. It stated that it had advised Mr Jones that his feedback on option A had been incorporated into its option B application.

**Mr Iwan Thomas Jones and Mrs Helen Margaret Jones (Penygerddi)**

- Plot numbers: 21, 21A, 22, 22A, 22B, 22C, 23, 23A
- Pole numbers: 51-58

8.12.89 Mr and Mrs Jones' representations identified that the physical impact upon the holding known as Penygerddi would be significant. They considered that there would be considerable disturbance to farming operations and material harm to the value of their farm land. The proposal was considered to be contrary to EU law as it would interfere with the human rights of the owner of Penygerddi. There would be an unacceptable impact on their right to quiet enjoyment of their property [RR-034] and [REP3-003].

8.12.90 Their representation [REP5-003], explained that they did not support option B. They oppose all overhead line options and are firmly of the view the entire length of the wind farms connection must be laid underground as called for by the local community.

- 8.12.91 The Applicant [REP9-038] explained that amendments to the overhead line design and pole positions made by Mr Jones and his agent had been incorporated into option B. Pole 57 was re-positioned so that it straddles the field boundary and had also been able to remove stays from pole 52. It was not able to reposition pole 51 to the boundary due to technical constraints associated with span lengths. Compensation offers were not considered to be adequate by the agent or his client at that time.

**Mr Emyr Wynne Hughes, Mrs Pamela Ann Hughes and Mr Euros Wynne Hughes (Gwaenynog Bach)**

- Plot numbers: 44, 44A, 44B, 44C, 44D, 44E, 46A, 51, 51A, 51B, 52, 52A, 52B, 52C, 52D, 52E, 54, 55, 55A
- Pole numbers: 103-107 and 111-112

- 8.12.92 Mr Emyr Wynne Hughes and his family had requested pole 112 to be moved due west adjoining the 5m wide field access track and that the existing field gateway was not to be obstructed by proposed poles 117 [RR-063] and WR [REP1-099]. They also requested that access rights along the driveway towards Eriviat Hall are not extinguished and suitable alternative access measures are provided during any period affected by the proposed scheme and no trees are planted along-side the A543 roadside boundary due to concerns about highway safety and future liabilities for maintenance costs. There was also a preference for no trees to be planted along the driveway to Eriviat Hall and on non-roadside boundaries.
- 8.12.93 [REP5-006 page 6/23] stated that option B was favoured over option A with regard to proposals for reduced planting. They were disappointed that pole 112 could not be relocated to reduce the impact on productive agricultural land. The objection would remain subject to there being reasonable consensus to terms for voluntary agreement. It was also explained that there is a need for clarity on the areas that are required permanently for proposed enhancement and tree planting and it is imperative that the right of way over Eriviat Hall drive is not suspended or extinguished (plots 51-52E in the BoR) and that temporary provisions are made in the event of any interference during the scheme works.
- 8.12.94 The Applicant [REP9-038] explained that the Hughes family did not consider the offer of compensation that it had made to be sufficient at that time. The APs requests for changes for pole locations in option A had not been able to be incorporated into option B.
- 8.12.95 In relation to the driveway towards Eriviat Hall, the Applicant stated [REP7-003] that it did not anticipate that it would need to extinguish or interfere with the access rights along the driveway due to the transient nature of the work being undertaken and the fact that the driveway would be used for access only. It explains that it would confine any interference with the access rights to the minimum area of Eriviat Hall land and for the minimum period of time as is reasonably



practicable. SPM is prepared to enter into a voluntary agreement subject to satisfactory terms being agreed with the landowner or part 3 interests (as applicable) in order to create a mechanism to provide alternative access, should this be necessary.

**Hefin Wynne Hughes (Troed y Foel)**

- Plot numbers: 52, 52A, 52B, 52C, 52D, 52E, 53, 53A, 56, 56A, 56B, 56C, 57, 57A, 57B, 57C
- Pole numbers: 113-123

8.12.96 Mr Hefin Hughes' RR [RR-065] and WR [REP1-100] explained that the route would traverse productive agricultural land rather than along the boundary of the affected parcels and the number and frequency of stays and poles being more than is considered necessary and not mitigating interruption to agricultural operations and enterprise. In order to reduce the potential impact on agricultural land (which consists of heavy clay and peat in parts), being prone to being particularly wet, especially in winter, the AP asked for pole 119 to be moved as far to the west of the adjacent field boundary fence as possible, as the location would dangerously impede on a narrow corridor available for farm vehicles. Requests were also made for realignments between poles 120-123 to reduce the number of stays required and that the existing field gateway would not be obstructed. It also explained that the access rights along the driveway in the direction of Eriviat Hall to Mr Hughes' agricultural land must not be extinguished and suitable temporary alternative access measures should be provided during any affected period. No trees were required to be planted either abutting the driveway leading to Eriviat Hall or on non-roadside boundaries, as they would reduce productivity owing to canopy shading of prime agricultural land.

8.12.97 [REP5-006, page 11/23] explained that in the event that a DCO is granted for the overhead line, option B was favoured over option A by Mr Hughes, particularly with the site adjustment regarding pole 119 to reduce the impact on the access corridor, the exclusion of stays from pole 123, albeit further reductions in the number of other pole stays would be preferred. The objection would remain however subject to there being reasonable consensus to terms for voluntary agreement. Also there was a need for clarity on the trees that would be felled, as there is concern that certain trees within the old parkland area of Eriviat Hall are of significant historical interest (particularly those forming part of what was known as the four sisters). It was also considered imperative that the right of way over Eriviat Hall drive is not suspended or extinguished (plots 51-52E in the BoR) and that temporary provisions must be available in the event of any interference during the scheme works.

8.12.98 Mr Hughes reiterated his concerns at the second Open Floor Hearing (OFH) [EV-047], when he explained that his family has farmed this land for 97 years. He explained that he comes to the land to enjoy its peace and tranquillity.

8.12.99 The Applicant [REP9-038] explained that SP Manweb had met with Mr Hughes to discuss works that would be carried out should the DCO be granted. These would include laying a new track over a short section of a sloped access track. Option B pole 119 was moved east and would no longer impede access. The re-positioning the stays of pole 117 which would interfere with the access would be considered as well as the re-positioning the gateway to a mutually convenient location. The stays from pole 121 had been removed to reduce the footprint of the pole on agricultural land. Other suggestions had not been adopted due to environmental reasons.

**Emlyn and Nicola Davies (Plas Captain)**

- Plot numbers: 31, 31A, 31B, 31C, 31D, 31E
- Pole numbers: 70-83

8.12.100 Mr and Mrs Davies' representations [RR-024] and [REP3-003] explained that the physical impact on Plas Captain would be significant. If implemented, there would be considerable disturbance to farming operations and material harm to Mr Davies' agricultural tenancy. [REP5-003] stated that they do not support option B. They oppose all overhead line options.

8.12.101 The Applicant explained [REP6-022], that Mr and Mrs Davies had requested poles 77, 80, 82 and 83 to be moved to be closer to hedges or field boundaries. Out of the four requested moves, the relocation of Pole 80 was accepted. The other three pole locations were rejected on environmental grounds (pole 77 relocation would place the pole on top of a public footpath), pole 82 relocation could not be accepted due to maximum span lengths. As pole 82 could not be moved, the suggested movement to pole 83 was also not feasible. [REP9-038] explained that the Applicant is seeking a voluntary consent from Mr Davies in the form of a tenanted wayleave and they would continue to liaise with Mr Davies in this regard.

**Mr Neville Hughes (Bodeiliog Ucha)**

- Plot numbers: 43, 43A
- Pole numbers: 96-102

8.12.102 Mr Hughes' representations [RR-078] and [REP3-003] explained that the physical impact on Bodeiliog Ucha would be significant. If implemented, there would be considerable disturbance to farming operations and material harm to Mr Hughes' agricultural tenancy. [REP5-003] stated that he does not support option B. He opposes all overhead line options.

8.12.103 The Applicant explained [REP9-038], that the suggestions put forward by Mr Hughes to reduce the effect on his agricultural practices were partially accepted in the option B design. Pole 99 was re-located to the hedge but it was not possible to re-position poles 101 or 97 due to the requirements on span lengths. It is waiting for further details from Mr Hughes in relation to drainage arrangements on his land, in

order to ensure that, where possible it could limit the impact of the construction works and any future reinstatement that may be required.

**Mr John Mars Jones, Ms Eleanor Iona Jones and Mr Richard Mars Jones (Berain Farm)**

- Plot numbers: 74, 74A, 74B, 75, 75A, 76, 76A, 77, 77A, 77B, 77C, 79, 79A, 80, 80A, 80B, 80C, 81, 81A, 82, 82A, 82B, 82C, 82D, 83, 83A, 84, 84A (Mr J M Jones is a tenant of land in plots 75, 75A, 76, 76A, 77, 77A, 77B, 77C, 79, 79A which includes poles 154-158)
- Pole numbers: 153-174

8.12.104 Mr John Mars Jones' RRs [RR-068] and written representation [REP1-036] explained that the proposed route would run directly across the farm at Berain. It would have detrimental impacts on the farm business and future expansion plans. It would have an impact on the value of the farm and the property. Over the years the farm has been developed into a high quality dairy, sheep and arable business. The family aims are to be a dynamic and expanding business and they have worked exceptionally hard over four generations to build up the business and it would be inequitable and unjust for this to be undone by a decision to erect the power line across the land, when a significantly less detrimental underground route is available. This would have an effect on all future farming activities and will cause restrictions on developments and devalue the land. It also considered the impacts on the Grade 2\* and Grade 2 listed buildings at Berain.

8.12.105 Mr John Mars Jones' representation at the CAH of 24 September 2015 [REP3-016] explained that he did not consider that all reasonable alternatives to CA have been considered sufficiently. He explained that his request for an alternative route had not been assessed appropriately along with the fact that the Applicant had dismissed undergrounding the cable at an early stage. He did not consider that the acquisition of land for landscaping purposes is necessary and has insignificant benefits. He also did not consider that the installation of the overhead line benefits the local area, the only benefit would be to the Applicant and private companies and investors. He considered that the seeking of CA of rights is inappropriate.

8.12.106 He also stated that he did not consider that discussions with the Applicant had been appropriate and a verbal rejection of his alternative route option was only provided on 8 September 2015. He also raised concerns regarding the consultation process in relation to Berain. The amount of compensation being offered was insignificant considering the detrimental effect of the development and the length of time that the route would be in place. It would create a loss of production land, give rise to risks to health and safety when considering the size and height of current farm machinery, it would disrupt efficient and effective working practices, disrupt land drainage, disrupt private water supplies, cause effects on Single Farm Payments,

cause effects on Glasdir Environmental Schemes, construction would impact on seasonal farm activities, ie loss of crops, impacts on lambing, impact on property and land depreciation, the land is versatile for arable, dairy, beef and sheep in general along with other crops, and when the line is decommissioned it would cause disruption equivalent to the initial installation.

8.12.107 The Applicant explained that Mr John Mars Jones had asked for pole 168 to be moved west, in order to move the section to the other side of the tree line [REP6-022]. The suggestion was refused on environmental grounds, as the western route suggested would be at a more elevated position and would run closer to Tyddyn Bartley and to the settlement at Cefn Berain. In addition, there is a change in the direction of the route as it passes a constrained section near Croen Llwm Mawr and Tyddyn Bartley. The suggested route would result in a greater change in direction and could necessitate the use of larger structures. It would move the route closer to ancient woodland. The increased level of impact in landscape terms would not be acceptable, and there would be no justification for the removal of additional ancient woodland.

8.12.108 The Applicant, in deadline 9 explained [REP9-038], that changes contained within option B do not affect land owned by Mr Mars Jones. He had made representations via the hearing process and was not prepared to negotiate with SPM until the DCO is confirmed.

**Mr Eric Gwyn Edwards and Mrs Annie Edwards (Cefn y Marial or Y Bwthyn)**

- Plot numbers: 14, 14A, 15, 17, 17A, 17B, 17C
- Pole numbers: 34-37 and 43-45

8.12.109 Mr Edwards, in his RR [RR-054], stated that there had been a significant lack of information and dialogue relating to key aspects, including access and precise location of the route corridor on our land. The property and land would suffer significant detriment if the overhead line goes ahead. Representatives from the Applicant company had trespassed on the land, causing great distress.

8.12.110 The Applicant explained in [REP6-022] that it had not been able to accept suggested changes to the overhead line design put forward by the agent and Mr and Mrs Edwards' daughter due to technical and environmental constraints. Compensation offers are considered inadequate. The Applicant would continue to seek voluntary agreements and is in negotiation with the agent in this regard.

**Mr Meilir Owain Jones (Gop Farm)**

- Plot numbers: 69, 69A, 70, 70A, 70B, 70C, 70D, 71, 71A, 72, 73, 73A
- Pole numbers: 147-152

- 8.12.111 The proposed development would be close to a bungalow that has planning permission [RR-050]. There would be health and safety issues as the land would not be able to be farmed as the pylons would be in the middle of the field. Mr Meilir Jones' WR [REP3-023] explained that obtaining planning permission was a lengthy and costly ordeal. He and his wife plan to live there in the near future. The proposed connection would have a detrimental effect on plans for his dream property and the lack of personal consultation by the Applicant had left him bitterly disappointed.
- 8.12.112 The Applicant stated [REP9-038] that it was not able to accommodate the landowner's feedback on option A in the option B proposals on environmental grounds. [REP6-022] explained that the re-positioning of poles 147-151 requested would be more visible from Hafod Farm and the repositioning would make the poles visible and skylined in nearby views from both the B road and neighbouring residential properties.

**Mr David Arwyn Roberts and Mrs Mari Roberts (Hafod)**

- Plot numbers: 70, 70A, 70B, 70C, 70D, 71, 71A, 72, 73, 73A, 74, 74A, 74B (tenant of 74, 74A, 74B)
  - Pole numbers: 147-153
- 8.12.113 Mr Roberts' RR [RR-014] explained that pylons would cause significant blight to property values, up to 20% where they can be seen from the residence. Hafod farmhouse was identified under the assessment of cumulative residential amenity affects as significantly affected by the proposal. Pylons take up valuable land and they would have an impact on farming decisions from season to season. They would restrict flexibility in terms of what can be done on the land. There were also issues with health and safety, specifically when livestock is grazing in fields containing pylons and when agricultural machinery are being used to conduct essential land maintenance work. [REP3-041] explained that Mr Roberts farms 150 acres and attempting to maintain past agricultural practices (including participating in the Tir Gofal agri-environment scheme, and currently participating in Glastir environmental scheme) focussing on rotational arable and pasture with different fields allocated for arable use every year) would be impossible when up to 4 double poled pylons including struts are in the field. Pole 147 would be a hazardous risk as to the north of the pole is an ascending hill which is significantly steep. If large machinery is used, travelling down the hill the double poles pylon would be a hazard especially in slippery conditions. At any point the tractor or other apparatuses could lose control and collide with the infrastructure.
- 8.12.114 The Applicant explained in [REP9-038] that Mr and Mrs Robert's preferred option would be for the development to go via Henllan, and they felt disappointed that their land was included. Changes contained within option B would not affect the land owned by Mr Roberts.

**Mrs Helen Morris Parry (College Farm Bungalow) and Mr Dewi Parry**

- Plot numbers: 27, 27A, 29, 29A, 29B, 29C, 30, 30A
- Pole numbers 64, 65, 68, 69

- 8.12.115 Mr Parry's RR [RR-018] raised concerns about a stream that passes through all but one field which is now the only source of water for all animals on the land. The proposed development would cross the stream at its furthest upstream point and a double pole structure with stays is planned to be installed within approximately 2m of the stream. The disruption and likely contamination of the water would be a very significant concern regarding the health and safety of the animals. The proximity of the pole to the stream is a concern for long term water quality. His written representation [REP1-022] explained that they had requested that the Applicant reposition a pylon to the left of the hedge (a movement of about 5m) in order to make valuable agricultural land available. The field to the left has a steep gradient and is not workable whereas the other field is flat and workable.
- 8.12.116 After the CAH on 8 December 2015, Mr Parry explained [REP9-002] that he felt that there appeared to be an error in the Applicant's description of pole positions. The uncertainty made it difficult for them to reach a preference in relation to option A or option B at that point.
- 8.12.117 However, Mrs Parry's land agent later confirmed [REP9-003] that in the event that above ground apparatus is granted permission, she preferred option B over option A.
- 8.12.118 The Applicant stated [REP9-038] that it had evaluated feedback from the agent and Mr Dewi Parry and has been partially able to adopt changes put forward by Mrs Parry in its option B design. The changes included the re-positioning of angle poles 64 and 69 which would improve matters from a general agricultural practices perspective. The Applicant had agreed to additional enhancement and replacement planting following discussions with the agent and Mr Dewi Parry.

**The Trustees of Rhyl and St Asaph Angling Association**

- Plot numbers: 104, 105, 105A, 105B, 105C
- Pole numbers: Oversail only

- 8.12.119 The Rhyl and St Asaph Angling Association explained that through its Trustees, it owns the fishing rights on the River Elwy at Pont-y-Ddol and would be affected by the scheme [AS-003]. The association would have to give up 60m of fishing, on what is "*prime water*". It would not be objecting to the scheme, but that is subject to reaching agreement on the matter of compensation and the associated matters of professional costs and disbursements. On the 27 August 2015 the association confirmed that there had been no changes in position [REP1-046]. No further representations were received from the society.

8.12.120 The Applicant, in its deadline 11 summary update on landowner and part 3 interest negotiations [REP11-013] stated that negotiations with the trustees (Hugh Edwards, Kenneth Alderson and Edward Watt, as trustees of the Rhyl and St Asaph Angling Association, in respect of profit a prendre in gross), and their agent, had been ongoing and would be captured in the same agreement for their Part 3 interests as for their Part 1 interests. Part 3 and Part 1 interests are identified in the various editions of the BoR. Part 1 interests relate to Category 1 and 2 persons, defined in section 57 PA2008 and Part 3 interests relate to easements or other private rights proposed to be interfered with, suspended or extinguished. The development would oversail their interests.

**Mr Huw Lloyd Evans and Mr John Lloyd Evans (Bryn Hen Farm)**

- Plot numbers: 105, 105A, 105B, 105C, 105D, 106, 106A, 107, 107A, 107B, 107C, 107D, 111, 111A, 111B, 111C
- Pole numbers: 204-216

8.12.121 Messrs Evans, in their representations [RR-092], [REP1-032] and [REP1-033], explained that the proposed position of the overhead line would have a huge impact on the potential use of their field. It is an arable field at present, but if the development went ahead it would only be useful for grazing as its productivity would fall and ultimately its value would fall too. They stated that they are still very much opposed to either option A or option B. However, without prejudice, in the unfortunate situation that it came down to A or B, they would prefer option B.

8.12.122 The Applicant stated [REP9-038] that Messrs Evans are occupiers on land owned by Mr H M Parry. It explained that it would continue to liaise with Mr Lloyd (the Panel assumes it means Mr Lloyd Evans) to minimise the impact on agricultural practices. Should the development result in losses to Messrs Evans, it would consider any claim for disturbance on a case by case basis, in accordance with the relevant legislation and statutory compensation codes.

**Mr Simon Peter White (Eriviat Bach Isa)**

- Plot numbers: 62A, 63, 63A, 63B, 63C, 63D
- Pole numbers: 133-136

8.12.123 Mr White's representations [REP3-028] and [REP9-040] explain that he owns hunting, shooting and sporting rights associated with his property which cover the surrounding land. Having seen how near the proposed overhead line is to his property and how unfair the positioning is in relation to health issues and property value, he wished to re-affirm his objection. The proposed overhead line would go through the middle of the area over which he owns sporting rights. He also stated [REP9-040] that he could not agree with their acquisition of these rights. He objected again to the proposed overhead line and requested that it was placed underground.

8.12.124 The Applicant [REP9-038] identified Mr White as owner of Plots 62A and 63D. These plots are required for temporary use and landscaping land. It stated that although wholeheartedly opposed to the overhead line, Mr White would welcome the replanting and enhancement measures proposed for his land should the DCO be granted. The option B enhancement and replanting proposals affecting land owned by Mr White would be the same as those proposed for option B.

**Mr Robert Lloyd Thomas (Bodeiliog Ucha, Groes)**

- Plot numbers: 43,43A
- Pole numbers: 96-102

8.12.125 Mr Thomas' representation on option B [RR-095] stated that the overhead line, if consented would result in a new overhead high voltage power line crossing through the farm over a distance of approximately 460m. It is a highly productive mixed arable/stock-rearing farm, extending to 85 acres in total (including farmhouse and buildings). The proposal would involve the erection of seven double poles with supporting stays which would take useful land permanently out of production. The effect of this loss is especially damaging on such a small agricultural unit.

8.12.126 The Panel notes that Robert Lloyd Thomas is identified in the BoR as a Category 1 owner in relation to these plots. It shows that Mr Thomas is the executor of the estate of HA Jones (deceased) who is a Category 1 owner.

8.12.127 The Applicant, at deadline 9 [REP9-038] stated that Mr N Hughes is the tenant of the estate of the late HA Jones at Bodeiliog Ucha, where poles 96-102 are proposed to be located. It explained that Mr Hughes' request to re-locating pole 99 to the hedge was accommodated in the option B design. However it was not possible to reposition poles 101 or 97 due to span length requirements. [REP9-038] does not appear to identify Mr Robert Lloyd Thomas' interests against these plots.

**Mrs Janie Wynne Smith (Gwaenynog Estate)**

- Plot numbers: 34, 34A, 35, 35A, 35B, 35C, 36, 37, 37A, 37B, 37C, 37D, 37E, 38, 38A, 39, 39A, 39B, 39C, 40, 40A, 41, 41A, 42, 42A, 53B
- Pole numbers: 84-95

8.12.128 Mrs Smith's written representation [REP5-002] explained that over 1.5km of power lines would be sited over the Gwaenynog Estate owned by Mrs Smith (which includes the property known as 'Pandy'). Mrs Smith considered that she would stand to be severely affected and objected to the proposal when there is an option to place them underground, as has happened along the routes of other power lines recently sited in north Wales. Specifically Mrs Smith wished to point out that the lines would pass very close to the property known as Pandy, which, in her view is a fine example of a traditional Welsh farmstead, a substantial part of which was built before the 20th



century. Siting of the power line so close to the property could render it impossible to ever again establish a dwelling for future generations.

- 8.12.129 The Applicant explained [REP9-038] that poles 84-95 would be on land owned by Mrs Smith and the proposed site compound would also be on land owned by her. The Applicant reported that Mrs Smith's agent had been instructed not to negotiate further in respect of laydown area or line design until confirmation was received that the development would be undergrounded. The Applicant was unable to provide that confirmation and negotiations were on hold at that time. They informed Mrs Smith's agent that her tenant had put forward proposed changes which would reduce the impact on his agricultural operations and these had been accepted in option B.

**Mrs M Jones (Garnedd Uchaf)**

- Plot numbers: 28, 28A
- Pole numbers: 66, 67

- 8.12.130 The representation made by Mrs M Jones' agent [REP5-017] explained that they had been unable to get detailed terms from Scottish Power and therefore the current proposals were unacceptable.

- 8.12.131 The Applicant explained [REP9-038] that poles 66 and 67 would be on land owned by Mrs M Jones. It was waiting for a response from Mrs M Jones' agent in relation to the terms of the voluntary agreement at that time. It had partially adopted suggestions put forward by Mrs Jones' agent in the option B design, which involve moving pole 66 closer to the field boundary. Pole 67 could not be moved due to engineering reasons associated with pole spans.

**Mr D Wyn Wilkinson (Bryn Glas)**

- Plot numbers: 9, 9A, 9B, 10, 10A, 11, 11A
- Pole numbers: 20, 21, 22, 23

- 8.12.132 Mr Wilkinson's representation [RR-091] explained that he objected to any compulsory purchase application made by the Applicant to acquire any rights over his land. He was concerned about the position of the new posts on his land and requested further consultations to agree the final position of any posts on his land. He also raised concerns about compensation payments, preferring to have an annual wayleave payment and required clarification regarding the reinstatement of land following any damage sustained to his land.

- 8.12.133 The Applicant explained [REP9-038] that his agent had agreed, in a letter of 05 January 2015, to the settling and signing of an option and Deed of Easement, subject to negotiation of compensation. Mr Wilkinson has requested that pole 22 be moved towards pole 23. This was rejected due to technical reasons associated with foundation purchase and span lengths and therefore option B would not affect land owned by Mr Wilkinson.

### **Mrs Yvonne Proudlock (Eriviat Hall)**

- Plot numbers: 52, 52A, 52B, 52C, 52D, 52E
- Pole numbers: Oversail only

8.12.134 Mr Conrad Proudlock gave verbal evidence to the Panel, on behalf of his mother (Mrs Yvonne Proudlock), at the second OFH on 9 December 2015 [EV-047]. In his written representation following the OFH [REP9-001], he explained that the family had purchased Eriviat Hall and it has undergone a complete renovation costing in excess of three million pounds. It is a private home which is rented as a country retreat to *"very high class VIP clients....who come very far and wide back to their roots to capture the Ambience that the hall offers."* He explained that had the family had any inclination of the proposed power lines, they would not have invested in the property. The hall is generating a substantial turnover with the support of the family, the local people and its potential clients. He raised concerns that if a very small percentage of its potential clients decided not to rent the hall as a result of the power cables, it would affect turnover and its potential survival. He considered that a 15% decline would result in a £100K loss, which would make the hall unviable and cause blight.

8.12.135 The family was also concerned about allowing the Applicant rights along the road into Eriviat Hall, causing impacts upon clients and inconvenience due to delays and wear and tear on the road.

8.12.136 The Applicant [REP9-038] explained that the offer of compensation that had been offered to Mrs Proudlock was not considered by her to be adequate. It explained that it had offered additional enhancement planting and provided plans to Mr Conrad Proudlock (Mrs Proudlock's son and director of the family business). There would be no difference in the way that option A or option B would affect Mrs Proudlock's land, as the development, in both options would oversail the access road leading to Eriviat Hall and rights of access would be needed along the private road during construction.

### **The Panel's consideration and conclusions in relation to the objections to the compulsory acquisition of rights**

8.12.137 The concerns expressed by these objectors formed an important part of the Examination. The Panel has considered all of the representations made by each and every Affected Person identified in this report section. Matters in relation to impacts of the development on health and safety, farming operations, tree and hedgerow planting, veteran trees, tourism, heritage and visual impact are discussed in detail in report Chapter 5. Also, matters in relation to undergrounding the project are discussed in the consideration of alternatives in report Section 4.5.

8.12.138 In considering and concluding on the Applicant's request for the CA of rights, the Panel is aware that compensation would be payable for the CA of rights and imposition of restrictions. However, the Panel

considers that the level and form of compensation are matters outwith the remit of an Examining authority.

8.12.139 The Panel notes that a substantial number of APs, as reported above, expressed a preference for option B over option A, if the DCO were to be made, as option B changes were in the majority, made to reduce the impact of the development on farming operations. The following clients of Mr Eifion Bibby [REP5-006] said that they preferred option B to option A. In the case of Mr H M Parry, option B would reduce the visual impact of the development in relation to his residential dwelling, Plas Hafod; all the other APs who commented on this matter would prefer option B because of reduced impacts on farming operations:

- Mr David Gwynfryn Davies;
- Mr Elwyn Rheon Evans;
- Mr John Evan Davies;
- Mr Dewi Clwyd Jones;
- Mr DC Jones, Mrs J L Jones and Mr A L Jones;
- Mr EW Hughes, Mrs PA Hughes and Mr EW Hughes;
- Mr HW Hughes, Mrs EA Hughes and Mr GW Hughes;
- Mr Hywel Meirion Jones;
- Mrs Carol Ann Owen and Mr Aled Alun Owen;
- Mr Dafydd Richard Owen and Mrs E M Owen;
- Mr Arthur Elwy Morris Owen; and
- Mr Hugh Morris Parry.

8.12.140 An additional client of Mr Bibby (Mrs H M Parry) also confirmed a preference for option B after the CAH on 9 December 2015 [REP9-003].

8.12.141 Mr Huw Lloyd Evans and Mr John Lloyd Evans (Bryn Hen), through their agent, also confirmed that whilst they were against the scheme, *"in the unfortunate situation that it came down to A or B, we would prefer option B"* [RR-092] and [RR-093].

8.12.142 In relation to land plots where there was a choice between option A and option B, no APs confirmed a preference for option A.

8.12.143 The Panel concludes that in relation to the CA of rights and imposition of restrictions, option B is preferable to option A as it reduces the impact upon numerous landowners compared with option A. Option B is therefore preferred by the Panel in relation to the CA of rights and imposition of restrictions.

8.12.144 The Panel is satisfied that the rights that the Applicant is seeking over the road leading to Eriviat Hall (Plots 52D, 52C, 52, 52A, 52B and 52E) (Class 2c,d,e,f,g,h,j rights on plots 52A, 52B and 52E; Class 1c, d, e, f, g and i on Plots 52C and 52D and all of those same Class 1 and Class 2 rights identified here for plot 52), are required to deliver the development and would not unduly restrict access along the road for Messrs Hughes or Mrs Proudlock, her family or their clients who rent Eriviat Hall for social events including weddings.

- 8.12.145 The Panel considers that the matters raised by APs during the Examination in relation to tree planting are important and relevant to both planning matters and CA of rights and imposition of restrictions. The Panel notes the changes that were made by the Applicant, during the Examination, in relation to the requirements on landscaping (Requirement 5) and re-instatement planting (Requirement 7), and is satisfied that the steps that have been taken, would ensure that any re-instatement planting would only take place with the agreement of the owner of the land [REP11-018] and [REP11-020]. The requirement in relation to landscape tree planting (Requirement 5), which would form part of the project mitigation, would require the landscaping scheme to be submitted to the Local Planning Authorities (LPAs) only after consultation with the relevant landowners on which the landscape planting is to be carried out, has taken place, and the Applicant must have regard to the consultation responses received. The Panel finds that these requirements now address the majority of concerns raised by APs, in relation to tree planting.
- 8.12.146 The Panel considers that whilst there may be some instances, where mitigation tree planting is necessary in the scheme to be submitted pursuant to Requirement 5, which is not agreed by the landowners, the areas that would be affected in this way are relatively small and would not significantly impact farming activities overall. The Panel concludes that the landscaping requirement would address the APs concerns about tree planting, as far as is possible. The Panel concludes that the rights that would be necessary for the Applicant to secure the landscape tree planting are proportionate and necessary to deliver the NSIP.
- 8.12.147 The Panel notes the concerns raised by Mr Iwan Wynne Jones regarding long term liabilities that would be incurred. This is especially relevant, given the nature of many of the farming units that would be affected which tend to remain in the families ownership (or tenancy) for generations. The Panel considers that the requirement in its recommended DCO for the development consent to expire thirty years after the DCO is made would mean that liabilities associated with the development would fall away when the overhead line is decommissioned and therefore there would be no long term liabilities associated with the development after it is decommissioned.
- 8.12.148 The Panel also notes the concerns of Mr Iwan Wynne Jones that the CA of rights should match the timescale of the development. The Panel considers that the only options available to the Applicant, in this case, are either the CA of permanent rights or temporary possession (the latter not being CA). Whilst, as a matter of fact, 30 years is temporary rather than permanent, the Panel considers it inappropriate to recommend that the DCO grants temporary possession (which is a right to possess land to the exclusion of others), for such a long period of time. However if the development consent granted by the DCO were to expire after 30 years and the Applicant then decommissions the wood pole line, and if the rights obtained by CA pursuant to the DCO are ones that apply only for the purposes of the development

authorised by the DCO, then those rights can, after such decommissioning, no longer be exercised (as the development to which they apply would no longer exist in situ, as a matter of fact).

8.12.149 The Panel concludes that, while it cannot restrict the CA of rights to 30 years to match the life of the development consent as proposed in its recommended draft DCO, as the CA of rights apply only to the development that would be permitted in the DCO, it is satisfied that the CA of rights requested by the Applicant is proportionate and legitimate.

8.12.150 The Panel considers that the acquisition of rights and imposition of restrictions over the land plots owned or occupied by the APs who are objecting to the CA of rights over their land is justified and proportionate to deliver the NSIP to provide a connection for the life of the wind-farms. It concludes that the CA of rights and imposition of restrictions, over the land plots where the objectors to CA have interests, is necessary to deliver the NSIP and there is a compelling case in the public interest.

### **8.13 COMPULSORY ACQUISITION OF RIGHTS AND IMPOSITION OF RESTRICTIONS FOR LAND AT THE NORTH OF THE PROPOSED DEVELOPMENT (WHERE THE CABLE WOULD GO UNDERGROUND)**

8.13.1 The SoRs [APP-078] and [OpB-004] explained that whilst the DCO application does not apply for development consent for the underground cable from the terminal point to the St Asaph substation on the grounds that it is associated development, pursuant to section 122(2)(b) PA2008 all versions of the Applicant's draft DCOs included powers for the acquisition of necessary land rights required for that part of the underground cable from the terminal point to the highway at Groesffordd Marli. Once at the highway, SP Manweb has statutory powers to break open the highway to install apparatus, including a cable. It was anticipated that the underground cable, and the other works at St Asaph substation would be permitted development. It later confirmed [REP6-035] that the works proposed constitute permitted development and there are, therefore, no further separate consents which would need to be obtained.

8.13.2 The Panel notes that this northern section of the development, beyond the terminal poles, which is within the Order limits includes plots 110, 111, 111A. Plots 108B, 111B, 108C and 111C are also north of the terminal poles but would be required for access to landscaping and construction and temporary use of the land (108B and 111B) and for landscaping only (108C and 111C).

8.13.3 The Applicant explained [REP1-056, Q11.9], that the underground cable whilst being necessary, did not form part of the 132kV overhead line. It further explained that in relation to plots 110, 111 and 111A, the Secretary of State may only make an order granting development consent which includes provisions authorising the CA of land if she is

satisfied that the conditions in subsection (2) and (3) of section 122 PA2008 are met. In its view, simply because works are not consented through the development consent order does not mean that CA powers cannot be applied for in respect of those works, the test being whether the Secretary of State is satisfied that they would be required to facilitate or are incidental to the development to which the development consent relates to. The Applicant considered that the underground cable is necessary to enable the connection of the 132kV overhead line into the existing substation at St Asaph. Without it, the 132kV overhead line cannot be energised. Accordingly the underground cable is considered to be required to facilitate, or is incidental to, the proposed development, satisfying the test in section 122(2) PA2008.

- 8.13.4 The Applicant later explained why, in its view, the Secretary of State's approach to the decision in the Hirwaun Generating Station Order 2015 provided a precedent which demonstrated that land may still be considered for inclusion in the CA powers granted under a DCO where the works proposed to be carried out on that land are excluded from the scope of the development consent granted by it, provided that the statutory tests for CA of that land are met [REP6-035, Q11.4]. In that case the Secretary of State took the view that the land was "*required to facilitate*" the generating station and concluded that there was a compelling case in the public interest for the grant of powers (on the basis that they were necessary for the generating station, which is a NSIP).
- 8.13.5 The Panel notes the final sentence of paragraph 3.26 of the Hirwaun decision letter of 23 July 2015 (where such powers were made subject to a 1990 Act permission being required before they could be exercised). However, in the case of the proposed development, it would be permitted development and so no further consent would be needed.

**PANEL CONCLUSION ON THE COMPULSORY ACQUISITION OF RIGHTS FOR LAND AT THE NORTHERN SECTION OF THE ORDER LIMITS WHERE THE CABLE WOULD GO UNDERGROUND**

- 8.13.6 The Panel considers that Plots 110, 111 and 111A would be required to facilitate the NSIP. The Panel concludes that the CA of rights and imposition of restrictions over this land would be necessary to enable the development to be delivered. It considers that the tests in sections 122(2) and 122(3) PA2008 are met and that there is a compelling case in the public interest for the grant of CA powers in relation to these plots, where the cable would be installed underground.
- 8.13.7 Plots 108B, 111B, 108C and 111C which are also north of the terminal poles would be required for access and landscaping, so the Panel considers that these plots are required as part of the development. It considers that the tests in sections 122(2) and 122(3) PA2008 are also met for these plots and that there is a compelling case in the public

interest for the grant of CA powers in relation to these plots, north of the terminal pole.

- 8.13.8 The Panel concludes that CA powers should be granted for these six plots which are north of the terminal pole at the northern end of the Order limits.

**8.14 IS THE INEVITABLE INTERFERENCE WITH HUMAN RIGHTS BY THE GRANT OF COMPULSORY ACQUISITION RIGHTS AND RESTRICTIONS JUSTIFIED?**

- 8.14.1 In assessing whether there is a compelling case in the public interest for the land to be acquired compulsorily it is necessary to consider the interference with human rights which would occur if CA powers were granted.
- 8.14.2 The European Convention on Human Rights (ECHR) was incorporated into domestic law by the Human Rights Act 1998. Article 1 of the First Protocol of the ECHR (rights of those whose property is to be compulsorily acquired and whose peaceful enjoyment of their property is to be interfered with) would be engaged.
- 8.14.3 Article 6 of the ECHR, which entitles those affected by CA and temporary possession powers sought for the project to a fair and public hearing of their objections, was engaged. Several of the APs requested to participate in a CAH and the Panel arranged for three days of CAHs during the Examination. All APs that requested to be heard at the CAHs were given an opportunity to put their case to the Panel and to provide a subsequent written report of their oral case. The Panel is satisfied that the requirements of Article 6 have been met.
- 8.14.4 Article 8, which relates to the right of the individual to "*respect for his private and family life, his home...*" would have a much more limited application as the development would not directly impact any residential properties. Residential properties which would be affected by the development are those that are identified in Chapter 4 of this report in relation to landscape and visual impacts, as well as noise and other impacts during construction.

**PANEL CONCLUSION - INTERFERENCE WITH HUMAN RIGHTS**

- 8.14.5 The Panel agrees with the Applicant's reasoning, in section 9 of the SoRs [APP-078] and [OpB-004] that any infringement of the ECHR rights of those whose interests are affected by the inclusion in the DCO of powers of CA is proportionate and legitimate and is in accordance with national and European law. The Panel considers that it would be appropriate and proportionate to make the DCO, including the grant of CA of rights and temporary possession. In reaching this conclusion the Panel has had regard to the compensation to which APs would be entitled. The Panel concludes that the need for the development outweighs any private loss that may arise in relation to APs having rights or restrictions imposed over their land or being

deprived temporarily of their land and, as such, that there is a compelling case in the public interest for the CA of rights and imposition of restrictions as requested by the Applicant.

## **8.15 TEMPORARY POSSESSION POWERS**

- 8.15.1 The Applicant's final draft DCOs for option A [REP11-018] and option B [REP11-020] at articles 28 and 29 seek powers for the temporary use of land for carrying out the authorised development and for the temporary use of land for maintaining and decommissioning the authorised development.
- 8.15.2 Schedule 8 of the Applicant's final draft DCOs for option A [REP11-018] and option B [REP11-020] identifies the land for which temporary possession may be taken as well as the purpose. The justification is set out in the respective SoRs [APP-078] and [OpB-004].
- 8.15.3 The BoR for option A, version 3 (submitted for deadline 6 [REP6-018] was amended to remove the Class 2 rights relating to the construction of the 132kV overhead line and the construction compound and the Class 4 rights relating to tree felling. The Applicant's response to the SWQ12.4 [REP6-035] explained that temporary use powers set out in the relevant articles of the draft DCO for option A at that time (version 4) would be used to carry out the construction activities over the land shown coloured yellow and light green on the land plans.
- 8.15.4 Much of the discussion during the CAHs focussed on whether it was necessary for temporary works to be included in the powers of CA of rights. At deadline 9, the Applicant, in its written summary of oral evidence (CAH 9 December 2015 [REP9-024] including action points), confirmed that:
- Class 2h rights (to enable archaeological, ecological, topographic and other environmental surveys and investigations to be undertaken) would be removed from the next version of the BoR for both options A and B;
  - Class 2f rights are required for the reasons set out in the Applicant's response to the Panel's SWQ12.4 [REP6-035]. This explained that Class 2(f) rights need to be retained in case the construction of the development needs the permanent construction, diversion or relocation of drains, drainage ditches, culverts or pipes in the yellow land. As the Applicant is unable to identify which parts of the coloured yellow land would be required for drainage works until detailed ground investigations have been carried out, the Class 2(f) rights need to apply to the entire coloured yellow land.
  - The rights set out in class 2(e) and (j) are required to facilitate the exercise of the rights in Class 2(f). Class 2(e) is to enable pedestrian and vehicular access and egress and Class 2(j) is to provide rights to enable any damage caused in connection with the exercise of these Class(2) rights to be made good;



- Class 2(g) rights (in relation to felling/trimming and lopping trees and clearing vegetation) were retained in the BoR, but if the Panel agreed with revised wording proposed for Article 29(11), then Class 2(g) rights would be removed from next edition of the BoR.

8.15.5 The Panel notes that in the final editions of the BoRs for option A [REP10-009] and option B [REP10-021], class 2g and 2h rights have been removed.

### **Panel conclusions - temporary powers**

8.15.6 Although described by the Applicant as temporary rights in the SoR, and shown as land over which new rights would to be compulsorily acquired, and temporary use of land on the Land Plans, these powers are not CA powers and accordingly the tests under sections 122 and 123 PA2008 are not applicable. However, the use of the power must be justified in order to enable the proposed development to be implemented and maintained, the inevitable interference with human rights must be justified and there must be adequate compensation provisions in place for those whose land is affected.

8.15.7 The Human Rights considerations have been addressed above and the Panel is satisfied that the temporary powers that have been requested are needed to deliver, maintain and remove the development. The Panel is satisfied that there are adequate compensation provisions in place in Articles 27 and 28 of its recommended draft DCO [Appendix E] for the temporary possession powers that are required and these would be secured through the proposed changes to Article 22 in the Panel's recommended draft DCO, which require the Applicant to provide a guarantee or alternative form of security. The Panel concludes that the temporary possession powers that are being sought by the Applicant should be granted.

## **8.16 SECTION 135 PLANNING ACT 2008**

8.16.1 Details of the Crown Land that would be affected are provided in Part 4 of the updated BoRs for option A [REP10-009, (v4)] and for option B [REP10-021 (v2)]. Details of the various land plots in which the Welsh Ministers are the appropriate Crown authority and land in which the Queen's Most Excellent Majesty in right of her Crown c/o The Crown Estate Commissioners is the appropriate Crown authority were provided by the Applicant [REP1-079].

8.16.2 The Welsh Ministers are the appropriate Crown authority, under section 135(1) PA2008 for plots 1, 1A, 1B, 3 and 3A.

8.16.3 The Crown Estate Commissioners are the agents on behalf of Her Majesty the Queen for mineral rights within plots 1, 1A, 1B, 2, 2A, 3, 3A, 4, 4A, 5, 5A, 6, 6A, 7, 7A, 8, 8A, 9, 9A, 10, 10A, 11, 11A, 12, 12A, 13, 13A, 13B, 14, 14A, 19, 19A, 19B, 19C, 21A and 21B. As such, the Panel considers that the Crown Estate Commissioners would be regarded as the appropriate Crown authority for those plots.

- 8.16.4 A DCO cannot authorise the CA of an interest in Crown land unless it is an interest, which is for the time being, held otherwise than by or on behalf of the Crown (and the appropriate Crown authority consents to the acquisition. The Crown Estate Commissioners' and the Welsh Ministers' own interests in land cannot therefore be subject to CA powers.
- 8.16.5 In their response to the Panel's FWQ11.1, the Welsh Government [REP1-098] confirmed that NRW is authorised to provide consent on behalf of the Welsh Ministers to a DCO provision or provisions authorising CA of interests in Crown land. On 2 July 2015, NRW provided confirmation of consent to the terms of the draft DCO for the Proposed Development pursuant to section 135 PA2008 [AS-005]. NRW also confirmed on 9 December 2015 [EV-041] that it agreed with the Applicant that section 135(1) PA2008 did not apply in this case as the development consent order, as drafted, would not include any Crown land in which there is a third party interest.
- 8.16.6 NRW explained [REP10-004] that the Applicant had confirmed that there are interests in Crown land which are held by third parties - in plots 1, 1A, 1B, 3 and 3A of the BoR. Paragraph 1 of the NRW note of the 9 December 2015, was therefore incorrect. In respect of those plots, the Welsh Ministers, acting via NRW confirmed that they provide consent to the Applicant under section 135(1) PA2008. This is in addition to the consent given under section 135(2), given in the NRW note of the 9 December 2015. This consent is in respect of the two options, option A and option B and indeed any hybrid scenario, should the Panel wish to make a recommendation for a DCO that includes part of option A and part of option B. This consent was on the basis of the then current draft DCOs for option A (v5) and option B (v2) and on the basis that the DCO includes the specified wording of the article on Crown land (which at that time was Article 21, which has been re-numbered as Article 20 in the Panel's recommended draft DCO and has also been amended slightly, which is discussed in Section 8.12 above).
- 8.16.7 The Crown Estate Commissioners, in their letter of 9 December to the Applicant [REP9-020], provided consent under section 135(1) PA2008. This included consent to the provisions within the proposed DCO that apply in relation to interests in Crown land held otherwise than by the Crown, or rights benefitting the Crown. The consent was in respect of both option A and option B. The approval was conditional upon the draft DCO remaining materially the same as submitted to the Secretary of State on 18 November 2015 (DCO for option A (v.4) and DCO for option B (v.1) and including a draft article, the text of which was proposed in the letter. The Article on Crown Interests in the Panel's recommended draft DCO (Article 20) has been amended slightly and other changes have been made to the Applicant's final draft DCOs since the Crown Estate Commissioners responded at deadline 9, so the Panel considers that the Secretary of State may wish to consider whether she should revert to the Crown Estate Commissioners (or their agents, Wardell Armstrong) on these matters.

- 8.16.8 The Panel is satisfied that section 135(1) consent from the relevant Crown Authorities has been obtained.
- 8.16.9 Now turning to the lease from the Welsh Ministers, in relation to the southern part of the Order limits, the Panel considers that, given the NRW's consent under section 135(1) and its ongoing participating in the Examination, reported in Section 8.12 above, there is nothing that would indicate that the lease would not be forthcoming. However, the Secretary of State may wish to be satisfied that the lease is secured and would enable the Applicant to have sufficient rights as are needed in relation to the Crown land at the southern end of the Order limits, prior to making a decision under section 104 PA2008.
- 8.16.10 Similarly, the Secretary of State may wish to establish whether the Applicant has secured a legal agreement with the Crown Estate Commissioners (or their agents, Wardell Armstrong), in respect of land plots within the Order limits which contain Her Majesty's mineral interests, which are managed by the Crown Estate Commissioners. This matter is discussed in paragraph 8.12.24 above.

## **8.17 SECTIONS 131 AND 132 PLANNING ACT 2008**

- 8.17.1 The Panel is satisfied that the Order land does not include any common land, fuel or field garden allotments or open space land and so sections 131 and 132 PA2008 do not apply to this case.

## **8.18 SECTIONS 127 AND 138 PLANNING ACT 2008**

- 8.18.1 Relatively few statutory undertakers (SUs) have interests in the Order land. These are:
- Dwr Cymru Welsh Water (DCWW);
  - Natural Resources Wales (NRW); and
  - The Applicant (SP Manweb).
- 8.18.2 The Applicant explained in its response to the Panel's FWQ11.3(b), that in the BoR version 1 [APP-080], Wales and West Utilities Limited's interests were included. [REP1-056] also explained that the Applicant knew at that time that Wales and West Utilities Limited's interests are outside the Order limits and these were removed from the next BoR. The Panel concludes that Wales and West Utilities Limited does not have any interest in the Order land and does not need further consideration in this report section.
- 8.18.3 Further, the Applicant stated [REP1-056] that it is identified in the BoR and would constitute a SU for the purpose of section 127 and section 138 PA2008. It explained that it would deal with its own apparatus as part of the development process and would not enforce the terms of the DCO against itself. Therefore no further consideration needs to be given to the Applicant as SU. The Panel therefore concludes that the Applicant's interests do not have to be considered further in this report section.

- 8.18.4 On 7 December 2015, DCWW wrote to the ExA [REP9-041] stating that it withdraws all representations that it has made to the Secretary of State and ExA. DCWW and the Applicant had reached agreement on the protective provisions for the benefit of DCWW. The agreed form of provisions were contained in Part 2 of Schedule 9 to the draft North Wales Wind Farm Connection Order (version 3, 16 October 2015), library reference [REP3-031].
- 8.18.5 The Applicant, in its responses to submissions from IPs at deadline 5 [REP7-003], explained that NRW had informed the Applicant on 3 December 2015 that it would not agree to the disapplication of legislative provisions in draft Article 33 of the DCO. On 4 December 2015 the Applicant communicated to NRW that it has reluctantly accepted its position and would remove those parts of Article 33 as they apply to NRW and part 3 of Schedule 9, as it applies to NRW. The Panel is satisfied that this was undertaken in the revised versions of the draft DCOs submitted at deadline 9 (option A v5 [REP9-026] and option B v2 [REP9-028]), albeit Article 33 (disapplication of legislative provisions) was moved to Article 34 in the deadline 9 editions of the draft DCO, but is found at Article 33 in the Panel's recommended draft DCO.
- 8.18.6 The Applicant explained [REP1-056] that it considered that the rights in question are not relevant rights. It further explained that it did not consider these rights were for the purpose of NRW carrying out its undertaking. It also explained that it would not interfere with NRW's interests in respect of the beds and banks of the Rivers Elwy and Ystrad, which it would need to cross, as there is no way to avoid these rivers. The 132kV line would be situated above the beds and banks of these rivers and would not be interfered with or affected.
- 8.18.7 BT, which is an operator of electronic communications code networks, does not fall within the definition of a SU for the purposes of Article 2(1) and Article 30 of the Applicant's final draft DCOs for option A, [REP11-018] or option B [REP11-020], but their rights and apparatus are considered in this report section as they are relevant in the context of section 138 PA2008 and they have a Protective Provision in their favour in Schedule 9 of the draft DCOs. Similarly Denbighshire County Council (DCC) and Conwy County Borough Council (CCBC) are not SUs for the purpose of section 127(8) PA2008 as highway land is not a statutory undertaking. BT and the local authorities will be considered further in relation to section 138 below.
- 8.18.8 The Applicant provided details of the rights or apparatus that it would seek to compulsorily acquire or interfere with pursuant to Article 28 in its response to the Panel's FWQ11.3(c) [REP1-056]. The Panel notes that Article 28 in the first edition of the draft DCO is now Article 30 (Statutory Undertakers) in the final draft DCOs [REP11-018] and [REP11-020] and Article 29 in the Panel's recommended draft DCO.

### **Panel conclusion - section 127 Planning Act 2008**

- 8.18.9 The Panel notes that neither of the SUs have raised concerns that the rights required by the Applicant would cause serious detriment to the carrying on of their undertaking. In respect of DCWW their representation was withdrawn and therefore section 127 is not engaged. In respect of NRW, whilst a RR was made, it was not in respect of NRW's undertaking as a SU. It was made in relation to its role as a statutory advisor and as regulator. The SoCG with NRW [REP9-019] explains that NRW is a party to the SoCG as a Statutory and Interested Party for the purposes of the Application. It does not concern, represent or bind NRW in respect of its land management functions. The Panel concludes that section 127 PA2008 is also not engaged in relation to NRW.
- 8.18.10 The Panel is aware of the provisions within the Applicant's final draft DCOs for option A [REP11-018] and option B [REP11-020] Schedule 9, Protective Provision Part 2 for the protection of Dwr Cymru Cyf which would prevent the exercise of powers without the consent of DCWW and give protection to DCWW apparatus and that the DCWW representation was withdrawn. The Panel is satisfied that the CA of rights and imposition of restrictions that were requested over DCWW land interests should be granted.

### **Section 138 Planning Act 2008 considerations**

- 8.18.11 Turning now to the relevant local authorities which are the regulators in relation to Section 23 of the Land Drainage Act 1991. CCBC agreed the disapplication provisions and the protective provisions in favour of the local authority in the SoCG between CCBC and the Applicant [REP9-021]. Paragraph 4.5.1 of the SoCG stated that SP Manweb and CCBC are agreed on the wording of the operative provisions of the DCO (Articles 1-39). CCBC agreed for the purposes of section 150 PA2008 to powers being contained within the DCO allowing for the disapplication of section 109 of the Water Resources Act, section 23 of the Land Drainage Act and any potential relevant bylaws which would otherwise require consent from CCBC. Paragraph 4.7.1 states that SP Manweb and CCBC agree the wording of the protective provisions contained in Schedule 9 Part 3.
- 8.18.12 Paragraph 4.5.1 of the SoCG between the Applicant and DCC [REP9-037] states that, *"Save for the matters referred to in paragraph 5 below, SP Manweb and DCC agree on the wording of the operative provisions of the DCO (Articles 1-39)"* and *"DCC agrees for the purposes of section 150 of the Planning Act 2008 to powers being contained within the DCO allowing for: ..(d). the disapplication of section 109 of the Water Resources Act, section 23 of the Land Drainage Act and any potential bylaws which would otherwise require consent from DCC"*. Paragraph 4.7 states that *"SP Manweb and DCC agree on the wording of the protective provisions contained in Schedule 9 Part 3"*. The Panel notes that the matters discussed in

paragraph 5 referred to, are not related to the protective provisions or the disapplication of legislation.

- 8.18.13 On 17 November 2015, BT wrote to the Applicant [REP6-045] stating that they confirm that it is in agreement with the draft protective provisions, being the protective provisions *"For the Protection of Operators of Electronic Communications Code Network"* which are contained in the draft DCO (version 3 dated October 2015).

**Panel conclusion - section 138 Planning Act 2008**

- 8.18.14 A DCO provision extinguishing certain rights of SUs or electronic communications code operators or requiring removal of their apparatus can only be included if the Secretary of State is satisfied that it is necessary to do so to carry out the development to which the Order relates. Unlike section 127, this section operates whether or not the SU has made a representation about the development. The Panel is satisfied that section 138 PA2008 applies because relevant rights would be extinguished or relevant apparatus belonging to SUs and/or electronic communications code operators would be removed by the development.
- 8.18.15 For the purposes of section 138 PA2008, the Panel considers the following are relevant:
- NRW as SU;
  - DCWW as SU;
  - BT as an operator of electronic communications code networks;
- 8.18.16 As section 138 PA2008 only applies where CA is involved, the Panel has taken into account the agreement of DCWW (as well as BT) to the relevant Articles and Protective Provisions in the draft DCOs. The Panel considers that the requirements of section 138(4) PA2008 in relation to the extinguishment of rights and removal of apparatus, of statutory undertakers and operators of electronic communications code networks, have been met in respect of Article 30 of the Applicant's final draft DCOs, which is now at Article 29 of the Panel's recommended draft DCO, which would enable the extinguishment of SUs and operators of electronic communications code networks rights in the plots listed in the BoR.
- 8.18.17 The Panel is also satisfied that the protective provisions in favour of BT, CCBC and DCC have been agreed. It considers that all the tests in section 138 PA2008 in relation to the extinguishment of rights and the removal of apparatus of SUs and operators of electronic communications code networks are met. The Panel therefore concludes that the CA powers sought in relation to these SUs and operators of electronic communications code networks considered in this section should be granted.

## **8.19 THE PANEL'S RECOMMENDATIONS ON THE GRANTING OF COMPULSORY ACQUISITION POWERS**

- 8.19.1 The Panel's approach to the questions whether and what CA powers it should recommend to the Secretary of State to grant has been to seek to apply the relevant sections of PA2008, notably sections 122 and 123, the Guidance<sup>16</sup>, and the Human Rights Act 1998 and ECHR; and, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.
- 8.19.2 The Panel understands, however, that the Applicant's first draft DCO and all subsequent versions deal with both the development itself and CA powers. The case for CA powers cannot properly be considered unless and until the Panel has formed a view on the case for the development overall, and the consideration of the CA issues must be consistent with that view.
- 8.19.3 The Panel has shown in the conclusions to the preceding sections that it has reached the view that development consent should be granted. The question therefore that the Panel addresses here is the extent to which, in the light of the factors set out above, the case is made for CA powers necessary to enable the development to proceed.
- 8.19.4 The Panel notes that Crown land plots remain in the BoR and on the land plans and that, in these plots, only interests which are for the time being held otherwise than by or on behalf of the Crown would be subject to compulsory acquisition of rights and imposition of restrictions.
- 8.19.5 With regard to section 122(2) PA2008, the Panel is satisfied that the land interests in all plots described and set out in the Applicant's final BoR for option A [REP10-009] and option B [REP10-021] and on the land plans as amended, for option A [REP6-032] and [REP6-033] for option B, are required in order to implement the development.
- 8.19.6 With regard to section 122(3) the Panel is satisfied in relation to the application that:
- development consent for the development should be granted;
  - the need for new electricity connections is proven;
  - whilst alternative routes for the development (other than option A and option B which are the only options before the Panel) and alternative methods of provision for the connection (undergrounding and a single wood pole for example) exist, the fact that these alternatives may be suitable does not preclude the grant of consent for the development;
  - there is a reasonable prospect of funding for the CA liabilities to be available;

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<sup>16</sup> Planning Act 2008, Guidance related to procedures for compulsory acquisition (CLG, 2013)

- the proposed interference with human rights would be for legitimate purposes that would justify such interference to a proportionate extent and is lawful in the public interest.

- 8.19.7 The Panel concludes that the development would comply with section 122(3) PA2008 in that there is a compelling case in the public interest for the rights over the land and power to impose restrictions to be acquired compulsorily.
- 8.19.8 In relation to all objections from APs considered by the Panel, it does not consider that the private losses suffered would be such as to outweigh the public benefits that would occur from the grant of the CA powers for rights over land and powers to impose restrictions that are sought.
- 8.19.9 In these circumstances, the Panel concludes that the proposed interference with individual rights as a result of the grant of CA powers would be necessary, proportionate and justified in the public interest and there is a compelling case in the public interest for the grant of CA powers for rights over land and imposition of restrictions sought by the Applicant in respect of the Order land as detailed in the Applicant's final editions of the BoR for option A version 4 [REP10-009] and option B version 2 [REP10-021].
- 8.19.10 The Panel therefore recommends that the Secretary of State grants the CA of rights that are being requested by the Applicant, in order to enable the NSIP to be delivered.

## **8.20 OTHER LAND MATTERS**

### **Section 127 Planning Act 2008**

- 8.20.1 At the close of the Examination there were no outstanding representations in relation to SU land. The Panel concludes that, at the close of the Examination, section 127 is not engaged.

### **Section 138 Planning Act 2008**

- 8.20.2 The Panel considers that in the case of land identified on the Applicant's final versions of the land plans for option A [REP6-032] and option B [REP6-033] and in the Applicant's final versions of the BoRs for option A, version 4 [REP10-009] and option B, version 2 [REP10-021], extinguishment of rights of SUs and operators of electronic communications code networks under Article 30 in the draft DCOs [REP11-018] and [REP1-020] is necessary for the purpose of carrying out the development and the test in section 138(4) PA2008 is met.



### **Human Rights Act<sup>17</sup> 1998 and European Convention of Human Rights considerations**

- 8.20.3 A key consideration in formulating a compelling case is a consideration of the interference with human rights which would occur if CA powers are granted.
- 8.20.4 Article 1 of the First Protocol (rights of those whose property is to be compulsorily acquired and whose peaceful enjoyment of their property is to be interfered with) is engaged.
- 8.20.5 Article 6, which entitles those affected by CA powers sought for the project to a fair and public hearing of their objections, is also engaged.
- 8.20.6 Article 8, which relates to the right of the individual to "*respect for his private and family life, his home ...*" is engaged, but to a lesser extent as no residential properties would be directly impacted by the development.
- 8.20.7 The Panel considers that it would be appropriate and proportionate to make the DCO, including the grant of CA of rights and temporary possession. In reaching this conclusion the Panel has had regard to the compensation to which APs would be entitled and the time limited nature of the development consent that the Panel is recommending in its recommended draft DCO. The Panel concludes that the need for the development to provide a connection for the wind farms outweighs any private loss that may arise in relation to APs having rights imposed over their land or being deprived temporarily of their land.

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<sup>17</sup> <http://www.legislation.gov.uk/ukpga/1998/42/contents>

## **9 DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS**

### **9.1 INTRODUCTION**

- 9.1.1 The original draft development consent order (DCO) submitted with the application for option A [APP-076] was accompanied by an explanatory memorandum [APP-077]. Later editions of the draft DCO did not have an accompanying explanatory memorandum but instead contained an explanation of the changes.
- 9.1.2 The draft DCO for option A (the original application) was updated several times during the Examination. At each revision the Applicant submitted a version which showed tracked changes between the previous version and a clean version of the updated draft DCO. References in this chapter will relate to the clean editions of the draft DCO. The various editions of the Applicant's draft DCOs are listed below.
- 9.1.3 The Applicant submitted option B details into the Examination on 16 September 2015 and these were accepted by the Panel in a Procedural Decision on 2 October 2015 [PD-013]. The Panel requested that the Applicant provided an option B draft DCO; this was submitted to the Examination at deadline 6 [REP6-016], and was then updated at deadline 9 [REP9-028] and deadline 11 [REP11-020].
- 9.1.4 The Panel's draft recommended DCO is appended to this report (Appendix E). It includes powers of compulsory acquisition (CA).
- 9.1.5 The constituent parts of the draft DCOs and the Panel's recommended draft DCO are described below.

### **9.2 THE APPLICANT'S DEVELOPMENT CONSENT ORDER**

- 9.2.1 The Applicant updated its DCO and numbered its versions of the DCO for option A (the original application) v1-v6. The draft DCO for option B was updated once at deadline 9 (option B (v2)) and again at deadline 11 (option B (v3)). Those versions of the draft DCOs and supporting documents, provided by the Applicant, can be found in the examination library, and are as follows:
- version 1 (v1) of the option A draft DCO (the original application) dated March 2015 [APP-076] and explanatory memorandum [APP-077];
  - version 2 (v2) of the option A draft DCO dated 17 September 2015 [REP2-020], tracked change version showing amendments made between v1 and v2 [REP2-021];
  - version 3 (v3) of the option A draft DCO dated 16 October 2015 [REP3-031] and tracked change version showing amendments made between v2 and v3 [REP3-034];
  - version 4 (v4) of the option A draft DCO dated 18 November 2015 [REP6-012] and tracked change version [REP6-013];

- version 5 (v5) of the option A draft DCO dated 21 December 2015 [REP9-026] and tracked change edition [REP9-027];
- version 6 (v6) of the option A draft DCO dated 28 January 2016 [REP11-018] and tracked change edition [REP11-017]
- version 1 (v1) for option B draft DCO dated 18 November 2015 [REP6-016] and track change edition [REP6-017];
- version 2 (v2) of the option B draft DCO dated 21 December 2015 [REP9-028] and tracked change edition [REP9-029]; and
- version 3 (v3) of the option B draft DCO dated 28 January 2016 [REP11-020] and tracked change edition [REP11-019].

9.2.2 The following paragraphs provide an overview of the main changes that occurred between the various iterations of the draft DCOs during the Examination.

9.2.3 In option A (v2) [REP2-020], the Applicant added definitions of "distribution", "NRW", "operate" and "structure" in Article 2. Article 13 (temporary prohibition or restriction of use of streets and public rights of way) was amended to enable the street authority to be provided with at least two weeks' notice of any alteration, diversion, prohibition or restriction. Articles 19 and 22 (compulsory acquisition of rights and private rights) were amended to include the "creation" of the rights, as well as their acquisition and Article 23 was amended to clarify that it is a right over land, not the land itself that is being sought. Schedule 1 (authorised development) was amended to clarify that trees would be "replaced" not "restored". Schedule 2 (requirements) updated Requirement 1 to include definitions of "core working hours" and other terms. A new requirement, Requirement 18 was added in relation to decommissioning. Schedule 9 (protective provisions) included a new protective provision in favour of Natural Resources Wales (NRW). Schedule 10 (procedure for discharge of requirements) was amended following concerns being raised by the Local Planning Authorities (LPAs) and NRW.

9.2.4 In option A (v3), [REP3-031] Article 2, the Applicant deleted the definitions of "operate" and "distribution". There were also amendments throughout the draft DCO to replace the word "operate" with "use". The Applicant considered that this also necessitated the inclusion of the definition, "distribution system". Article 4 was amended to clarify that the undertaker could maintain the development up to the end of the decommissioning period. Article 18 was amended so that any damage that occurred during the digging of trial holes would be made good. A new Article 22 was added which provided that the undertaker (the developer) must not exercise its powers of CA until it had demonstrated to the Secretary of State that it has sufficient funds to cover its CA liabilities. Article 28 was changed to enable the undertaker to use land within the Order limits for the purposes of decommissioning the authorised development. Schedule 2 included changes to definitions in relation to the decommissioning and restoration plan. Requirements 5, 6 and 7 were modified in relation to landscape and reinstatement planting matters following discussions at the hearings. Requirement 10 was amended to clarify which

operational activities could take place outside the core working hours and the use of artificial light would be restricted to use at Broadleys compound.

- 9.2.5 Various other requirements were amended including Requirement 18 on decommissioning, which the Applicant had simplified and redrafted based on the decommissioning requirement in the Hinkley Point C Connection draft DCO, submitted prior to that Examination closing in July 2015. The new wording required decommissioning only if numbered Works 1A and 1B were not in use, rather than specifying a specific period. A new requirement, Requirement 19, was added which would mean that the Applicant could not commence construction until the relevant LPAs have confirmed in writing that the works at the collector substation or cable sealing compound are permitted development or planning permission had been granted for these works under the Town and Country Planning Act 1990 (T&CPA 1990). Also the protective provisions had been updated following discussions with the statutory undertakers (SUs) concerned.
- 9.2.6 Option A (v4) [REP6-012] moved definitions of "distribution system" and "use" from Article 2 to Schedule 2. Article 12 was amended following comments received from Denbighshire County Council (DCC). Article number 27 was amended following the Panel's second written question (SWQ) SWQ12.6 [PD-016], so that all temporary and permanent works must be removed from the Order limits before giving up possession of the land unless the Applicant has previously acquired the necessary land rights by CA or through voluntary negotiation. Schedule 8 (Land of which temporary possession may be taken) was amended to provide some details in relation to the purpose for which temporary possession may be taken, following the Panel's SWQ12.4 [PD-016].
- 9.2.7 Option A (v5) [REP9-026] included a new Article 21 in relation to Crown rights. Article 29 was modified to revise the definition of "maintenance period" to enable the Applicant to carry out maintenance of landscaping, reinstatement planting and laying of hedgerows. This enabled the removal of Class 2(g) rights from the next versions of the Books of Reference (BoR) for both option A [REP10-009] and option B [REP10-021]. Article 34 was modified following NRW's refusal to provide consent to the disapplication of section 109 of the Water Resources Act (1991) and the provision of any bylaws made under paragraphs 5, 6 or 6A of Schedule 25 of that Act. This article in (v5) of the option A draft DCO, only disappplied section 23 of the Land Drainage Act. Article 37 and Schedule 12 were modified to widen the scope of the number of documents that would need to be certified by the Secretary of State to include the draft environmental management plans. Requirement 16 was deleted following the Issue Specific Hearing (ISH) on the draft DCO held on the 10 December 2015. Various other requirements were modified following discussions at that ISH including Requirement 17 on decommissioning which required the Applicant to submit for approval

to the relevant Local Planning Authorities a decommissioning and restoration plan.

- 9.2.8 Option A (v6) [REP11-018] included a modification to Article 21 to remove the word "take" in relation to land rights on Crown land, in line with the Panel's procedural decision regarding proposed modifications on the Applicant's draft DCO [PD-022]. Requirement 1 (Interpretation) had some definition modifications and the definition of "distribution" and "use" were deleted. Requirement 10 had been modified as suggested in the Panel's procedural decision regarding the wording for "Broadleys compound". Requirement 15 had been changed so that the photographic condition survey had to be approved by the local planning authorities. Requirement 17 on decommissioning was also modified, so that the decommissioning and site restoration scheme must be submitted no less than 12 months before the expiry of the development consent granted by the Order. A new requirement (Requirement 19) was added so that the development consent would expire 30 years after the commencement of works 1A and 1B. Other minor changes are evident in the tracked change version [REP11-017].
- 9.2.9 Option B (v1) draft DCO [REP6-016] provided an explanation of changes between option A draft DCO v3 (October 2015) and option B draft DCO v1 (18 November 2015). The Panel noted that option B (v1) draft DCO is identical in layout and content to option A (v4) draft DCO, submitted on the same date, with the only changes relating to definitions in Article 2. For example, the definitions of "access and right of way plan", "book of reference", "land plans" and "works plans" in Article 2 were amended to refer to the option B submission documents.
- 9.2.10 Option B draft DCO (v2) [REP9-028] contained the same changes as those for option A (v5), summarised above. The Panel noted that option B draft DCO v2 remained identical in layout and content to option A v5 draft DCO, apart from the differences identified above and changes to Schedule 12 which listed the plans and documents that would be certified by the Secretary of State, which are different for option B compared with option A.
- 9.2.11 Option B [REP11-020] contains the same changes as those for option A (v6), summarised above. The Panel noted that option B draft DCO (v3) remained identical in layout and content to option A (v6) draft DCO, apart from the differences identified above and changes to Schedule 12.

### **Structure of the draft development consent orders**

- 9.2.12 The various iterations of the Applicant's draft DCOs included articles and schedules including requirements and protective provisions. The articles are contained in seven parts, which will be briefly described here. The structure remains the same in the Panel's recommended DCO attached as Appendix E of this report, except Article 9

(Application and modification of Hedgerows Regulations 1997) in the Applicant's final draft DCOs for option A [REP11-018] and option B [REP11-020] having been deleted from Part 2 of the Panel's recommended draft DCO.

- 9.2.13 Part 1 contains the citation and commencement and interpretation provisions.
- 9.2.14 Part 2 sets out the principal powers in relation to the development consent proposed to be granted by the draft DCO, maintenance of the authorised development, limits of deviation, installation and use of the development, benefit of the Order, consent to transfer the Order and the application and modification of the Hedgerow Regulations 1997.
- 9.2.15 Part 3 includes amongst other things, the powers in relation to streets with articles which include rights which would enable the undertaker to alter the layout of streets; undertake street work; construct and maintain new means of access; prohibit or restrict temporarily the use of streets and public rights of way and enter into agreements with the street authority.
- 9.2.16 Part 4 contains two miscellaneous articles in relation to supplementary powers for the discharge of water and authority to survey and investigate the land.
- 9.2.17 Part 5 contains articles in relation to the CA of rights, statutory authority to override easements and other rights; Crown rights; the time limit for exercising the authority to acquire rights compulsorily; funding, temporary use of land for carrying out the authorised development, temporary use of land in relation to maintaining and decommissioning the authorised development, statutory undertakers and recovery of costs of new connections.
- 9.2.18 Part 6 contains one article in relation to the felling or lopping of trees and removal of hedgerows.
- 9.2.19 Part 7 contains miscellaneous and general articles including the application of landlord and tenant law; disapplication of legislative provisions; defence to proceedings in relation to statutory nuisance; protective provisions; certification of plans etc.; application and modification of legislative provisions, service of notices; and the procedure in respect of certain approvals and arbitration.
- 9.2.20 The schedules attached to the various iterations of the draft DCOs contain information referred to in the articles to the Order including the authorised development; requirements; land which would be subject to temporary possession; the procedure for the discharge of requirements; and provisions for the protection of specified SUs. Schedules are discussed in detail in report Section 9.10.

### **9.3 HOW THE PANEL EXAMINED THE DRAFT DEVELOPMENT CONSENT ORDER**

- 9.3.1 The Panel included questions concerning the draft DCO in its first written questions (FWQs) [PD-010]. These included questions on matters regarding the access and rights of way plans; the maximum depth of downward deviation; the definitions of various terms; the disapplication of legislation; the securing of details within the draft DCO including the Construction Environmental Management Plan (CEMP) and the minimum and maximum heights of poles; the total length of the above ground electric line; identification of plan revision numbers; requirement tailpieces; use of the term "substantially in accordance with" and whether there should be requirements for the expiry date for the consent and the timing of decommissioning.
- 9.3.2 The Applicant responded to the FWQs [REP1-056]. Other Interested Parties (IPs) including DCC [REP1-018], Conwy County Borough Council (CCBC) [REP1-009], Mr Dewi Parry and Mrs H Parry [REP1-021] responded to various of the Panel's FWQs in relation to draft DCO matters.
- 9.3.3 The Panel held two days of ISHs on the draft DCO. The first was on 2 October 2015 [EV-029 and EV-029a] and the second on 10 December 2015 considered matters in relation to both the draft DCO for option B [EV-048] and the draft DCO for option A [EV-049].
- 9.3.4 At the first ISH on draft DCO matters, the Panel sought updates and further details from the Applicant and IPs in relation to:
- differences between the first version of the draft DCO for option A [APP-076] submitted with the application and the second version [REP2-020];
  - various matters in relation to the draft articles including the disapplication of legislation;
  - the wording of draft Schedule 1 - authorised development;
  - the draft requirements (including the new draft requirement proposed by the Applicant on decommissioning - Article 18 in the draft DCO for option A v2 [REP2-020]);
  - the protective provisions; and
  - Schedule 10 in relation to procedure for the discharge of requirements.
- 9.3.5 At the second ISH on the draft DCOs for both option A and option B on 10 December 2015, the Panel sought updates and clarification from the Applicant and IPs on matters including:-
- progress with the two Highways Authorities in respect of agreement of draft Articles 10-16;
  - Article 33 regarding concerns raised by NRW in respect of the disapplication of legislation;
  - whether there would have been a potential for a hybrid scheme with some parts of option A and some parts of option B;

- Requirements 5 and 6 in relation to landscaping matters;
- Requirement 10 details (construction matters);
- Requirement 13 in relation to the draft CEMP;
- why Requirement 16 (amendments to approved details) would be needed and whether it would meet the tests for planning permissions under the Town and Country Planning Act (1990) and Welsh Government Circular WGC 016/2014: The Use of Planning Conditions in Development Management; and
- the wording of draft Requirement 18 (decommissioning) including the need for an expiry date for the development consent that would be granted by the DCO should it be made, starting with the draft wording proposed for such a requirement by CCBC in their Local Impact Report (LIR) [LIR-001].

- 9.3.6 IPs were invited to give oral evidence to the Panel in relation to any matters relevant to the content of the draft DCO versions at all of the ISHs on draft DCO matters.
- 9.3.7 Written summaries of cases made after the first ISH on the draft DCO were submitted by the Applicant [REP3-032] and DCC [REP3-006]. Following the second ISH on the draft DCOs, a written summary of case was received from the Applicant [REP9-025], together with the updated revised draft DCOs for option A v5 [REP9-026] and for option B v2 [REP9-028].
- 9.3.8 The Panel issued a procedural decision letter on the 7 January 2016 [PD-022], setting out, for consultation, its proposed revisions to the draft Applicant's DCOs, based upon the Applicant's option A (v5) draft DCO [REP9-026] and the Applicant's option B (v2) draft DCO [REP9-028], which had both been submitted to the Examination on 21 December 2015. The revisions proposed would apply equally, in identical terms, to both the option A draft DCO and option B draft DCO.
- 9.3.9 Responses to the Panel's procedural decision letter were received from the Applicant [REP10-019] and IPs including Mr Bibby on behalf of his clients [REP10-002], Mr Iwan Jones [REP10-003] and Ms Sheila Harman [REP10-007]. The Applicant, in its last iterations of the draft DCOs [REP11-018] and [REP11-020] accepted and incorporated some of the Panel's proposed revisions into the updated articles and requirements.
- 9.3.10 The Welsh Government, in its letter of 28 January 2016, attached to its Statement of Common Ground (SoCG) with the Applicant, [REP11-008], proposed some changes to the draft DCO, in relation to Article 9 (Application and modification to the Hedgerow Regulations 1997); Schedule 10 Article 3 (Appeals); Schedule 1, Work No. 2A; transport; and Cadw. The matter in relation to Cadw is discussed in report Section 5.4 above. The Panel also notes the Welsh Government's comment in relation to transport that according to the submitted information, the proposed works do not cross any trunk roads, therefore no direction response was issued from the Transport Division



of the Welsh Government. All other draft DCO matters raised by the Welsh Government [REP11-008] are discussed below.

#### **9.4 PRECEDENT ORDERS**

- 9.4.1 As this is the first Nationally Significant Infrastructure Project (NSIP) DCO application for a double wood pole line, the Panel is aware that there are no direct precedents from which guidance can be drawn.
- 9.4.2 DCOs have however been made relating to various projects in Wales, these include The Brechfa Forest West Wind Farm Order 2013, The South Hook Combined Heat and Power Plant Order 2014, The Clocaenog Forest Wind Farm Order 2014, The Swansea Bay Tidal Generating Station Order 2015 and The Hirwaun Generating Station Order 2015. Some of these are discussed in relation to relevant articles, requirements and schedules later in this chapter.

#### **9.5 DEFENCE TO PROCEEDINGS IN RESPECT OF STATUTORY NUISANCE**

- 9.5.1 This matter is discussed in report Section 5.10. The Panel's conclusions on this matter are summarised here. The Panel agrees with the Applicant, that the requirements in the draft DCOs together with the details on the monitoring, management and mitigation of any potential impacts upon human receptors during construction, together with the complaints procedure which is included in the outline CEMP [REP9-030], would provide a suitable and deliverable response mechanism for minimising impacts from noise and emissions and dealing with complaints when they arise.
- 9.5.2 The Panel concludes that the wording of Article 35 of the Applicant's final draft DCOs for option A [REP11-018] and option B [REP11-020] on this matter is acceptable in principle, and this wording has been carried forward into the Panel's recommended draft DCO, albeit it is numbered Article 34 in the Panel's recommended draft DCO and altered to reflect changes to legislation.

#### **9.6 CERTIFIED DOCUMENTS AND PLANS**

- 9.6.1 As set out in Schedule 12 of the Applicant's final draft DCO for option A [REP11-018] and for option B [REP11-020], and the Panel's recommended draft DCO, land plans, works plans, access and rights of way plans and a number of other documents would be submitted to the Secretary of State to be certified, should the DCO be made.
- 9.6.2 Various revisions to plans were made during the Examination, so Schedule 12 of the Applicant's final draft DCOs provides details relating to the latest editions of these documents that were submitted to the Examination. The other documents that would be certified include the outline Construction Environmental Management Plan (CEMP) and the environmental management plans that sit under the outline CEMP (the outline ecological environment plan, the outline hedgerow management plan, the outline traffic management plan) as

well as the outline landscape management plan. The final versions of the environmental management plans to be approved through the discharge of requirements, would be required to substantially accord with their outline counterparts to be certified under the Order. For example, Requirement 13 requires the CEMP to be approved and it would have to be substantially in accordance with the outline CEMP. The Panel considers that the inclusion of the phrase "substantially in accordance with" is acceptable because the outline environmental management plans have, as the Examination progressed, become more detailed and provided more certainty that specific mitigation and management actions would be implemented. As a result, these now provide a suitably detailed framework against which the final versions can be assessed. The Panel is therefore of the view that should the word "substantially" not be present, it could restrict the applicant on the content of the final documents and make them unable to reflect the best options that might be available at the time of submission for approval.

## **9.7 ARTICLES**

- 9.7.1 At the end of the Examination, the Applicant's final draft DCOs for option A [REP11-018] and option B [REP11-020] contained 41 articles. The Panel's recommended DCO however, contains 40 articles. The article that the Panel is proposing to remove from the draft DCO is discussed in paragraph 9.2.10 above.
- 9.7.2 The Panel's recommended draft DCO principal powers articles would grant development consent for the development to be carried out within the Order limits, subject to Article 5 (limits of deviation). Each numbered work must be constructed and installed on the corresponding numbered line or within the numbered area shown on the works plans. Principal power articles would also authorise the undertaker to install and maintain the development. Whilst the Order would be for the benefit of SP Manweb PLC, Article 8 enables the Applicant to transfer to another person any or all of the benefits of the Order. Details concerning the Panel's proposed changes to articles in its recommended draft DCO are provided in the Table below and report Section 9.15.

## **9.8 DESCRIPTION OF WORKS**

- 9.8.1 Schedule 1 defines the authorised development works contained in the DCO. Works number 1A and 2A cover the construction and installation of a double wood pole 132kV above ground electric line, approximately 9.6km in length and other works including earthworks, landscaping and ecological measures to replace trees, hedgerows and other vegetation that has been removed during construction and temporary and permanent means of access and trackways that would be undertaken in the County of Denbighshire. Work number 3A comprises landscaping to mitigate any adverse effects of the maintenance or use of the authorised development together with means of access. Work number 4 comprises a temporary site

construction compound; there is only one site compound required to serve the construction of all of the proposed development.

- 9.8.2 Works number 1B and 2B cover the construction and installation of a double wood pole 132kV above ground electric line, approximately 7.8km in length and other works including earthworks, landscaping and ecological measures to replace trees, hedgerows and other vegetation that has been removed during construction, and temporary and permanent means of access and trackways that would be undertaken in the County Borough of Conwy. Work number 3B comprises landscaping to mitigate any adverse effects of the maintenance or use of the authorised development together with means of access.

## **9.9 PROTECTIVE PROVISIONS**

- 9.9.1 The three sets of protective provisions in Schedule 9 of the Panel's recommended draft DCO are in favour of operators of electronic communications code networks; Dwr Cymru Welsh Water (DCWW); and the relevant planning authorities. These are discussed in Chapter 8 above, and summarised here. The protective provisions have been agreed with British Telecommunications PLC (BT) (an electronic communications code network operator), DCWW and the two local authorities (DCC and CCBC). BT and the local authorities are not SUs as defined in the relevant legislation, but their interests are relevant to section 138 Planning Act 2008 (as amended) (PA2008).
- 9.9.2 NRW and DCWW are the only two relevant SUs that have land interests in the Order land. Chapter 8 explains that NRW's SU interests are in relation to its capacity as river authority, but as the development would not interfere with the bed or the banks of Afon Elwy or Afon Ystrad, its interests in relation to its role as river authority would not be affected. The Panel therefore agrees with the Applicant that there is no need for protective provisions in favour of NRW.
- 9.9.3 There are no other SUs that would be affected by the development, other than the Applicant itself. The Applicant explained that it would deal with its own apparatus as part of the development process and would not enforce the terms of the DCO against itself. The Panel concludes that the Applicant's interests as a SU do not need to be considered in relation to protective provisions.
- 9.9.4 The agreement of all three sets of protective provisions with the relevant SUs and IPs has overcome issues that could have arisen in relation to section 127 and section 138 PA2008. In relation to section 127, the Panel noted that neither of the relevant SUs had raised concerns that the rights required by the Applicant would cause serious detriment to the carrying out of their undertaking. In respect of DCWW their representation was withdrawn and so section 127 was not engaged. NRW, identified as river authority in respect of the bed and banks of Afon Ystrad and Afon Elwy in the BoR, submitted a written

representations but it was not in relation to its land management interests. The Panel concluded in Chapter 8 that section 127 was not engaged in relation to either of the SUs.

- 9.9.5 The Panel also concluded that the requirements of section 138(4) PA2008 in relation to the extinguishment of rights and removal of apparatus are met.

## **9.10 OTHER SCHEDULES**

- 9.10.1 Schedule 2 contains the requirements, which are discussed below. Schedules 3 and 4 set out respectively, the streets that would be subject to permanent and temporary alteration of layout and subject to street works. Schedule 5 sets out details in relation to works to and maintenance responsibilities for accesses needed for the development. Schedule 6 sets out where temporary prohibition or restriction of the use of streets or public rights of way would occur. Schedule 7 sets out proposed modification of compensation and compulsory purchase enactments for creation of new rights. Schedule 8 identifies land of which temporary possession may be taken. Schedule 10 sets out the procedure for the discharge of requirements. Schedule 11 sets out the details of important hedgerows that may be removed. Schedule 12 sets out the Applicant's documents that would be certified by the Secretary of State, if a DCO is made.

## **9.11 REQUIREMENTS**

- 9.11.1 EN-1, paragraph 4.1.7 advocates that the decision-maker should only impose requirements in relation to a development consent that are necessary, relevant to planning, relevant to the development consented, enforceable, precise and reasonable in all other respects. The decision-maker should take into account the guidance in Circular 11/95 (the use of conditions in planning permissions) or any successor to it. Circular 11/95 has now been cancelled and replaced by section 21a the 'Use of Planning Conditions' of the Planning Practice Guidance. The same six tests are referred to in paragraph 3.6.2 of Planning Policy Wales (Edition 8, January 2016) (PPW 8) and section 3 of Welsh Government circular 06/2014: The Use of Planning Conditions for Development Management.

### **Requirement 1 - Interpretation**

- 9.11.2 Requirement 1 was altered and modified by the Applicant through the course of the Examination to remove interpretations that were covered by Article 2(1), to include new and updated definitions that were considered necessary following alterations to proposed requirements and the insertion of new requirements. These include defining core working hours and daylight hours to reflect concerns raised by the Panel, DCC, CCBC and IPs; providing definitions for Broadleys compound; decommissioning and site restoration scheme; landscape planting; new trees; outline construction environmental management

plan; planning consent; reinstatement planting; relevant design principles and wind farms.

- 9.11.3 The definition of "core working hours" in the Applicant's draft DCO [REP11-018 and REP11-020] states that no works are to take place on Sundays and bank holidays. However, "bank holidays" are those fixed by statute - the Banking and Financial Dealings Act 1971 (the 1971 Act) - as days when financial dealings may be suspended which are Easter Monday; the last Monday in May; the last Monday in August; Boxing Day. In addition Christmas Day and Good Friday are common law public holidays and New Years Day and the first Monday in May are public holidays declared by Royal Proclamation under the 1971 Act. Whilst the term "bank" holiday is used interchangeably with "public" holiday and for all practical purposes there is no difference for the purposes of precision and enforceability in the Panel's recommended DCO this definition has been amended to "no works shall take place on Sundays and any bank or public holiday".
- 9.11.4 The definition of felling in the Applicant's draft DCO [REP11-018 and REP11-020] refers to "article 32". In the Panel's recommended DCO this has been amended to "article 31".
- 9.11.5 The definition of "landscape planting" refers to land stippled dark green on the land plans. Stippling is defined as a pattern made by a series of dots. However, the land plans show areas of green cross-hatching rather than stippling. In the Panel's recommended DCO the definition has been amended to "the land shown coloured dark green and the land shown cross-hatched green".
- 9.11.6 The definition of "new tree" refers to "yellow and blue land shown on the land plans (but excluded the land stippled dark green on the land plans)". As outlined in the previous paragraph the land plans show green cross-hatching rather than stippling. Therefore for consistency and clarity in the Panel's recommended DCO the definition has been amended to "land shown coloured yellow and the land shown coloured blue on the land plans (but excluding any such land shown cross-hatched green on the land plans)".
- 9.11.7 The definition of "reinstatement planting" has a similar reference to land stippled dark green. Therefore for consistency and clarity in the Panel's recommended DCO the definition has been amended to "the land shown coloured yellow and the land shown coloured blue on the land plans (but excluding any such land shown cross-hatched green on the land plans)".
- 9.11.8 For clarity the definition of "planning consent" in the Panel's recommended DCO has been amended to:
- "Planning Consent" means any of the following -
- (a) planning permission granted under part 3 of the 1990 Act;
  - (b) development consent granted under the 2008 Act;
  - (c) consent granted under the Electricity Act 1989; or

- (d) planning permission granted under the Town and Country Planning (General Permitted Development) Order 1995.

9.11.9 For clarity the definition of "wind farms" in the Panel's recommended DCO has been amended to:

"wind farms" means the wind farms known as -

- (a) Nant Bach approved under planning permission DC/0/35170 or such other planning consent replacing it or amending it;
- (b) Derwydd Bach approved under planning permission 04/2007/0964/WF or such other planning consent replacing it or amending it;
- (c) Clocaenog Forest approved under the Clocaenog Forest Wind Farm Order 2014 or such other planning consent replacing it or amending it; and
- (d) Brenig approved under planning permission 25/2007/0565/WF or such other planning consent replacing it or amending it.

### **Requirement 3 - Detailed design**

9.11.10 Requirement 3 was amended by the Applicant to include the compound layout drawings and to update document reference numbers for the section drawings.

### **Requirement 4 - Stages of authorised development**

9.11.11 In response to comments made by DCC in their LIR [LIR-002] Requirement 4 was expanded by the Applicant at version 2 [REP2-020] to provide further clarity as to what the written scheme setting out the stages of the authorised development needed to include.

### **Requirement 5 - Landscaping**

9.11.12 DCC in their LIR [LIR-002] advocated that as a landscaping scheme is proposed to mitigate the visual effects of the proposed development it should form part of the application and details should only be submitted to the local planning authority where they deviate from the approved detail. The Panel accepts, for the reasons detailed in the relevant section of Chapter 5, that the proposed landscaping is key to mitigating the visual effects of the proposed development. However, the Panel also accept, following evidence given at both ISH and DCO hearings, that an indicative landscaping scheme can only be provided at this stage as the final detail and location of planting can only be agreed once the location of the poles and route has been finalised following further survey work that would only be undertaken once consent was granted and following discussions with the relevant landowners. Therefore, the Panel is satisfied that landscaping should be dealt with by means of a requirement and that as currently drafted [REP11-018 and REP11-020] no stage of the authorised development could commence until a written landscaping scheme for that part of the development has been submitted to and approved by the relevant local planning authority.

- 9.11.13 Requirement 5 was amended by the Applicant to include a duty for the Applicant to consult with landowners on the written landscaping scheme prior to submission of the details for approval to the relevant planning authority. This was inserted in version 3 [REP3-031] of the draft DCO in response to IPs concerns regarding the potential impacts of landscaping proposals, in particular tree planting, on agricultural practices.
- 9.11.14 Requirement 5 [REP11-018 and REP11-020] would also now require the submission and approval of the details of the maintenance regime for the landscape planting 5(1)(e) and that the landscape planting must be maintained in accordance with the approved landscaping scheme 5(4) which were covered by Requirement 6 in earlier iterations of the draft DCO.
- 9.11.15 A tailpiece, Requirement 5(3) has been added to Requirement 5 by the Applicant which would enable the Applicant to amend the approved landscaping scheme. The Applicant advocated that this was necessary in order to provide flexibility and prevent delay should plants or materials not be available or better alternatives become available when the landscaping scheme is implemented.
- 9.11.16 Paragraph 19.4 of the Planning Inspectorate Advice Note 15: Drafting Development Consent Orders, states that a tailpiece should not allow a Local Planning Authority to approve details which stray outside the parameters set for the development by the examination process. This tailpiece would require that any amendment remains substantially in accordance with the outline landscape management plan and the planting principles contained in the ecological management plan and include the details listed in Requirement 5(1). Given this limitation on the scope of the tailpiece the Panel considers that its use is appropriate and would provide a proportionate and limited degree of flexibility to the Applicant, the relevant planning authorities and landowners.
- 9.11.17 The Applicant's draft DCO [REP11-018 and REP11-020] at Requirement 5(4) refers to the 'landscaping scheme as approved under this article'. In the Panel's recommended DCO this has been amended to 'landscaping scheme as approved under this requirement'.

#### **Requirement 6 - Dying, diseased, damaged planting**

- 9.11.18 Requirement 6 requires the replacement of any tree or shrub that is planted as a result of Requirement 5 or 7 that is removed, dies or becomes seriously damaged or diseased. The timeframe set by this requirement for replacement planting is five years. However, the requirement as drafted in the Applicant's draft DCO for both options [REP11-018 and REP11-020] does not provide a date from which the five year period would start. As a result it is considered that the requirement would fail to meet the test set out in paragraph 4.1.7 of the National Policy Statement (NPS) EN-1 which states that requirements need to be precise and enforceable.

- 9.11.19 As the proposed development is a linear scheme, planting for both landscaping and reinstatement planting would be carried out in stages in accordance with an implementation timetable that would be approved by the relevant planning authority as part of Requirements 5 and 7. The Panel consider that the proposed implementation timetable would provide precision and an enforceable date from which the proposed five year period for replacement of removed, dead, seriously damaged or diseased planting could commence. The Panel's recommended DCO has therefore been amended to include reference to the implementation of that stage of the planting or reinstatement planting.

### **Requirement 7 - Reinstatement planting**

- 9.11.20 Requirement 7(2) requires the submission of a reinstatement planting plan to the relevant planning authority for approval. It includes a list of details that the reinstatement planting plan must include. However, unlike the landscaping scheme (Requirement 5), Requirement 7 as drafted [REP11-018 and REP11-020] by the Applicant does not include an implementation timetable for the reinstatement planting. Although Requirement 7(2) states that "No reinstatement planting...is to be carried out until a reinstatement planting plan has been submitted to and approved by the relevant planning authority" without an implementation plan the Panel consider that the requirement as drafted would be neither precise nor enforceable and therefore would fail to meet the test for requirements as set out in paragraph 4.1.7 of NPS EN-1. As a result the Panel's recommended DCO has been amended to insert Requirement 7(2)(d) implementation timetable for the reinstatement planting.
- 9.11.21 As with Requirement 5, Requirement 7(3) includes a tailpiece which would enable the Applicant to amend the approved reinstatement planting plan for the same reasons given for its inclusion in Requirement 5.
- 9.11.22 The amendments would need to include the details listed in subparagraph (2). Given this limitation on the scope of the tailpiece the Panel considers that its use is appropriate and would provide a proportionate and limited degree of flexibility to the Applicant, the relevant planning authorities and landowners.
- 9.11.23 The Applicant's draft DCO [REP11-018 and REP11-020] at Requirement 7(4) refers to the 'planting plan as approved under this article'. In the recommended DCO this has been amended to 'planting plan as approved under this requirement'.

### **Requirement 10 - Construction hours**

- 9.11.24 Both the Statements of Common Ground for DCC [REP-037] and CCBC [REP9-021] indicate that they would want a reduction in the proposed construction hours. However, as outlined in Section 5.9 of the report, taking into account the construction needs of the Applicant and the



relatively limited impact of the additional working hours, the Panel are satisfied that the suggested working hours would restrict the impacts associated with construction so that the living conditions of the surrounding residents would not be adversely affected.

- 9.11.25 Requirement 10(2) as drafted by the Applicant states that certain operations are excluded on public holidays. However, for the reasons outlined above for the definition of "core working hours" whilst the term "bank" holiday is used interchangeably with "public" holiday and for all practical purposes there is no difference, for the purposes of precision and enforceability in the Panel's recommended DCO this has been amended to refer to "excluding bank and public holidays".

### **Requirement 11 - Contaminated land and groundwater**

- 9.11.26 DCC in their LIR [LIR-002] considered that Requirement 11 of the original draft DCO [APP-076] needed to be amended to specify time limits for the completion of investigations and risk assessments and for works to cease until contamination has been rectified.
- 9.11.27 The Applicant amended Requirement 11 in version 2 of the draft DCO [REP2-020] so that in the event of contamination being found work would cease immediately on that part of the authorised development and would not recommence until investigation; risk assessments and where necessary remediation has been undertaken in accordance with a scheme to be submitted to and approved by the relevant planning authority.
- 9.11.28 The requirement as drafted does not specify time limits for the completion of investigations and risk assessments or remediation. However, the proposed development is a linear scheme and as work would have to cease until investigation, risk assessment and where necessary remediation has been undertaken to the satisfaction of the relevant planning authority the Applicant would, in such circumstances, effectively be prevented from completing the development. As a result the Panel, having regard to paragraph 4.1.7 of NPS EN-1, do not consider that imposition of time limits for investigation and risk assessments would be necessary.

### **Requirement 12 - Archaeology**

- 9.11.29 The Applicant's draft DCO [Rep11-018 and REP11-020] refers to the "Clwyd and Powys Archaeological Trust (CAPT)". In the recommended DCO this has been amended to "Clwyd-Powys Archaeological Trust".

### **Requirement 13 - Construction Environmental Management Plan**

- 9.11.30 The Applicant's draft DCO [REP11-018 and REP11-020] at Requirement 13(1) contains a number of typos and omissions. On the fifth line "and" needs to be deleted; the seventh line omits the word "be" in the sentence "and must include but not limited to the following plans" and should read "and must include but not be limited to the

following plans". For clarity the Panel's recommended DCO has been amended to include these changes.

- 9.11.31 The Applicant's draft DCO at Requirement 13(3) refers to the "construction environmental management plan as approved under this article". In the recommended DCO this has been amended to "construction environmental management plan as approved under this requirement".

#### **Requirement 14 - Piling**

- 9.11.32 Paragraph 4.1.7 of NPS EN-1 states that requirements need to be precise and enforceable. Requirement 14(1) requires the submission and approval of a piling method statement which the panel consider would be necessary to manage the impact of piling on the living conditions of neighbouring residents. However, Requirement 14(2) of the Applicants draft DCO [REP11-018 and REP11-020] states that piling must be carried out in accordance with the approved method statement. In order to comply with paragraph 4.1.7 of NPS EN-1 and ensure that the requirement would be precise Requirement 14(2) of the Panel's recommended DCO has been amended to "piling must be carried out in accordance with the approved piling method statement".

#### **Requirement 17 - Decommissioning**

- 9.11.33 The original draft DCO for option A [APP-076] did not include a decommissioning requirement. However, DCC, CCBC and a number of IPs raised this as a concern. Decommissioning was also highlighted as a principal issue at Annex C of the Panel's letter of 2 July 2015 [PD-004]. As a result a decommissioning requirement was inserted into the next version of the Applicants draft DCO for option A [REP2-020] the wording of which was refined and amended over subsequent iterations to address concerns raised both by IPs and the Panel with particular reference to improving the precision of the wording around timescales for decommissioning.
- 9.11.34 The requirement as drafted [REP11-018 and REP11-020] is now linked to the expiry of consent (Requirement 19) and would require the Applicant to submit a decommissioning and site restoration scheme which would include a timetable for decommissioning; removal of works 1A and 1B; restoration of the order land and management of traffic and sensitive habitats during decommissioning and restoration.
- 9.11.35 As highlighted in Section 5.9 the impacts of decommissioning would be similar to the impacts of construction, albeit that they would be experienced over a shorter timescale. However, the mitigation measures that would be provided via the CEMP for construction would as drafted currently not be provided for decommissioning. As a consequence the Panel considers that the decommissioning phase could have the potential to adversely impact upon the living conditions of neighbouring residents. In order to address this concern, the Panel's recommended DCO has been amended so that Requirement

17(2) would include a provision to submit for approval "(f) a Decommissioning Environmental Management Plan, which is, where relevant to the proposed works, substantially in accordance with the Construction Environmental Management Plan approved in accordance with Requirement 13."

### **Requirement 18 - Connection to the wind farms**

- 9.11.36 Requirement 18 was inserted into the second version of the applicants draft DCO for option A [REP2-020] following concerns raised by the Panel at the ISH on the 29 September 2015 [EV-016]. The concern arose from the fact that proposed work No 1A would commence "in the vicinity of the gantries at the new collector substation to be built at Clocaenog Forest". However, the collector substation does not form part of the proposed development and was the subject of a separate planning application to DCC [DCC Ref: 23/2014/1440]. DCC refused planning permission for the collector substation on the 15 July 2014 and this application is the subject of a current appeal [PINS Ref: APP/R6830/A/15/3134331] the decision for which is pending. A collector substation would be necessary to provide the connection between the wind farms and the proposed development.
- 9.11.37 Furthermore, whilst the proposed development would terminate at a terminal structure south of Glascoed Road, B5381 modifications to the cable sealing compound at St Asaph Substation and a length of underground cable would be required to enable the proposed development to connect to the grid. The Applicant advocated that these works would be permitted development under the Town and Country Planning (General Permitted Development) Order 1995 and had written to DCC outlining how they had reached this conclusion and seeking written confirmation that this approach was correct [REP1-054 - Appendix D]. For the majority of the Examination DCC had not confirmed whether or not they agreed with this position. However, in the signed Statement of Common Ground [REP9-037] it was agreed between DCC and the Applicant that the works within the perimeter of St Asaph substation and the installation of an underground cable to connect St Asaph substation to the terminal point would be permitted development.
- 9.11.38 Paragraph 4.1.7 of NPS EN-1 states that requirements need to be necessary and reasonably related to the development. Without planning permission for a collector substation at Clocaenog Forest in place the proposed development would not be able to provide the connection between the wind farms and the grid connection at St Asaph. As a result the Panel considers that 18 (b) (a planning permission under Part 3 of the 1990 Act has been granted for such works as not covered by sub paragraph (a)) is both necessary and reasonably related to the development. However, as DCC have confirmed that the cable to and works within St Asaph substation compound are permitted development, the Panel considers that 18(a) (the relevant planning authority has confirmed in writing after the day this Order comes into force that such works are permitted

development under Town and Country Planning (General Permitted Development) Order 1995) would no longer be necessary and as a result this element of the requirement has been deleted from the recommended DCO.

- 9.11.39 For clarity in the recommended DCO requirement 18 has been amended to "No authorised development must commence, unless, in relation to all works comprising a collector substation at Clocaenog Forest which connects the authorised development to any of the wind farms a planning permission for the collector substation under Part 3 of the 1990 Act has been granted for such works".

### **Requirement 19 - Expiry of development consent**

- 9.11.40 The original draft DCO for option A [APP-076] sought an unrestricted consent that did not limit the lifetime of the proposed development. Whilst the Applicant acknowledged that the consents for the wind farms which the proposed development would connect to the electricity network had requirements or conditions that limited the individual wind farms to a life of 25 years, they advocated that the wind farms are located within an area designated by TAN 8 as a Strategic Search Area (SSA) and therefore there was the possibility that other developments may come forward that would also require a connection. Furthermore, as the Electricity Network Operator for North and Mid Wales, the Applicant was under an obligation to ensure that the infrastructure of the electricity distribution network was up to date and had sufficient capacity to meet current and future needs. Therefore the Applicant considered that the lifetime of the line should not be limited to the lifetimes of the wind farms, to enable them to provide potential further connections and to meet their Electricity Network Operator obligations.
- 9.11.41 However, as outlined in Chapter 5 the Panel and a number of IPs were concerned regarding the potential impacts if the overhead line were to remain in place in perpetuity. In order to address these concerns, particularly with regard to the impact on Berain [Chapter 5.4] and the wider landscape and countryside [Chapter 5.2] the Panel issued its consultation letter to all IPs on 7 January 2016, regarding its proposed changes to the draft DCO [PD-022]. This suggested the insertion of an additional requirement (Requirement 19) that would result in the development consent granted by the Order expiring 30 years from the date of the Order.
- 9.11.42 The Applicant accepted that to limit the life time of the development would provide a means of mitigating the impact of the proposed development [REP10-019]. As a consequence at deadline 11 [REP11-018 and REP11-020] the Applicant amended the draft DCO for both options to include a requirement that would limit the period for which development consent would be granted by the Order.
- 9.11.43 However, the requirement as drafted by the Applicant would result in the development consent expiring 30 years from the commencement,

which is defined by Requirement 1, of works 1A and 1B. The Applicant considered that this was necessary on the basis that it would be possible for the development to commence at any time within a period of five years from when the consent is granted and, therefore, it would not be appropriate for the 30 year period to commence until development was commenced.

- 9.11.44 Having regard to Paragraph 4.1.7 of EN-1 whilst the Panel welcomed the inclusion of the requirement it was considered that the proposed timeframe of 30 years from commencement would not be reasonable given that the wind farms have a life of 25 years and the requirement, as worded by the Applicant would not give the LPAs or the local community any certainty over the commencement (and therefore the expiry date). However, the Panel acknowledges that, given the construction of the wind farms would not be controlled by the Applicant, to limit the life of the proposed development to 25 years from the date that the DCO is made would be unreasonable, as the wind farms have consented lives of 25 years and this would not give any flexibility should developers for the other two wind farms come forward in the short term. As a consequence Requirement 19 of the Panel's recommended DCO reflects the original wording suggested by the Panel and requires that the development consent granted by the Order to expire 30 years from the date of the Order, thereby providing a buffer of an additional 5 years over and above the consented lifetime of the wind farms, to enable the development of the other two wind farms, should a developer for these come forward in the near future.

## **9.12 OTHER LEGAL AGREEMENTS/ RELATED DOCUMENTS**

- 9.12.1 There is no agreement under section 106 of the T&CPA 1990, for the proposed development. At no stage during the Examination was it considered by the Applicant or IPs that a planning obligation directly related to the proposed development was necessary. The Panel agrees with this approach.
- 9.12.2 The Panel noted that the Applicant was in the process of obtaining a lease from NRW in respect of the Crown land at the southern end of the Order limits. This had not been finalised by the end of the Examination and is discussed in report Chapter 8.
- 9.12.3 The application form [APP-002] identified that other consents and licences would also be required:
- European Protected Species Licences (Conservation of Habitats and Species Regulations 2010);
  - Licence to authorise work affecting badgers or interfering with badger setts (Protection of Badger Act 1992);
  - Protected species licences (Wildlife and Countryside Act 1981);
  - Hazardous waste regulations (Regulation 21 of the Hazardous Waste (England and Wales) Regulations 2005;
  - Environmental Permitting discharge consents (Environmental Permitting (England and Wales)) Regulations 2010;

- Section 61 consents (Control of Pollution Act 1974);
- Permitted Development or Planning Permissions for St Asaph Substation works and underground cable (The Town and Country Planning (General Permitted Development) Order 1995/Town and Country Planning Act 1990); and
- Planning Permission for the Collector substation (Town and Country Planning Act 1990).

9.12.4 Report Section 5.1 provides details relating to protected species licences and Section 5.9 provide details in relation to waste management and discharge consents. The planning situation at the end of the Examination in relation to permitted development matters and planning permission for the associated development is described in report Section 2.4.

9.12.5 The SoCG between the Applicant and NRW [REP9-019] stated: "*based on the information currently available NRW considers that it is not unlikely that any necessary protected species licences will be granted*".

9.12.6 Given the final position of NRW and the two relevant LPAs in relation to matters within their jurisdiction, the Panel does not envisage any particular issues would be likely to arise in connection with the necessary grant of licences and permits by the relevant bodies. The Panel concludes that, if a DCO is made, there is a reasonable likelihood of all of the required permissions and licences being granted, after the DCO is made.

### **9.13 OPTION A AND OPTION B**

9.13.1 On 16 September 2015 the Applicant submitted a request for 16 proposed changes to the scheme, which would form an option B for the proposed development and they asked that the Panel examine both the original scheme, option A and the modified version option B alongside each other.

9.13.2 The changes came out of requests made by those with an interest in the land affected by the scheme. The changes proposed by option B relate to the location of proposed poles outside of the order limits proposed by option A which would mean that the applicant would need more land to undertake the scheme.

9.13.3 The details of the proposed changes are summarised in Table 1 of paragraph 3.4 of Option B Compulsory Acquisition Document 1 [OpB-002]. The 16 proposed changes include seven movements of poles within existing limits of deviation; eight movements of poles which would result in changes to the order limits which would require the need for the Applicant to acquire additional land; one reduction to the order limits and the insertion of four additional pole positions.

9.13.4 Option B was the subject of a separate round of consultation and ISHs on 8 December 2015 and 10 December 2015 and a Compulsory Acquisition Hearing (CAH) and an Open Floor Hearing (OFH) on 9 December 2015.

- 9.13.5 The majority of IPs maintained the same in-principle concerns that they had made to option A regarding the proposed development. However, those that provided specific comments on option B [REP5-003, REP5-006, REP5-013, REP5-019] confirmed that the changes had arisen in response to requests to address specific concerns and therefore they indicated a preference for option B over option A. This preference for option B over option A was confirmed following further examination of the proposal and the evidence provided by IPs at the Hearings and in their written representations. This is discussed and concluded upon by the Panel in report 5.15.
- 9.13.6 As a consequence the Panel has acknowledged the preference for option B and concludes that, if made, the recommended DCO should be based on the Applicant's final draft DCO for option B [REP11-020].

## **9.14 THE RECOMMENDED ORDER**

- 9.14.1 The Panel's recommended draft DCO is based on the Applicant's last submitted version of the draft DCO for option B (v3) [REP11-020], but includes the following changes made by the Panel and incorporated within it. Report Chapter 5 provides an explanation why the Panel is recommending that the DCO for option B is used as the basis for the consent.
- 9.14.2 Whilst the changes have been made to the option B draft DCO, they would apply equally, in identical terms, to both the option A DCO v6 and the option B DCO v3. If the Secretary of State were minded to grant development consent for the NWWFC DCO based on option A, the Panel recommends that the same changes are made to the Applicant's final draft DCO for option A.
- 9.14.3 Many of the amendments made by the Panel below have been considered in the Panel's letter of the 07 January 2016 on the Examining Authority's consultation draft DCO [PD-022], in which amendments proposed by the Panel were issued for consultation and therefore the Applicant and other IPs have had an opportunity to set out their views upon them, as reflected in the relevant sections of this report.

<b>Panel Amendment Number</b>	<b>Part of the Panel's recommended draft DCO that differs from the applicant's final submission DCO for option B [REP11-020]</b>	<b>Amendment(s) made by the Panel</b>	<b>Reason for amendment</b>
1	Article 2(1) (Interpretation)	<p>Replace "decommissioning and site restoration plan" with "decommissioning and site restoration scheme" in the definition of "the decommissioning period".</p> <p>Delete NRW definition and replace with "'NRW" means the Natural Resources Body for Wales".</p> <p>Delete ",in any given provision of this Order," from the definitions for "relevant highways authority" and "relevant planning authority".</p>	To provide clarity over the meaning of certain expressions used within the DCO.
2	Article 9 (Application and modification of Hedgerows Regulations 1997)	Delete this article and renumber subsequent articles.	So that any hedgerow removal carried out is restricted to that authorised in the Panel's recommended DCO Article 31(4), previously Article 32(4).
3	Article 16 (Discharge of Water) (previously Article 17)	Replace "Natural Resources Wales" with "NRW" in paragraph (9)(a).	To provide clarity and uniformity.
4	Article 18 (Compulsory acquisition of rights), (previously Article 19)	<p>Insertion of a new paragraph in Article 18 (as a new paragraph at (6)), to read as follows:</p> <p>"(6) Nothing in this article authorises the acquisition of rights over, or the imposition of restrictions affecting, an interest which is for the time being held by or on behalf of the Crown."</p>	To clarify that the DCO would not authorise the acquisition of rights over, or imposition of restrictions affecting an interest in land which is for the time being held by or on behalf of the Crown.



Panel Amendment Number	Part of the Panel's recommended draft DCO that differs from the applicant's final submission DCO for option B [REP11-020]	Amendment(s) made by the Panel	Reason for amendment
5	Article 22 (Funding), (previously Article 23)	<p>Replacement of text in Article 22 with the following text:</p> <p>"Article 22: Funding</p> <p>22.—(1) The undertaker must not begin to exercise the powers provided within Parts 3, 4, 5 and 6 of this Order in relation to any land unless it has first put in place either —</p> <p>(a) a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or</p> <p>(b) an alternative form of security for that purpose which has been approved by the Secretary of State.</p> <p>(2) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under the Order is to be treated as enforceable against the guarantor by any person to whom such compensation is payable and must be in such form as to be capable of enforcement by such a person.</p> <p>(3) The guarantee or alternative form of security is to be in place for a maximum of 20 years from the date on which the relevant power is exercised."</p>	To ensure that the funding for the CA liabilities is secured through a guarantee or other form of security and the guarantee or other form of security is in place for a maximum of 20 years from the date on which the relevant power is exercised.
6	Article 25 (Acquisition of subsoil or airspace only) (previously Article 26)	In Article 25(1) delete reference to "article 19" and replace with "article 18".	To accord with renumbering of articles.

<b>Panel Amendment Number</b>	<b>Part of the Panel's recommended draft DCO that differs from the applicant's final submission DCO for option B [REP11-020]</b>	<b>Amendment(s) made by the Panel</b>	<b>Reason for amendment</b>
7	Article 30 (Recovery of costs of new connections) (previously Article 31)	In Article 30(2) delete reference to "article 30" and replace with "article 29".	To accord with renumbering of articles.
8	Article 31 (Felling or lopping trees and removal of hedgerows) (previously Article 32)	<p>Insert an additional paragraph (as a new paragraph (5) into Article 31) to read as follows:</p> <p>"(5) The power conferred by paragraph (4) shall remove any obligation upon the undertaker to secure any consent to remove those hedgerows under the Hedgerows Regulations 1997(a)."</p> <p>Footnote (a) would then read as follows: "(a) S.I. 1997/1160, to which there are amendments not relevant to this Order."</p> <p>The previous paragraph (5) in Article 31 would then be re-numbered as (6).</p>	To clarify that the hedgerow removals authorised by Article 31 would not require consent under the Hedgerows Regulations 1997.
9	Article 34 (Defence to proceedings in respect of statutory nuisance) (previously Article 35)	<p>In Article 34(1)(a) delete "or 65 (noise exceeding registered level),".</p> <p>In Article 34(2) delete "and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded),".</p>	Article 34(1)(a) and Article 34(2) both refer to s65 Control of Pollution Act 1974 which was repealed under the Deregulation Act 2015 .
10	Article 40 (Arbitration) (previously Article 41)	In Article 40 delete reference to "article 40" and replace with "article 39".	To accord with renumbering of articles.

Panel Amendment Number	Part of the Panel's recommended draft DCO that differs from the applicant's final submission DCO for option B [REP11-020]	Amendment(s) made by the Panel	Reason for amendment
11	Schedule 2 Requirement 1	<p>Definition of "core working hours" replace the words "bank holidays" with "bank or public holidays".</p> <p>Definition of "felling" replace the words "pursuant to article 32" with "pursuant to article 31".</p> <p>Definition of "landscape planting" replace the words "land coloured dark green and stippled dark green" with "land shown coloured dark green and the land shown cross-hatched green".</p> <p>Definition of "new tree" replace the words "yellow and blue land shown on the land plans (but excluded the land stippled dark green on the land plans)" with "land shown coloured yellow and land shown coloured blue on the land plans (but excluding any such land shown cross-hatched green on the land plans)".</p> <p>Replace the definition of "planning consent" with:</p> <p>"planning consent" means any of the following:</p> <ul style="list-style-type: none"> <li>(a) planning permission granted under Part 3 of the 1990 Act;</li> <li>(b) development consent granted under the 2008 Act;</li> <li>(c) consent granted under the Electricity Act 1989; or</li> <li>(d) planning permission granted under the Town and Country Planning (General Permitted Development) Order 1995"</li> </ul> <p>Definition of "reinstatement planting" replace the words "the land coloured yellow and blue on the land plans (but excluding the land stippled dark green on the land plans)" with "the land shown coloured yellow and the land shown</p>	To provide clarity and precision over the meaning of certain terms used within the requirements in accordance with paragraph 4.1.7 of EN-1.

Panel Amendment Number	Part of the Panel's recommended draft DCO that differs from the applicant's final submission DCO for option B [REP11-020]	Amendment(s) made by the Panel	Reason for amendment
		<p>coloured blue on the land plans (but excluding any such land shown cross-hatched green on the land plans)".</p> <p>Replace definition of "wind farms" with:</p> <p>"wind farms" means the wind farms known as –</p> <ul style="list-style-type: none"> <li>(a) Nant Bach approved under planning permission DC/0/35170 or such other planning consent replacing it or amending it;</li> <li>(b) Derwydd Bach approved under planning permission 04/2007/0964/WF or such other planning consent replacing it or amending it;</li> <li>(c) Clocaenog Forest approved under the Clocaenog Forest Wind Farm Order 2014 or such other planning consent replacing it or amending it; and</li> <li>(d) Brenig approved under planning permission 25/2007/0565/WF or such other planning consent replacing it or amending it." </li></ul>	
12	Schedule 2 Requirement 5(4)	Change the word "article" to "requirement".	To correct what appears to be a typographical error.
13	Schedule 2 Requirement 6	<p>The text of Requirement 6 to be replaced with the following text:</p> <p>"Notwithstanding the maintenance regime to be approved pursuant to Requirement 5 and Requirement 7, where any tree or shrub planted as part of the landscaping scheme under Requirement 5 or the reinstatement planting plan under Requirement 7 (including new trees), is removed, dies or becomes seriously damaged or diseased, within a period of 5 years from the date of completion of the stage of landscape planting or reinstatement planting within which it</p>	To provide precision and enforceability to meet the test for requirements set out in paragraph 4.1.7 of EN-1.

<b>Panel Amendment Number</b>	<b>Part of the Panel's recommended draft DCO that differs from the applicant's final submission DCO for option B [REP11-020]</b>	<b>Amendment(s) made by the Panel</b>	<b>Reason for amendment</b>
		is planted, it must be replaced by the undertaker in the first available planting season with a specimen of the same species and size as that originally planted."	
14	Schedule 2 Requirement 7(2)	Delete "and" at the end of (b); and at end of (c) delete full stop and insert:  "; and (d) implementation timetable for reinstatement planting."	To meet the test for requirements as set out in paragraph 4.1.7 of EN-1.
15	Schedule 2 Requirement 7(4)	Change the word "article" to "requirement".	To correct what appears to be a typographical error.
16	Schedule 2 Requirement 10(2)	Insert "bank or" before "public holidays"	To provide clarity and precision
17	Schedule 2 Requirement 12(1)	Change "Clwyd and Powys Archaeological Trust (CAPT)" to "Clwyd-Powys Archaeological Trust".	To correct what appears to be a typographical error.
18	Schedule 2 Requirement 13(1)	On fifth line delete "and". On seventh line replace "not limited" with "not be limited".	To correct what appears to be a typographical error.
19	Schedule 2 Requirement 13(3)	Change the word "article" to "requirement".	To correct what appears to be a typographical error.
20	Schedule 2 Requirement 14 (2)	On second line replace "approved method statement" with "approved piling method statement".	To provide clarity in accordance with paragraph 4.1.7 of EN-1.

<b>Panel Amendment Number</b>	<b>Part of the Panel's recommended draft DCO that differs from the applicant's final submission DCO for option B [REP11-020]</b>	<b>Amendment(s) made by the Panel</b>	<b>Reason for amendment</b>
21	Schedule 2 Requirement 17 (2)	Delete "and" at the end of (d); and delete full stop at the end of (e) and insert:  "; and (f) a decommissioning environmental management plan, which is, where relevant to the proposed works, substantially in accordance with the construction environmental management plan approved in accordance with Requirement 13."	To ensure that the mitigation measures provided by the CEMP for construction are also provided for the decommissioning phase to minimise the impact on the living conditions of neighbouring residents.
22	Schedule 2 Requirement 18	The text of Requirement 18 to be replaced with the following text:  "No authorised development must commence, unless, in relation to all works comprising a collector substation at Clocaenog Forest which connects the authorised development to any of the wind farms a planning permission for the collector substation under Part 3 of the 1990 Act has been granted for such works."	The SoCG between DCC and the Applicant confirmed that the proposed works to the cable sealing compound at St Asaph were permitted development under the Town and Country Planning (General Permitted Development) Order 1995. As a result paragraph (a) of Requirement 18 of the Applicant's final submission draft DCO would no longer be required.

Panel Amendment Number	Part of the Panel's recommended draft DCO that differs from the applicant's final submission DCO for option B [REP11-020]	Amendment(s) made by the Panel	Reason for amendment
23	Schedule 2 Requirement 19 (Expiry of the Development Consent)	<p>The text of Requirement 19 to be replaced with the following text:</p> <p>"19. The development consent granted by this Order expires 30 years after the date of this Order."</p>	<p>To ensure that the development consent would expire 30 years after the date that it is made, to give certainty to the communities that would be hosting the development. The Panel does not consider that the proposed wording in the Applicant's final draft DCO [REP11-020] would provide sufficient certainty to the local communities in ascertaining when the commencement of works 1A and 1B occurred, or how any notification on this matter would be secured.</p>

## **9.15 FURTHER DETAILS ON THE REASONING FOR THE CHANGES TO THE DEVELOPMENT CONSENT ORDER**

### **Applicant's final draft development consent order for option B [REP11-020] proposed Article 9 (Application and Modification of Hedgerows Regulations 1997) and Article 32 (Felling or Lopping of Trees and Removal of Hedgerows)**

- 9.15.1 The Panel, in considering the comments from the Welsh Government, in its letter to the Applicant, attached to the Statement of Common Ground with the Applicant [REP11-008], considers that the Secretary of State does, indeed, have vires, in terms of whether or not the Hedgerows Regulations 1997 should be dis-applied. However, on reflection, the Panel considers that the wide ranging powers sought by the Applicant in Article 9 in relation to them removing the need to obtain authorisation from the relevant local planning authorities under these Regulations, should be limited to the hedgerow removal work that is authorised in Article 32. Therefore, the Panel concludes that Article 9 should be removed, Article 32 would then be renumbered as Article 31 in the Panel's recommended draft DCO and it would be modified, in the manner identified in its recommended DCO in Appendix E, to include a new paragraph to clarify that the hedgerow removal work that is authorised under the terms of the DCO would not need approval, under the Hedgerow Regulations 1997.

### **Applicant's final draft development consent order for option B [REP11-020] Proposed Article 19 (Compulsory acquisition of rights)**

- 9.15.2 The Panel noted that the Applicant, in both draft of its draft DCOs for option A (v5) [REP09-026] and option B (v2) [REP09-027], inserted a new article in relation to Crown land (Article 21). This was carried forward to the Applicant's final draft DCO for option A [REP11-018] and option B [REP11-020], which had been requested by The Crown Estate Commissioners and agreed by NRW acting on behalf of the Welsh Ministers, and the Applicant. For the avoidance of doubt, the Panel has added a new paragraph in Article 19 (Article 19(6)). This has been re-numbered as Article 18(6) in the Panel's recommended draft DCO which explains that Article 19 does not authorise the acquisition of rights over or the imposition of restrictions affecting any interest held by or on behalf of the Crown.

### **Applicant's final draft development consent order for option B [REP11-020] proposed Article 23 (Funding)**

- 9.15.3 The Panel considers that the wording provided by the Applicant in the final draft DCOs for option A [REP11-018] and option B [REP11-020] in its proposed Article 23 (Funding), goes some way towards ensuring that the funds required for the liabilities that would occur in relation to the CA of rights would be available. However, the Panel considers that this article should be changed, to reflect Article 14 of the Hornsea One Offshore Wind Farm Order 2014, so that the majority of the works



related to the construction of the development cannot be commenced until the undertaker has put into place either a guarantee or some other form of financial security, with the financial security remaining in place for 20 years after the Order is made. The Panel's recommended wording for this article, based on the Hornsea One Offshore Wind Farm Order 2014, requires the guarantee (or other financial security) to be treated as enforceable against the guarantor by any person to whom compensation is payable and the guarantee or financial security would be in place for a maximum of 20 years from the date on which the relevant power is exercised. The Panel considers that there is no reason to change the 20 years that was acceptable for the financial security being in place for Hornsea One Offshore Wind Farm Order 2014 in this Order. This article has been renumbered as Article 22 in the Panel's recommended draft DCO.

- 9.15.4 The Panel considers that its proposed wording for this article, securing the funding of the CA liabilities is reasonable and proportionate, in order to ring-fence and guarantee payment of CA liabilities to Affected Persons (APs) and recommends that these details should be included in the DCO, if made.

**Applicant's final draft development consent order for option B [REP11-020] proposed Schedule 1 Works No.2A(c)**

- 9.15.5 The Panel notes the comments from Welsh Government on this matter, in their letter to the Applicant of the 28 January 2016 attached to the SoCG between the Welsh Government and the Applicant [REP11-008]. The Panel understands the concern raised by the Welsh Government, in relation to the provision for *"works to alter the position of existing services"* which it considered could involve the lower voltage lines which comprise part of the *"wider project"*. However, the Panel considers that the explanatory memorandum [APP-077] that accompanied the first draft DCO [APP-076], in paragraph 2.2.6, explained that this included *"other integral work such as site preparation and clearance, earthworks, alteration of existing services and minor street works"*. The Panel finds that the Applicant made it clear (in paragraph 2.5.3 of the explanatory memorandum, for example), that certain diversions of other overhead lines would be associated development and are not included in the draft DCO. The Panel is satisfied that these works in 2A(c) do not include associated development. The Panel concludes that there are no changes required to Schedule 1 on this matter.

**Applicant's final draft development consent order for option B [REP11-020] proposed Requirement 17 (Decommissioning)**

- 9.15.6 The Panel considers that the decommissioning and expiry requirements contained within the Clocaenog Forest Wind Farm Order 2014 (the Clocaenog Order) are relevant and proportionate and provide a precedent which is relevant to this NSIP, as Clocaenog Forest remains the bigger of the two remaining wind farms that this NSIP would provide the connection for. The Clocaenog Order

requirements in relation to the expiry of development consent (Requirement 4) and decommissioning and site restoration (Requirement 5) require a decommissioning and site restoration scheme to be submitted to the relevant Local Planning Authorities not less than 12 months before the expiry of the consent. This has been incorporated into the Panel's recommended draft DCO at Requirement 17(1). The Clocaenog Order requirement for decommissioning (Requirement 5) identified the elements of the development that must be removed and the disturbed area to be restored. The Panel has used this approach to modify the defined aspects of the scheme that have to be included in the submitted scheme for decommissioning and restoration of the proposed development. Requirement 17(2) includes the removal of works 1A and 1B, the restoration of the Order land, a methodology for the ecological management of sensitive habitats during the decommissioning and restoration works, a methodology for the management of traffic during decommissioning and restoration and a new part of Requirement 17 has been added (Requirement 17(3)) which requires the decommissioning and restoration to be completed in accordance with the approved scheme within the timescale set out in the approved scheme.

**Applicant's final draft development consent order for option B [REP11-020] Schedule 2, proposed new Requirement 19 (Expiry of Development Consent)**

- 9.15.7 The Clocaenog Forest Wind Farm Order 2014 requirement for the expiry of development consent (Requirement 4) states that "*The development consent granted by this Order expires 25 years after the first export date*" and then goes on to explain how details of the first export date are to be provided to the LPA. However, the Panel considers that imposing a similar requirement for the NWWFC Order, expiring 25 years after the first export date could prohibit other potential developers and operators of wind farms for the other two wind farms that were to be served by this development, from coming forward. The Panel has concluded that imposing a requirement for the expiry of the development consent, 30 years after the date of the Order would be reasonable and proportionate.

**Applicant's final draft development consent order for option B [REP11-020] proposed Schedule 10 Article 40 (3) (Appeals)**

- 9.15.8 The Panel notes the comment from the Welsh Government on this matter [REP11-008]. The Panel is satisfied that the Secretary of State is the decision maker under PA2008 for this NSIP and therefore any appeal would be determined by relevant Secretary of State. The Panel concludes that there should be no changes to the wording of this Schedule.

**9.16 CONCLUSIONS ON THE RECOMMENDED DEVELOPMENT  
CONSENT ORDER**

- 9.16.1 The Panel concludes that, for the reasons set out in this report, and subject to the incorporation of the changes it has recommended to the Applicant's draft DCO for option B in the Panel's recommended draft DCO, the Panel's recommended draft DCO should be made.

## **10 SUMMARY OF FINDINGS AND CONCLUSIONS**

### **10.1 SUMMARY**

- 10.1.1 The legal and policy context that the Panel considers is relevant to this application is set out in Chapters 3 and 4. In coming to its overall conclusion, the Panel has had regard to the National Policy Statements, the Local Impact Reports submitted during the Examination and all matters that it considers are both important and relevant to this application, including local planning policies and Welsh policy in Planning Policy Wales (8), January 2016 and the Welsh Government's Technical Advice Notes and circulars. As required by the Infrastructure Planning (Decisions) Regulations 2010, the Panel has had regard to the United Nations Environmental Programme on Biological Diversity 1992 (regulation 7) and listed buildings, conservation areas and scheduled monuments (regulation 3).
- 10.1.2 The Panel's findings and conclusions in relation to policy, need and the principle of development and environmental planning issues are set out in Chapters 4 and 5.
- 10.1.3 In Section 4.5 the Panel concludes that there are no policy or legal requirements that would lead it to recommend that development consent be refused for the proposed development in favour of another alternative.
- 10.1.4 In Section 5.15, the Panel sets out its findings and conclusions on option B and concludes that option B is to be preferred over option A for reasons in relation to land-use and land management, visual impact and compulsory acquisition (CA) matters. In Section 5.5 the Panel concludes that the proposal would not cause deterioration in status or prevent actions required to raise the water quality status of any of the water bodies in the vicinity of the proposed development.
- 10.1.5 Chapter 6 of this report considers the predicted effects of the project on any nearby European sites alone and in combination with other plans or projects. The Panel concludes that there are no Habitat Regulations Assessment matters (including features of the nearby European sites) which would prevent the Secretary of State from making the Order.
- 10.1.6 The Panel's overall conclusion on the case for development consent is set out in Chapter 7. The conclusion that the Panel reaches, is that, provided the changes that are proposed to the draft development consent order (DCO) are made, and that the made order should be based on the Applicant's final draft DCO for option B [REP11-020], the DCO should be made. However, if the Secretary of State is minded to make the DCO based on the Applicant's final draft DCO for option A [REP11-018], and concludes that option A should be preferred, then the additional impacts of the proposed development upon the farming community and residential receptors would need to be weighed in the overall balance. Although the Panel has expressed its preference for

option B, it does not consider that additional impacts associated with option A would be sufficient to alter the overall balance of the case.

- 10.1.7 The Panel has also considered the request for CA of rights and imposition of restrictions across the Order land. It concludes that there is a compelling case in the public interest for the grant of the CA powers sought by the Applicant. However, in Chapter 8, the Panel has drawn to the Secretary of State's attention matters which were not concluded upon during the Examination, and in which she may wish to revert to the Applicant and the relevant Crown Authorities, in order to satisfy herself that all matters are concluded prior to making her decision on the Order under section 104 Planning Act 2008 (as amended) (PA2008). The matters identified were as follows:
- whether the Applicant has secured the lease with the Welsh Ministers (or their agents, Natural Resources Wales (NRW)), for the Crown land at the southern end of the Order limits (plots 1, 1A, 1B, 3, 3A); and whether the lease would enable the Applicant to have sufficient rights as are needed in relation to this Crown land;
  - whether the Applicant has secured a legal agreement with the Crown Estate Commissioners (or their agents, Wardell Armstrong), in respect of land plots within the Order limits which contain Her Majesty's mineral interests, which are managed by the Crown Estate Commissioners; and
  - whether the Crown Estate Commissioners remain satisfied with the slightly modified wording of the draft Article on Crown rights in the Panel's recommended draft DCO (Article 20).
- 10.1.8 The Panel's recommendation in respect of the grant of CA powers, the section 127, section 132 and section 138 representations and Crown land is set out in Chapter 8.
- 10.1.9 The Panel has considered all these factors together, in the light of the tests set out in section 104 of the Planning Act 2008 (as amended) (PA2008). It is satisfied that none of the subsections (4) to (8) apply and the relevant national policy statements support the grant of development consent. The adverse impacts of the proposed development would not outweigh its benefits.
- 10.1.10 In coming to the conclusion that development consent should be granted, in the form proposed in Appendix E, the Panel has taken into account all matters raised in representations and during the Examination hearings. The Panel finds no reason, either individually, or collectively, that would lead it to a different conclusion.
- 10.1.11 The other consents and licenses that would be required to construct, operate and maintain the proposed development are set out in Chapter 1 of this report and the Panel considers them again in Chapter 9. The Panel has no reason to believe that the necessary approvals, protected species licenses and permits would not be granted, if

required. None of the consents identified in Chapter 1 would be a pre-requisite of making the DCO.

## **10.2 RECOMMENDATION**

- 10.2.1 For all of the above reasons, and in the light of the Panel's findings and conclusions on important and relevant matters set out in this report, the Panel under the Planning Act 2008 (as amended) (PA2008) recommends that, subject to resolving the matters identified in paragraph 10.1.7 above, the Secretary of State grants the application for development consent and makes the North Wales Wind Farms Connection Order 2016 as set out in Appendix E.

## APPENDICES

**See separate documents**