



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

Brechfa Forest Connection Project

Examining Authority's Report of Findings and Conclusions

and

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

Examining Authority

Martin Broderick

6 July 2016

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Examining Authority's findings and conclusions and recommendation in respect of an application by Western Power Distribution (South Wales) plc for an Order granting Development Consent for the Brechfa Forest Connection Project.

File Ref EN020016

The application, dated 29 May 2015 was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 29 May 2015.

The applicant is Western Power Distribution (South Wales) plc.

The application was accepted for examination on 24 June 2015.

The examination of the application began on 6 October 2015 and was completed on 6 April 2016.

The development proposed is to construct, operate and maintain a new 132,000 volt (132kV) electric line connection of the consented Brechfa Forest West Wind Farm to an existing overhead line near Llandyfaelog, 10 km south of Carmarthen approximately 28.6km above and below ground located in Carmarthenshire, Wales.

Summary of Recommendation:

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

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APPENDIX B: EXAMINATION LIBRARY INCLUDING RIES

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ERRATA SHEET – Brechfa Forest Connection Project - Ref. EN020016

Examining authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Energy and Climate Change, dated 6 July 2016

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

Page No.	Paragraph	Error	Correction
14	2.1.3	'RWE Brechfa Forest East Wind Farms'	'RWE Brechfa Forest East Wind Farm'
21	2.3.4	'metrological'	'meteorological'
50	4.3.3	'is in complies'	'is in compliance'
96	5.2.54	'decommissioned48'	'decommissioned'
222	8.5.113	'Section 5.3'	'Section 5.10'
233	8.6.31	'REP8-019'	'REP8-022'

1 INTRODUCTION

1.1 PREAMBLE

- 1.1.1 An application for development consent was submitted to the Planning Inspectorate on 29 May 2015 and was accepted for examination under s55 of Planning Act 2008 (PA2008) on the 24 June 2015 [PD-001]. The application is for the installation of a 132,000 volt (132kV) electric line of approximately 28.6km above and below ground located in Carmarthenshire, Wales. The line includes an undergrounding section under the River Towy/ Afon Tywi.
- 1.1.2 The electric line is classed as a Nationally Significant Infrastructure Project (NSIP) pursuant to sections 14(1) (b) and 16 PA2008.
- 1.1.3 Whilst changes have been made to the application (discussed below), these changes, in the view of the Examining Authority (ExA), do not change the proposed development to such a degree that it would be classed as different to that accepted for examination.
- 1.1.4 The proposed development is also Environmental Impact Assessment (EIA) development under schedule 2 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (the EIA Regulations). The Applicant has provided an Environmental Statement (ES) [APP-054 to APP-117] as part of the submitted application under Regulation 6 of the EIA Regulations.
- 1.1.5 Under s56 of PA2008, the Applicant gave notice of the accepted application and, in response to the Applicant's notification, 30 relevant representations were received by the Planning Inspectorate [RR-001 to RR-030]. The Applicant certified its compliance with the requirements of s56 of PA2008 on 21 August 2015 [APP-148].
- 1.1.6 The Applicant provided a number of updated documents prior to the commencement of the Examination in response to a procedural decision issued on 6 July 2015 [PD-004] following the decision to accept the application [PD-001]. This information was accepted into the Examination on 21 August 2015 [APP-134 to APP-147].

1.2 APPOINTMENT OF EXAMINING AUTHORITY

- 1.2.1 On 26 June 2015, Martin Broderick under s78 and 79 of PA2008, was appointed under delegation from the Secretary of State (SoS), as the Single Person Examining Authority (ExA) to examine the application. [PD-003].

1.3 THE EXAMINATION AND PROCEDURAL DECISIONS

- 1.3.1 On 3 September 2015, the ExA wrote to all Interested Parties (IPs), Statutory Parties and Other Persons under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) (EPR) [PD-005 and PD-006]. This letter set out the:

- the arrangements for the Preliminary Meeting;
 - an agenda for the Preliminary Meeting;
 - the initial assessment of the principal issues;
 - a draft timetable for the Examination of the application;
 - the availability of relevant representations and application documents; and
 - the procedural decisions made by the ExA.
- 1.3.2 The ExA's first written questions (FWQ) [PD-011] and procedural decisions were set out in the Rule 8 letter [PD-009 and PD-010], which was issued to all IPs, Statutory Parties and Other Persons on 13 October 2015.
- 1.3.3 A Procedural Decision was issued by the ExA, dated 7 December 2015, to accept a note from the Applicant regarding a Proposal for Alternative Southern Extension to Underground Section as Scheme Variation [PD-014] into the Examination. The Applicant's note informed the ExA that it intended to submit other information to the Examination in respect of the proposed alternative [AS-009].
- 1.3.4 On 24 February 2016, the Applicant submitted a change request, together with supporting other information, in the form of an Option B to the proposed development [CR-001]. This option includes the addition of two further spans of above ground electrical connection in Option A (the original application) to be undergrounded adjoining the River Towy/Afon Tywi.
- 1.3.5 The ExA considered all the information submitted [CR-001 to CR-026] and concluded that Option B was to be examined alongside Option A and was accepted into the examination on the 1 March 2016 [PD-038]. Option B was considered both as a whole and as a potential alternative to this section of the alignment.
- 1.3.6 The Option A submitted layout is as shown on works plan section A [APP-007] map 7 of 7. This shows the section of OHL proposed south of the River Towy/Afon Tywi terminating at pole 86, in a field south of the B4300. North of this position the connection would head in a northerly direction underground across the Towy/Tywi Valley until it re-emerges south of Cwmgwili at pole 87. The alternative layout (Option B) is shown on the plans submitted with this document as CR-016 and CR-017. Option B involves the removal of poles 85 and 86 from the project and the relocation of pole 84. To enable the longer undergrounding section of Option B, the location of pole 84 would be moved from its position to the north of the Byway Open to All Traffic (BOAT) and would be repositioned to the south of the BOAT. The newly located pole 84 would become a terminal pole (transition between the overhead line and the underground section) and would consist of a four-pole arrangement.
- 1.3.7 The underground section of Option B would be extended south by approximately 260 metres in comparison to that of Option A to connect with a repositioned pole 84. The undergrounding would take

place within the existing Order limits as submitted in Option A and it would cross underneath the Byway Open to All Traffic (BOAT). The extension of the underground line as set out in Option B would be installed using open cut methods. These methods are set out within the Construction Management Strategy Chapter 13 Option A of the ES [APP-125 and APP-126]. No further engineering changes are required to accommodate Option B and the Applicant confirmed [CR-003] that the reception pit for the Horizontal Directional Drill (HDD) under the River Towy/Afon Tywi would remain in the location shown on plan (page 2 of [APP-032]) as submitted with the original Option A application submitted on the 29 May 2015.

- 1.3.8 The ExA's second written questions (SWQ) [PD-019] were issued to all IPs on 11 January 2016.
- 1.3.9 The ExA's Report on the Implications for European Sites (RIES) [PD-035] was published on Brechfa Forest Connection project page of the National Infrastructure Planning website on 25 February 2016. Comments on the RIES from IPs were requested for D61, 17 March 2016 (see Chapter 6 of this Recommendation Report).
- 1.3.10 Further details on all Procedural Decisions and events in the Examination are provided in Appendices A and B of this Recommendation Report. All Procedural Decisions were made available in English and in Welsh.

PRELIMINARY MEETING

- 1.3.11 The Preliminary Meeting took place on Tuesday 6 October 2015 at St Peter's Civil Hall, Carmarthen. An audio recording [EV-001] and a note of the meeting [EV-002] were published on the Brechfa Forest Connection project page of the National Infrastructure Planning website.

HEARINGS

- 1.3.12 The ExA held a number of hearings under s91 to s93 of PA2008 to ensure the thorough examination of various topics. These were:

Issue Specific Hearings

- 1.3.13 Issue Specific Hearings (ISH) under s91 of PA2008 were held in Theatr Genedlaethol Cymru, Carmarthen on:
 - Environmental Matters (ISH on Tuesday 8 December 2015) [EV-018]:
 - landscape and visual impact;
 - route optioneering;
 - application of Holford Rules;

¹ Hereafter references to the Examination Deadlines are abbreviated thus: D1, D2 etc

- undergrounding;
 - integral development;
 - alternatives;
 - River Towy/Afon Tywi horizontal directional drilling;
 - socio-economic issues (including tourism);
 - biodiversity; and
 - construction issues.
- The draft Development Consent Order (DCO) (ISH on Thursday 10 December 2015) [EV-023]; and
 - The draft DCO (ISH on Thursday 11 February 2016) [EV-027].

1.3.14 The ISH on Environmental Matters (EV-018) was scheduled to take place over two days, starting on Tuesday 8 December and continuing on Wednesday 9 December 2015. However, all matters to be discussed in the hearing were covered on the first day of proceedings and therefore, the hearing did not continue onto Wednesday 9 December 2015. This was announced at the end of the hearing. No representations were received from any party claiming they had been disadvantaged in any way.

Compulsory Acquisition Hearings

1.3.15 Compulsory Acquisition Hearings (CAHs) under s93 of PA2008 were held in Theatr Genedlaethol Cymru, Carmarthen on:

- Wednesday 2 December 2015 [EV-012];
- Thursday 3 December 2015 [EV-012]; and
- Wednesday 10 February 2016 [EV-026].

Open Floor Hearings

1.3.16 Open Floor Hearings (OFHs) were held under s93 of PA2008 in St. Peter's Civic Hall, Carmarthen on the evenings of:

- Monday 30 November 2015 [EV-004]; and
- Tuesday 1 December 2015 [EV-004].

1.3.17 Simultaneous translation from Welsh to English was provided by a translator at all hearings, providing any party wishing to make representations in Welsh the opportunity to do.

1.4 SITE INSPECTIONS

1.4.1 During the course of the Examination the ExA undertook unaccompanied and accompanied site inspections.

1.4.2 An unaccompanied site inspection was undertaken on the 5 October 2015 [EV-003].

- 1.4.3 Accompanied Site Inspections along the proposed route took place on 1 December 2015 and 11 December 2015. The Applicant produced a Site Inspection Itinerary [EV-009] and provided a pack [EV-010] for each IP in attendance to use on the accompanied site inspections.

1.5 LOCAL IMPACT REPORTS

- 1.5.1 Carmarthenshire County Council (CCC) is the host authority for the proposed development. CCC submitted a Local Impact Report (LIR) at D1 of the Examination on 9 November 2015 [REP1-025]. The definition of an LIR is given in s60(3) of PA2008 as a "report *in writing giving details of the likely impact of the proposed development on the authority's area (or any part of that area)*". The LIR was prepared in line with the Planning Inspectorate's Advice Note One: Local Impact Reports (April 2012). No further LIRs were submitted into the Examination. The matters raised within the LIR are discussed in Chapters 3, 4 and 5 of this Recommendation Report.

1.6 STATEMENTS OF COMMON GROUND

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

- Natural Resources Wales (NRW) [REP2-036];
- CCC - DCO [REP1-082 and REP7-018];
- CCC - Landscape and Visual [REP2-037];
- CCC - Historic Environment [REP2-038];
- NRW - Landscape and Visual [REP2-039]; and
- Dyfed Archaeological Trust and Cadw - Historic Environment [REP1-083].

1.7 OTHER CONSENTS REQUIRED

- 1.7.1 In addition to the consent required under PA2008 (which is the subject of this Recommendation Report), the Applicant will require other consents to construct, operate and maintain the proposed development. As set out by the Applicant in its Planning Statement [APP-119] which was updated on 24 August 2015 [APP-150] and also at D3 [REP3-054], the following consents, licences and permits are expected to be required:

- NRW: European Protected Species Licences under the Conservation of Habitats and Species Regulations 2010 (as amended);
- NRW: Protected Species Licences under the Wildlife and Countryside Act 1981 (as amended);
- NRW: Licence to erect structures in, over or under any water which is part of a main river under the Water Resources Act 1991;

- NRW: Flood defence and drainage consents² under the Water Resources Act 1991;
- NRW: Marine licences under the Marine and Coastal Access Act 2009 - a licence application was submitted to NRW and accepted on 11 November 2015, ref no. CML 1551;
- CCC: Watercourse obstruction consents under the Land Drainage Act 1991;
- NRW: Environmental permitting discharge consents under the Environmental Permitting (England and Wales) Regulations 2010;
- Dŵr Cymru Cyfyngedig(Welsh Water): Consent to discharge trade effluent into public sewers under the Water Industry Act 1991 (as amended);
- Local Planning Authority (LPA): Permitted development for diversion of existing WPD apparatus, if necessary, under the Town and Country Planning (General Permitted Development) Order 2015;
- LPA: Planning permission to create, and operate from, the main construction compound under the Town and Country Planning Act 1990 (as amended) - Planning permission for the compound was received on 2 October 2015, ref no. W/32499; and
- South Wales Trunk Roads Agency: Licence to install and maintain apparatus in a highway under the New Roads and Street Works Act 1991 (as amended).

1.8 UNDERTAKINGS/OBLIGATIONS GIVEN TO SUPPORT APPLICATION

- 1.8.1 Paragraph 4.1.8 of National Policy Statement (NPS) EN-1 indicates that the decision maker may take into account any development consent obligations that an applicant agrees with local authorities on the basis that they:

"...must be relevant to planning, necessary to make the proposed development acceptable in planning terms, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development, and reasonable in all other respects".

- 1.8.2 The Applicant and CCC have agreed a s106 agreement under the 1990 Act³ [REP7-011] (see section 9.8 of this Recommendation Report). It contains obligations relating to the following matters:

- the laying (and fencing) of hedgerows;
- the planting of trees and woodland creation;
- the planting of new hedgerows/hedgerow plants;
- the blocking of existing drainage ditches;
- the removal of invasive species; and
- the provision of nest boxes (birds, bats, dormice).

² <https://naturalresources.wales/apply-for-a-permit/flood-risk-activities/flood-risk-activity-permits-information/?lang=en>

³ "1990 Act" means the Town and Country Planning Act 1990 (as amended).

1.9 REQUESTS TO BECOME OR WITHDRAW FROM BEING AN INTERESTED PARTY (S102A, S102B AND S102(ZA))

- 1.9.1 On 24 November 2015 a request to become an IP under s102(a)(ab) of PA2008 was received from Mr and Mrs Shaw [REP2-005].
- 1.9.2 A Procedural Decision was made by the ExA to request further information from Mr and Mrs Shaw on the 18 December 2015 [PD-016].
- 1.9.3 On the 3 February 2016, the ExA issued a further Procedural Decision [PD-030] through a Rule 8(3) and Rule 17 of the EPR letter to Mr and Mrs Shaw regarding 'Other Person' status in the Examination.
- 1.9.4 For the purposes of s102A of the PA2008, the ExA did not consider Mr and Mrs Shaw to be a person within one or more of the categories set out in s102B PA2008. However, they were still welcome to make representations through the course of the Examination [PD-030]. The ExA made this "Other Person" invitation in order to ensure they were not disadvantaged in any way from participating in the examination.
- 1.9.5 The ExA issued a Rule 8(3), Rule 17 letter under the EPR and s89(3) and s102A letter under PA2008 on the 25 February 2016 explaining that the Land Registry Plans provided by Mr and Mrs Shaw were not clear and were not up-to-date i.e. 2013 [PD-033].
- 1.9.6 The Applicant responded on the 27 February 2016 [REP6-033] providing up-to-date Land Registry registers and plans i.e. 2015 and 2016. It was the Applicant's view that Mr and Mrs Shaw had no interest in land within the Order Limits and did not fall under any of the categories set out in s102B of PA2008. The ExA stated that there was no evidence before the examination to contradict the view that the Applicant held.
- 1.9.7 In the ExA letter of the 25 February 2016 the Applicant was requested to provide copies of any letters to additional Affected Persons which state the nature of the Application, how they may be affected by it, the stage reached in the Examination, how they can get involved and how they can request status in the Examination under s102A of PA2008. If no letters have been sent as requested above, then the ExA requested that the Applicant do so and the Applicant was asked to provide proof that such a letter has been sent.
- 1.9.8 Following this Procedural Decision, the Applicant undertook further investigations during the Examination to establish known rights over land. The Applicant had further contact with Mr and Mrs Shaw. The Applicant provided a response in respect of the Procedural decision issued on the 25 February 2016 [PD-033] on the 16 March 2016 [REP6-033]. The Applicant stated that they received a response from Mr and Mrs Shaw dated 24 February 2016 to its letter dated 17 February 2016, which states that they had a right of access over plot C163 to their adjoining land. The Applicant stated that their interest will be recorded in the Book of Reference per the Procedural Decision

dated 25 February 2016 at paragraph 1(d) under the heading 'Changes to the Book of Reference'(see paragraph 8.2.5 of this Recommendation Report) [PD-033]. Mr and Mrs Shaw had no further engagement with the examination.

- 1.9.9 National Grid in a letter to the Planning Inspectorate on 5 April 2016 withdrew their relevant representation [RR-017] dated 3 August 2015 before the close of the Examination.

1.10 STRUCTURE OF REPORT

- 1.10.1 This Recommendation Report sets out the main features of the proposed development, the legal and policy context, identifies the principal issues examined and, in turn, sets out the findings of the examination by topic, including the Habitats Regulation Assessment (HRA), concluding with the ExA's recommendations in respect of the application, compulsory acquisition and the DCO.
- 1.10.2 Given that all the application and Examination material has been published online, the Report does not contain extensive summaries of all the representations, although regard has been had to them in the conclusions reached by the ExA. The ExA has considered all matters which are important and relevant and the Report sets out recommendations to the SoS against the tests required in s104 of PA2008.
- 1.10.3 The contents of the Recommendation Report are summarised here:
- Chapter 1 introduces the application and sets out, in summary, the Examination and procedural decisions;
 - Chapter 2 sets out the main features of the Proposed Development;
 - Chapter 3 identifies and summarises the policy and legal context applicable to the application;
 - Chapter 4 sets out the ExA's main findings and conclusions in relation to the principle of the development, conformity with NPSs, adequacy of the Environmental Statement (ES), integral nature of undergrounding, alternatives and mitigation taking into account the information provided in the ES and during the Examination;
 - Chapter 5 sets out the ExA's main findings and conclusions in relation to design and the potential effects of the development taking into account the information provided in the ES and during the Examination;
 - Chapter 6 deals with the findings and conclusions in relation to HRA;
 - Chapter 7 sets out the ExA'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 proposed draft DCO, including requirements and any changes which were made to it during the course of the Examination; and
- Chapter 10 presents the ExA's overall conclusions and recommendations to the SoS.

1.10.4 The full list of Appendices attached to this Recommendation Report are:

- APPENDIX A: THE EXAMINATION;
- APPENDIX B: EXAMINATION LIBRARY INCLUDING RIES;
- APPENDIX C: LIST OF ABBREVIATIONS; and
- APPENDIX D: RECOMMENDED DCO.

1.10.5 Where document references are presented in square brackets in the text of this Recommendation Report, that reference can be found in the Examination library (Appendix B).

1.10.6 Where mention is made of the ExA's questions, the question number reference indicates whether it was a first or second round question. Reference to deadlines are set out as 'D' followed by the deadline number.

2 MAIN FEATURES OF THE PROPOSAL AND SITE

2.1 THE APPLICATION AS MADE

- 2.1.1 The Applicant, Western Power Distribution (South Wales) plc (WPD) distributes electricity across an area which covers the Midlands, South Wales and the South West. The application is for an installation of a new 132kV electric line of 28.6km (approximately 24.3km above ground and 3.3km below ground) connecting the consented Brechfa Forest Wind Farm (SI 2013, No 586) to an existing overhead line near Llandyfaelog in Carmarthenshire.
- 2.1.2 The Statement of Reasons (SoR) provides information on the need case of the development [APP-041]. Under the terms of its distribution licence, the Applicant is obliged to make an offer of connection in response to each valid application made to it. Section 9 of the Electricity Act 1989 (the Electricity Act) places a statutory duty upon the Applicant as an electricity distributor to develop and maintain an efficient, co-ordinated and economical system of electricity distribution in order to facilitate competition in the supply and generation of electricity. This places an obligation on them to connect new generating stations to the transmission system via connection agreements [APP-081].
- 2.1.3 In 2011, the Applicant received applications for the following three developments:
- RWE Innogy UK Ltd (RWE) for the Brechfa Forest West Wind Farm;
 - RWE Brechfa Forest East Wind Farms; and
 - Renewable Energy System (RES) for the Bryn Llywelyn Wind Farm.
- 2.1.4 The Brechfa Forest East Wind Farm received approval from Carmarthenshire County Council (CCC) in December 2013 under the Town and Country Planning Act 1990, with the completion of a Section 106 agreement in October 2014. RWE has however decided to withdraw its connection agreement with the Applicant for this wind farm [APP-041].
- 2.1.5 The Bryn Llywelyn Wind Farm was refused planning permission at appeal in May 2014. RES subsequently withdrew its connection agreement with the Applicant [APP-041]. As a consequence only one of the three original windfarm projects remained i.e. The Brechfa Forest West Wind Farm. The Brechfa Forest West Wind Farm received consent from the Secretary of State (SoS) under PA2008 in March 2013 (SI 2013, No 586). As a result, the application is to provide a connection for the wind farm at Brechfa Forest West i.e. northern connection point, to the electricity distribution system at the existing

steel pylon (reference EE42⁴ at Llandyfaelog) i.e. southern connection. The northern and southern connection points are the same for Option A and B (see Figure 1.1 [APP-076]).

- 2.1.6 As described in the Application Form [APP-002], the proposed southern connection point would be to an existing overhead tower line near Llandyfaelog (tower EE42), situated approximately 10km south of Carmarthen and approximately 3km east of the River Towy/Afon Tywi estuary (Grid Reference: 239734, 212646 see Figure 1.1 [APP-076]). From the southern connection point, the proposed development will cross the River Towy/Afon Tywi and pass to the east of Carmarthen underground for 3.3km for Option A and 3.56km for Option B. The overhead line emerges in a field accessed from the U2095 and heads in a northerly direction running to the west of Peniel and Rhydargaeau until, south of Alltwalis, it heads east and ultimately through Brechfa Forest to the proposed wind farm substation at Brechfa West Wind Farm i.e. northern connection point.
- 2.1.7 Due to the location of the proposed development in Wales, consent cannot be given within the DCO for works which are associated development. The ExA is satisfied that all of the development within the DCO is integral to the proposed development and the reasons for this are set out in section 2.2 of this Recommendation Report.
- 2.1.8 The Applicant set out in its Application Form [APP-002] that the compulsory acquisition of interests in land or rights over land is required for the proposed development. The application was accompanied with a Book of Reference (BoR) [APP-043] which was updated throughout the Examination (see Guide to the Application [REP8-037]).
- 2.1.9 The key location maps and plans which were submitted with the original application (Option A) were as follows:
- Land Plans - Overall Location Plan and Master Key to Sections Plan [APP-013];
 - Land Plans - Section A [APP-010];
 - Land Plans - Section B [APP-011];
 - Land Plans - Section C [APP-012];
 - Crown Land Plans - Key Plan [APP-026];
 - Crown Land Plans - Section B [APP-027];
 - Crown Land Plans - Section C [APP-028];
 - Works Plans - Overall Location Plan and Master Key to Sections Plan [APP-006];
 - Works Plans - Section A [APP-007];
 - Works Plans - Section B [APP-008]; and
 - Works Plans - Section C [APP-009].

⁴ The Applicants existing infrastructure tower pylon

2.1.10 The key location maps and plans for the Option B were as follows:

- Land Plans - Overall Location Plan and Master Key to Sections Plan [APP-013];
- Land Plans - Section A [APP-010];
- Land Plans - Section B [APP-011];
- Land Plans - Section C [APP-012];
- Crown Land Plans - Key Plan [APP-026];
- Crown Land Plans - Section B [APP-027];
- Crown Land Plans - Section C [APP-028];
- Works Plans - Overall Location Plan and Master Key to Sections Plan [APP-006];
- Works Plans - Section A [REP8-027];
- Works Plans - Section B [CR-016 and CR-017]; and
- Works Plans - Section C [APP-009].

2.1.11 The location maps and plans for Option A and B are identical apart from:

- Works Plans - Section A [REP8-027]; and
- Works Plans - Section B [CR-016 and CR-017].

for Option B which are highlighted above.

2.2 APPLICATION AT THE CLOSE OF EXAMINATION

2.2.1 The Applicant submitted a 'Note Regarding Proposal for Alternative Southern Extension to Underground Section as Scheme Variation' to the Examination on 19 November 2015 [AS-009]. The note intended to clarify the steps the Applicant proposed to take to apply for, and include in an application, an alternative to the proposed development, known as Option B5. The proposal was brought forward by the Applicant in response to consultations with CCC and Natural Resources Wales (NRW).

2.2.2 On 7 December 2015, the ExA issued a Procedural Decision to accept this note into the Examination [PD-014 and PD-015]. However, the ExA did not consider the note contained sufficient information in order for a decision to be made on whether it could be examined as an alternative option. The ExA advised the Applicant should undertake a consultation exercise and requested the Applicant submit more information in order for him to consider it as an alternative option.

2.2.3 Further to the above, the Applicant submitted a letter to the Planning Inspectorate under s89 of PA2008 and the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), dated 24 February 2016 [CR-001]. The submitted letter proposed the consideration of an additional length of undergrounding south of the River Towy/Afon Tywi i.e. Option B as an alternative to the scheme as submitted i.e. Option

⁵ Option A is the original Application

A-the original Application, in the form of an Option B⁶ to the proposed development. Prior to this change request, it was proposed to have an overhead line (OHL) strung between poles 84 to 86. Option B would extend the total length of the connection to be undergrounded by approximately 260m from the point at which it transitions to OHL (pole 86). Option B would remove the requirement for poles 85 and 86 and amend the position of pole 84.

- 2.2.4 The Applicant, as requested through the ExA's procedural decision of 7 December 2015 [PD-014 and PD-015], carried out consultation with the prescribed persons on Option B and submitted this information alongside, amongst other documents, an Option B draft DCO [CR-011], Works Plans [CR-016 and CR-017], a copy of the Master Landowner Communication Table [CR-024], a Habitats Regulation Assessment(HRA) No Significant Effects Report (NSER) Screening of Alternative Undergrounding Option in the Towry Valley [CR-010], and an addendum to the ES [CR-003 to CR-009].
- 2.2.5 As a result of the receipt of the above information, the ExA issued a procedural decision on 1 March 2016 [PD-038] notifying that Option B be accepted and examined alongside Option A (the original application) in the Examination.
- 2.2.6 Comparison versions of the Option A and Option B draft DCO were provided with every updated version submitted throughout the Examination. This highlighted the changes from the previous version of the draft DCOs.
- 2.2.7 Following the acceptance of Option B, the Applicant submitted versions of the draft DCO for both Option A, version F [REP8-015] and Option B, Version A [REP8-023].

INTEGRAL NATURE OF UNDERGROUNDING OF CABLING FOR 3.3 KM OF OPTION A AND 3.56 KM OF OPTION B

- 2.2.8 The Applicant states at paragraph 1.4.3 of the Planning Statement [APP-119]⁷ that:

"The 3.3km⁸ of cabling would connect the two sections of overhead line (OHL) to the north and south of the cable section. The underground cable is considered to be integral to the development for the following reasons:

- *The Brechfa Forest Connection project was initially proposed to be constructed as an overhead connection in full;*

⁶ Option A is the original Application

⁷ Option A and Option B

⁸ Option B increases this to 3.56km

- *An extensive technical and environmental appraisal was undertaken including consideration of the alternative option of undergrounding sections of the line;*
- *The evaluation of serious concern resulted in a decision to underground the Towy valley crossing to mitigate for unacceptably high adverse environmental impact;*
- *The underground section forms part of the project mitigation;*
- *As a direct replacement of the overhead sections, the undergrounding does not consist of development associated with the project; it forms an integral part of the scheme;*
- *The underground section of the project can consist of development integral to the overhead line."*

- 2.2.9 The original application Option A submitted layout is as shown on works plan section A [APP-007] map 9 of 9 This shows the section of OHL proposed south of the River Towy/Afon Tywi terminating at pole 86, in a field south of the B4300. North of this position the connection would head in a northerly direction underground across the Towy/Tywi Valley until it re-emerges south of Cwmgwili at pole 87.
- 2.2.10 The alternative layout (Option B) is shown on the plans submitted as [CR-016 and CR-017]. Option B involves the removal of poles 85 and 86 from the project and the relocation of pole 84. To enable the longer undergrounding section of Option B, the location of pole 84 would be moved from its position to the north of the Byway Open to All Traffic (BOAT) and would be repositioned to the south of the BOAT. The newly located pole 84 would become a terminal pole (transition between the overhead line and the underground section) and would consist of a four-pole arrangement. The underground section of Option B would be extended south by approximately 260 metres in comparison to that of Option A to connect with a repositioned pole 84. The undergrounding would take place within the existing Order limits as submitted in Option A and it would cross underneath the BOAT.
- 2.2.11 The Applicant argued that it considered Works No.2 (undergrounding) in Schedule 1 of the draft DCO Option A Version E [REP5-023] and draft DCO Option B [CR-011] are integral to the development (Page 5 of [REP5-034]) because it believes:
- the works form part of the project as properly understood;
 - the works are essential mitigation as agreed by the parties for the project;
 - they are integral to the project as the line takes electricity seamlessly from Brechfa Forest to Llandyfaelog; and
 - without the underground section there is no project.
- 2.2.12 Though draft DCO Option B was not formally part of the examination until 1 March 2016 [PD-038] (see paragraph 2.2.1 of this Recommendation Report), it is clear to the ExA that following the addition of 260 m of underground cable to Option A, to create Option B, that the Applicant's arguments for 3.3km of underground cable are

equally applicable to an extension of 260m to create Option B. Indeed the arguments deployed by the Applicant are identical in the draft DCO Option A, Explanatory Memorandum (EM) Version F [REP8-017] and draft DCO Option B EM Version A [REP8-025].

- 2.2.13 The Applicant relies on s14 and 31 of PA2008 and also EN-5, particularly footnote 13 of paragraph 2.8.8, which notes that undergrounding may form part of scheme subject to an application for development consent and may form part of a mitigation strategy:

"Proposed underground cables do not require development consent under the Planning Act, but they may form part of a scheme of new infrastructure which is the subject of an application under the Act, and requirements or obligations regarding undergrounding may feature as a means of mitigating some of the adverse impacts of a proposal which does require and is granted development consent."

- 2.2.14 CCC agreed with the Applicant's approach at the DCO ISH (Section 3.1.4 of [REP3-044]). A joint legal opinion was agreed between CCC and the Applicant (Appendix 10 of [REP3-045]). CCC further stated that it does not consider it appropriate to submit a separate planning application under the Town and County Planning Act 1990 (TCPA90) for the undergrounding section at the DCO ISH (section 3.1.4 of [REP3-044]).

- 2.2.15 CCC also endorsed undergrounding in [REP6-036] as clearly their view that it represented essential mitigation:

"Based on our review of the additional undergrounding the Council considers that this alternative would address the concerns raised at the Issue Specific Hearing in December 2015⁹ and we would encourage the Examining Authority to favour this ahead of the OHL option."

- 2.2.16 Further justification for the inclusion of the underground section within the draft DCO Option A Version F [REP8-015] and draft DCO Option B Version A [REP8-023] is found within the updated EM at paragraphs 2.8-2.22 of both for Option A EM [REP8-017] and Option B EM [REP8-025].

- 2.2.17 A meeting was held between the Applicant and the Welsh Government on 3 March 2015¹⁰ and this was followed up by an advice note being issued by the Applicant detailing, in full, with justification, the inclusion of the undergrounding as part of the project. A copy of the advice note was provided at Appendix 1 of the Applicant's D8 submission of Draft DCO Option A EM [REP8-017] and Draft DCO Option B EM [REP8-025].

⁹ See section 2 of [REP3-027]

¹⁰ Pre-application period

2.2.18 In response to this note, for the Welsh Government stated that:

"The Welsh Government's interpretation is that for an element to be considered to "form part of" a NSIP [Section 31 PA2008] it must be necessary to enable the construction, operation, or maintenance of the Nationally Significant Infrastructure Project. This is the installation of an 132kV electricity line between two identified points in this case. For electricity to flow from point A to point B (the purpose of the project) the cable needs to be continuous, and therefore it may be reasonable to conclude that the underground element is necessary to ensure that the NSIP can operate as intended. Consequently it may also be reasonable to conclude that this element could also be included within an application for development consent, and any subsequent DCO."

A copy of the above correspondence was provided by the Applicant at Appendix 2 of their D8 submission in the draft DCO Option A EM [REP8-017] and Draft DCO Option B EM [REP8-025].

2.2.19 Given the above confirmation of position by Welsh Government, the Applicant considers that the underground section of the proposed development consists of development integral to the overhead line and is therefore included in the development for which consent is sought, and for which consent may be permitted, pursuant to PA2008. No representations were received from the Welsh Government during the course of the examination.

2.2.20 The Applicant, in responding to ExA oral questions, summarised their position on the integral nature of Work No. 2 at a number of the ISHs:

- section 4.2 of [REP3-042];
- section 7.3 of [REP3-043]; and
- section 3 of [REP3-044].

2.2.21 No representations were submitted querying the integral nature of Work No.2, the undergrounding of draft DCO Option A [REP8-015] 3.3km, or the undergrounding of draft DCO Option B [REP8-023] for 3.56km.

ExA's conclusion on the integral nature of Work No.2 undergrounding of Option A 3.3 km and Option B 3.56km of cabling

2.2.22 Having considered the views of the Applicant, Welsh Government, CCC and NRW, the ExA considers that Works No.2, Option A 3.3km and Option B 3.56 km of underground cable, forms an integral part of the NSIP development applied for, for the same reasons as those outlined in paragraphs 2.2.12 to 2.2.22 of this Recommendation Report. The undergrounding of the line in the area of the RLOHIW is required as mitigation for the project and therefore is integral to the development.

2.3 RELEVANT PLANNING HISTORY

- 2.3.1 In the immediate vicinity of the proposed development there have been two other developments which are of direct relevance to this application. These two developments have the potential for cumulative effects with the proposed development.

Brechfa Forest West Wind Farm

- 2.3.2 The Brechfa Forest West Wind Farm consisted of the construction and operation of up to 28 wind turbine generators with a total installed capacity of between 56 and 84MW and other infrastructure integral to the construction and operation of the wind farm (including access tracks, a meteorological mast and an onsite electricity substation).
- 2.3.3 Development consent was granted on the 12 March 2013 for the Brechfa Forest West Wind Farm Order by virtue of The Brechfa Forest West Wind Farm Order 2013 (SI 2013, No 586). Construction has not yet commenced¹¹.

Alltwalis Wind Farm¹²

- 2.3.4 The Alltwalis Wind Farm planning application included the erection of 10 wind turbines with a tip height of 110m and associated ancillary development comprising a metrological mast (67m), transformers, substation, temporary site compound and improvements to highway access, together with habitat improvements.
- 2.3.5 Consent was given by CCC under the Town and County Planning Act 1990 on the 7 September 2006 at Planning Committee (ref: W/14257). The project has a capacity of 23MW and has been in operation since December 2009.

Other Developments

- 2.3.6 Additionally the following developments were considered in the Applicant's cumulative impact assessment [APP-074]:
- a single large turbine at Nantyclaws (77m to tip at a distance of more than 1km from the proposed development)¹³;
 - a number of small scale wind and single turbine proposals (below 50m to tip);
 - two solar energy schemes (and any known associated grid connections); and

¹¹ A connection offer has been made by WPD and accepted by RWE. This agreement between RWE and WPD has been in place for some time. The terms are commercially confidential. The terms can be summarised as making provision for the consenting and construction of the Proposed Development [APP-042].

¹² At the specific request of the independent consultant acting on behalf of CCC and NRW, existing operational 'developments' are identified as relevant to an assessment of the proposed development's contribution to a process of cumulative landscape and visual change over time

¹³ Though operational included at CCC request

- some consented forestry operations that may result in tree removal.

2.3.7 Planning permission was granted by CCC on 2nd October 2015 (Application Number W/32499) for a temporary construction compound on an area of unused land within the Nantyci Showground complex on the outskirts of Carmarthen. The permission expires on 2nd October 2018 and the developer will be expected to reinstate the site to its former condition. CCC have included planning conditions restricting the hours of operation and the height of materials and temporary buildings within the site.

2.3.8 CCC in their LIR at paragraph 5.8 [REP1-025] state:

"...the temporary nature of the compound will ensure no long term landscape and visual impacts."

3 LEGAL AND POLICY CONTEXT

3.1 INTRODUCTION

- 3.1.1 This chapter sets out the legal and policy context for the application which was taken into account and applied by the Examining Authority (ExA) in carrying out his Examination and in making its findings and recommendations to the Secretary of State (SoS) for Energy and Climate Change.
- 3.1.2 The Applicant has set out the policy that it considers relevant in the Planning Statement [APP-119] and Environmental Statement (ES) - Chapter 7 Planning Policy [APP-062]. The local authority where the proposed development is proposed, Carmarthenshire County Council (CCC) supplied Statements of Common Ground (SoCG) [REP1-082, REP2-037, REP2-038, REP3-047 and REP7-018] and submitted a Local Impact Report (LIR) [REP1-025], which clarify the planning policies they consider relevant to the application.

3.2 PLANNING ACT 2008 (AS AMENDED)

- 3.2.1 The application is for a Development Consent Order (DCO) under the Planning Act 2008 (as amended) (PA2008). The application is for a Nationally Significant Infrastructure Project (NSIP), falling under s14(1) (b) PA2008, as it includes *"the installation of an electric line above ground"*. Conditions for projects to be included as an electric line NSIP are set out in s16 PA2008.
- 3.2.2 Section 104(1) of PA2008 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 in 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 s104 of PA2008. Section 104(2) of PA2008 requires the SoS 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 SoS 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 SoS being in breach of any duty imposed on her by or under any enactment;
 - or be unlawful by virtue of any enactment.
- 3.2.5 The SoS 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.
- 3.2.6 This Recommendation Report sets out the ExA's findings, conclusions and recommendations taking these matters fully into account and applying the approach set out in s104 of PA2008.

3.3 NATIONAL POLICY STATEMENTS

- 3.3.1 As this is a project for electricity network infrastructure there are two relevant NPSs which the SoS is required to take into account:
- NPS EN-1: Overarching National Policy Statement for Energy; and
 - NPS EN-5: National Policy Statement for Electricity Networks Infrastructure.
- 3.3.2 These NPSs were produced by the Department for Energy and Climate Change (DECC) and received designation by the SoS for Energy and Climate Change on 19 July 2011.

NPS EN-1 (OVERARCHING NPS FOR ENERGY)

- 3.3.3 This NPS sets out national policy for major energy infrastructure. Part 4 of EN-1 makes clear that the assessment of applications for energy NSIPs *"should start with a presumption in favour of granting consent"* and sets out the assessment principles applied. Therefore, the ExA has applied the principles set out in EN-1 as one of the primary bases for its Examination of the application.
- 3.3.4 Further aspects of EN-1 are referred to as relevant throughout this Recommendation Report.

NPS EN-5 (ELECTRICITY NETWORKS INFRASTRUCTURE)

- 3.3.5 In relation to applications in Wales, this NPS (paragraph 1.8.2) covers above ground electricity lines whose nominal voltage is expected to be 132kV or above. This NPS provides general guidance on factors influencing site selection for electric lines by applicants.

- 3.3.6 This NPS is therefore relevant to this application. The ExA considers the proposed development against the policies of EN-5 in Chapters 4 and 5 of this Recommendation Report.

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 to the decision. These include:

LEGISLATION

- Planning (Wales) Act 2015;
- Government of Wales Act 2006;
- Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011; and
- Well-being of Future Generations (Wales) Act 2015.

POLICY

- Planning Policy Wales (Edition 8) (2016) (PPW8);
- Wales Spatial Plan 2008;
- Energy Wales: A Low Carbon Transition (2012);
- The Climate Change Strategy for Wales (2010); and
- A Low Carbon Revolution - The Welsh Assembly Government Energy Policy Statement (March, 2010).

GUIDANCE¹⁴

- 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 15: Development and Flood Risk (2004) (TAN 15)¹⁵;
- Technical Advice Note 18: Transport (2007) (TAN 18);
- Technical advice note 20: Planning and the Welsh language (2013); and
- Technical Advice note 23: Economic Development (2014) (TAN 23).

¹⁴ Referred to where relevant in Chapter 5 of this Report

¹⁵ Justification test in Wales applied by NRW

THE PLANNING (WALES) ACT 2015

- 3.4.2 The Planning (Wales) Act 2015 introduced a review of the Technical Advice Notes (TANs) which has yet to take place. The TANs adopted, which are listed above, are therefore still relevant.

GOVERNMENT OF WALES ACT 2006

- 3.4.3 The Government of Wales Act 2006 (GOWA 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, habitats coast and marine environment;
- local government, including areas of local authorities which includes 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.

EQUALITY ACT 2010 (STATUTORY DUTIES) (WALES) REGULATIONS 2011

- 3.4.5 Section 153 of the Equality Act 2010 enables the Welsh Ministers to impose duties on certain Welsh public authorities through regulations.

- 3.4.6 The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011, enables the better performance of the duties under s149(1) of the Equality Act 2010 in Wales. Those duties are to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under that Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and person who do not share it.

- 3.4.7 The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 were identified by Mrs Miles, an IP [REP3-019] as relevant to the examination of this application. The Equality Act 2010 is considered further in Chapter 8 of this Recommendation Report.

- 3.4.8 In forming his recommendation, the ExA has had due regard to the public sector equality duty (PSED) and the need to eliminate

discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Equality Act 2010, and to advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it, in accordance with section 149 of the Equality Act 2010 (see Sections 7.1 and 8.5 of this Recommendation Report).

WELL-BEING OF FUTURE GENERATIONS (WALES) ACT 2015

- 3.4.9 The Well-being of Future Generations (Wales) Act 2015, among other things is about improving the social, economic, environmental and cultural well-being of Wales.
- 3.4.10 It will make the public bodies listed in the Act think more about the long-term, work better with people and communities and each other. The Well-being of Future Generations (Wales) Act 2015, was identified by Mrs Miles an AP as relevant to the examination of this application (see Section 8.5 of this Recommendation Report).

PLANNING POLICY WALES (EDITION 8) (PPW8) (2016)

- 3.4.11 PPW8 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 (see below).
- 3.4.12 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 development serves SSA G Brechfa Forest (see Sections 5.1-5.3, 5.7, 5.9, 5.10, 5.14, 5.15 and 7.2 of this Recommendation Report).

THE WALES SPATIAL PLAN (2008)

- 3.4.13 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 Brechfa Forest Connection proposed development is in the Central Wales region and borders the Pembrokeshire - The Haven, Swansea Bay and Western Valleys regions (see Section 5.2 of this Recommendation Report).

ENERGY WALES: A LOW CARBON TRANSITION (2012)

- 3.4.14 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. It recognises that if Wales' energy ambitions are to be achieved, its energy infrastructure requires investment, reinforcement and upgrading.
- 3.4.15 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, onshore and offshore natural resources, and a grid with the capacity to transmit generated low carbon energy.

THE CLIMATE CHANGE STRATEGY FOR WALES (2010)

- 3.4.16 The Climate Change Strategy for Wales 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.

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

- 3.4.17 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 (SSA) 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.

TECHNICAL ADVICE NOTES

- 3.4.18 Technical Advice Note (TAN) 5: Nature Conservation and Planning (2009), provides advice about how the land use planning system should contribute to protecting and enhancing biodiversity and geological conservation.
- 3.4.19 TAN 6: Planning for Sustainable Rural Communities (2010). The purpose of this TAN is to provide practical guidance on the role of the planning system in supporting the delivery of sustainable rural communities. The TAN provides guidance on how the planning system can contribute to:
- Sustainable rural economies;
 - Sustainable rural housing;
 - Sustainable rural services; and
 - Sustainable agriculture.
- 3.4.20 TAN 8: Land use Planning of Renewable Energy (2005). The proposed connection serves SSA G, Brechfa Forest, TAN 8 is therefore of

relevance to this application. However, UK and national energy policy provide its context. Paragraph 4.1.5 of EN-1 states that the energy NPSs have taken account of the relevant TANs in Wales.

- 3.4.21 TAN 11: Noise (1997). This note provides advice on how the planning system can be used to minimise the adverse impact of noise without placing unreasonable restrictions on development or adding unduly to the costs and administrative burdens of business.
- 3.4.22 TAN 12: Design (2014). This TAN endorses the commitment to good design and sets out the requirement for a Design and Access Statement.
- 3.4.23 TAN 15: Development and flood risk (2004). TAN 15 provides technical guidance which supplements the policy set out in Planning Policy Wales in relation to development and flooding. The application for the proposed development includes for the submission of a Flood Consequence Assessment (FCA). This has considered the potential for the development to be affected by, and to effect, flooding. The FCA includes for specific consideration against the requirements of TAN15 and concludes that the proposed development should not affect the capacity of the existing environment to accommodate flood events.
- 3.4.24 TAN 18: Transport (2007). TAN 18 provides policy advice on the integration of land use and transport planning. It explains how transport impacts should be assessed and mitigated.
- 3.4.25 TAN 20: Planning and the welsh language (2013). The purpose of this TAN is to provide guidance on how the planning system considers the implications of the Welsh language. The TAN explains the importance of the Welsh language to the nation of Wales but cautions at paragraph 4.1.2 that *"In determining individual planning applications and appeals where the needs and interests of the Welsh language may be a material consideration decisions must, as with all other planning applications, be based on planning grounds only and be reasonable."*
- 3.4.26 TAN 23: Economic Development (2014). This TAN reiterates that planning decisions are made in a sustainable way which should balance social, environmental and economic considerations. The TAN does not contain policy advice relevant to transmission lines but it does recognise at paragraph 1.1.4 that economic development can include for the provision of infrastructure.
- 3.4.27 Where relevant, the ExA has taken account of these policy documents mentioned in this section of the report.

3.5 EUROPEAN DIRECTIVES AND RELATED UK REGULATIONS

COUNCIL DIRECTIVE ON THE ASSESSMENT OF THE EFFECTS OF CERTAIN PUBLIC AND PRIVATE PROJECTS ON THE ENVIRONMENT (THE 'EIA DIRECTIVE') 2011/92/EU

- 3.5.1 The EIA Directive first came into force in 1985(85/337/EEC) and was implemented through over 40 different secondary regulations in 1988. It defines the procedure by which information about the environmental effects of a project is collected and taken into account by the relevant decision making body before consent is granted for a development. It applies to a wide range of public and private projects, which are defined in Annexes I and II of the Directive. The Directive has been amended four times: in 1997, 2003 and 2009, and was consolidated and codified by Directive 2011/92/EU on 13 December 2011. The most recent EIA Directive is 2014/52/EU, which entered into force on 15 May 2014. The 2014 Directive is not yet transposed to UK law and has transitional arrangements, thus the proposed development falls to be considered under the UK legislation related to 2011/92/EU (see Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) below).

Infrastructure planning (environmental impact assessment) regulations 2009 (as amended) (the EIA Regulations)

- 3.5.2 The EIA Regulations establish the minimum information to be supplied by the Applicant within an ES, as well as information that the ExA can request as being reasonably justified given the circumstances of the case. Part 2 of Schedule 4 represents the minimum requirements for an ES under the EIA Regulations and this is reinforced by Regulation 3(2), which sets out the core duty of the decision maker in making a decision on EIA Development. Regulation 3(2) of the EIA Regulations states:

"...the decision-maker must not make an order granting development consent unless it has first taken the environmental information into consideration, and it must state in its decision that it has done so."

- 3.5.3 The proposed development is EIA development under Schedule 2 of the EIA Regulations. The Applicant has provided an ES [APP-054 to APP-117] as part of the submitted application and submitted notification to the Planning Inspectorate of their intention to submit an ES under Regulation 6(1)(b) in July 2014 (Appendix L of APP-115)].

- 3.5.4 The Applicant also submitted an ES Addendum [CR-003 to CR-009] in respect of Option B during the Examination. The Applicant describes this addendum as having:

"...been produced voluntarily with the intention of providing an objective assessment of potential environmental effects that could arise were the examining authority to conclude that undergrounding [Option B] would represent appropriate mitigation of what both CCC and NRW consider to be significant environmental effects"[CR-003].

- 3.5.5 The ExA in reaching its conclusions and recommendation has taken into consideration the environmental information, as defined in Regulation 3(1) (including the ES and all other information on the environmental effects of the development) (see Chapter 4 and 5 of this Recommendation Report).

RENEWABLE ENERGY DIRECTIVE 2009

- 3.5.6 The Renewable Energy Directive sets out legally binding targets for European Union (EU) Member States with the expectation that by the year 2020, 20% of the EU'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.
- 3.5.7 This is relevant to the application due to the fact that the proposed development requires consent to connect the Brechfa Forest West Wind Farm which will contribute to the UK's renewable energy generation (see Section 4.3 of this Recommendation Report).

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

- 3.5.8 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).
- 3.5.9 The Habitats Directive (together with the Council Directive on the conservation of wild birds (2009/147/EC), below) has been transposed into UK law through the Conservation of Habitats and Species Regulation 2010 (as amended) (see below).

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

- 3.5.10 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.

- 3.5.11 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.
- 3.5.12 The Birds Directive and the Habitats Directive been transposed into UK law through the Conservation of Habitats and Species Regulation 2010 (as amended) (see below). The Birds Directive and its implications have been taken into account in considering the application, although it is noted that the Applicant did not identify any SPAs or proposed SPAs (pSPAs) that could be affected by the proposed development in their Habitat Regulations Assessment (HRA) (see Chapter 6 of this Recommendation Report).

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

- 3.5.13 The protection given by the Habitats Directive and the Birds Directive is transposed into UK legislation through the Habitats Regulations. 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).
- 3.5.14 As stated in EN-1, when determining this application the SoS must, in accordance with the Habitats Regulations, consider whether the proposed development may have a significant effect on a European site¹⁶ of nature conservation importance alone or in combination with other plans or projects. The Report on the Implications for European Sites (RIES) [PD-035] complies, documents, and signposts information provided within the application and subsequent information in relation to potential effects on European sites that was submitted throughout the Examination by both the Applicant and Interested Parties (IPs), up to and including D5 of 18 February 2016. The ExA has set out its findings and conclusions in relation to Habitats Regulations Assessment in Chapter 6 to this Recommendation Report.

¹⁶ The term European Sites in this context includes Sites of Community Importance (SCIs), Special Areas of Conservation (SACs), candidate SACs, possible SACs, Special Protection Areas (SPAs), potential SPAs, and Ramsar sites.

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

- 3.5.15 The Water Framework Directive (WFD) is concerned with water management. Amongst other objectives, it requires EU Member States to prevent deterioration of surface water bodies, groundwater bodies and their ecosystems and improve the quality of surface and groundwater bodies by progressively reducing pollution and by restoration. The WFD requires Member States to identify 'river basin districts' (RBD).

**WATER ENVIRONMENT (WATER FRAMEWORK DIRECTIVE)
(ENGLAND AND WALES) REGULATIONS 2003 (AS AMENDED)
(THE 2003 REGULATIONS)**

- 3.5.16 The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (the 2003 Regulations) (as amended) implement the WFD in England and Wales. They require the 'appropriate agency' (Natural Resources Wales (NRW) in Wales) to prepare River Basin Management Plans (RBMPs) for each RBD, for the approval of 'the appropriate authority' (the Welsh Government in Wales). The RBD, and associated RBMP, relevant to the proposed development is the Western Wales RBD.
- 3.5.17 The RBMPs must relate to a specified period, and include information specified in relevant provisions of the WFD. Environmental objectives for the district must be proposed, together with a programme of measures to achieve them. Detailed provision is made in the regulations for public participation on the content of the RBMPs.
- 3.5.18 The environmental objectives to be included in RBMPs are those required to comply with Article 4 of the WFD. Broadly the WFD requires that there be no deterioration in status and that good ecological and chemical status be achieved by 2015 (extended to 2021 and 2027, subject to derogations).
- 3.5.19 Regulation 3 places a general duty on the SoS, Welsh Government, Environment Agency (EA) and NRW to exercise their 'relevant functions' so as to secure compliance with the WFD. PA2008 is not a 'relevant function' for this purpose. However, these bodies, together with public bodies, also have a specific duty to have regard to the relevant RBMP and any supplementary plans made under it in exercising their functions, which would include functions under the PA2008. Additionally, to be in compliance with EN-1 the SoS must take the relevant RBMP and WFD compliance into account.
- 3.5.20 The WFD and its implications are addressed in Chapter 5, Section 5., of this Recommendation Report.

MARINE AND COASTAL ACCESS ACT 2009 (MCAA 2009)

- 3.5.21 The UK marine area is split into 8 regions, comprising inshore and offshore regions for each of England, Scotland, Wales and Northern Ireland. For Wales these are:
- The “Welsh inshore region” which means the area of sea within the 12 nautical mile seaward limits of the territorial sea adjacent to Wales;
 - The “Welsh offshore region” which means so much of the Welsh zone as lies beyond the seaward limits of the territorial sea.
- 3.5.22 The MCAA sets the arrangements for establishing marine policy and carrying out marine licensing. The Applicant submitted a Welsh Marine licence application to NRW on 11 November 2015 (CML1551) (see Section 4.4 of this Recommendation Report).

THE MARINE POLICY STATEMENT

- 3.5.23 The UK Marine Policy Statement (MPS) was prepared and adopted for the purposes of s44 of the MCAA and was published on 18 March 2011 by all the UK administrations as part of a new system of marine planning being introduced across UK seas. The MPS is the framework for preparing Marine Plans and taking decisions affecting the marine environment. It provides the high level policy context, within which national and sub-national marine plans will be developed, implemented, monitored, amended and will ensure appropriate consistency in marine planning across the UK marine area. The MPS also sets the direction for marine licensing and other relevant authorisation systems.
- 3.5.24 It contributes to the achievement of sustainable development in the UK marine area. The UK marine area includes the territorial seas and offshore area adjacent to the UK, which includes the area of sea designated as the UK Exclusive Economic Zone (the Renewable Energy Zone until the Exclusive Economic Zone comes into force) and the UK sector of the continental shelf. It includes any area submerged by seawater at mean high water spring tide, as well as the tidal extent (at mean high water spring tide) of rivers, estuaries and creeks. The Welsh National Marine Plan (which will cover both inshore and offshore waters) is not yet available.

MARINE LICENSING

- 3.5.25 It is a criminal offence to carry out licensable marine activities either without a marine licence or in breach of the conditions of a marine licence. Activities such as dredging, and constructing works in or over the sea or on or under the sea bed, are licensable. In England, a DCO may include a deemed marine licence; this is not the case in Wales.
- 3.5.26 The Welsh Ministers are the licensing authority in relation to the Welsh inshore region (except in relation to petroleum and defence activities). In practice, the Welsh Ministers have delegated their marine licensing

functions to NRW who consider applications, issue or decline them and monitor marine licences.

SHORELINE MANAGEMENT PLANS

- 3.5.27 A Shoreline Management Plan (SMP) is a large-scale assessment of the risks associated with coastal processes and helps to reduce these risks to people and the developed, historic and natural environment. SMPs form part of Defra and the Welsh Government's strategy for managing flooding and coastal erosion and are non-statutory policy documents for coastal defence management planning. In 1995, the former Ministry of Agriculture, Fisheries and Food (MAFF) (now Defra) and the Welsh Office published guidance for operating authorities (such as maritime local authorities, the Environment Agency and internal drainage boards) on preparing SMPs.
- 3.5.28 The relevant plan for the proposed development is the South Wales Shoreline Management (SMP) Plan 20 (Lavernock Point to St. Anns Head)(response to SWQ OM2-05 [REP4-004]). The SMP and its implications are addressed in Chapter 4, Section 4.4, of this Recommendation Report.

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 ExA 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, biological environment and ecology which are considered in Chapter 5, Section 5.3 of this Recommendation Report.

THE NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949

- 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 Applicant noted (see Sections 4.6 and 5.2 of this Recommendation Report) that the proposed development lies outside any nationally designated areas e.g. AONBs, National Parks. The Applicant also noted the proposed connection would not be visible when viewed from any such designations [APP-064]. Nationally designated areas related to the National Parks and Access to the Countryside Act 1949 are therefore not considered further in this Recommendation Report (however, see Wildlife and Countryside Act below in relation to SSSIs).

THE WILDLIFE AND COUNTRYSIDE ACT 1981 (AS AMENDED)

3.6.7 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 W&CA provides for the notification and confirmation of SSSIs. These sites are identified for their flora, fauna and geological or physiographical features by the statutory nature conservation bodies (in Wales, NRW). The W&CA also contains measures for the protection and management of SSSIs.

3.6.8 The W&CA 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.

3.6.9 The W&CA has relevance to consideration of impacts on SSSIs and on protected species and habitats. The proposed development crosses the River Towy/Afon Tywi SSSI and could potentially affect protected species and habitats. Potential effects on SSSIs and protected species and habitats are reported in Chapter 5, section 5.3 of this Recommendation Report.

PROTECTION OF BADGERS ACT 1992

3.6.10 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 in Wales due to development activities 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 [REP3-054].

- 3.6.11 The effect of the proposed development on badgers and their setts is considered in Section 5.3 of this Recommendation Report.

NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT (2006)

- 3.6.12 The Natural Environment and Rural Communities (NERC) Act 2006 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 Environment Programme Convention on Biological Diversity of 1992.
- 3.6.13 Under s42 of the Act, the National Assembly for Wales must publish a list of species and habitats 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 s40 of the NERC to have regard to the purpose of conserving biodiversity.
- 3.6.14 Consideration of how the proposed development would affect biodiversity is considered in Chapter 5.3 of this Recommendation Report.

ELECTRICITY ACT 1989

- 3.6.15 The Electricity Act 1989 provided for the privatisation of the electricity supply industry in Great Britain. The Act established a licensing regime and a regulator for the industry called the Office of Electricity Regulation (OFFER), which has since become the Office of Gas and Electricity Markets (OFGEM). Section 9 of the Electricity Act 1989 (the Electricity Act) places a statutory duty upon the Applicant as an electricity distributor to develop and maintain an efficient, co-ordinated and economical system of electricity distribution in order to facilitate competition in the supply and generation of electricity. This places an obligation on them to connect new generating stations to the transmission system via connection agreements [APP-081]. This is discussed further in Chapter 4.

3.7 MADE DEVELOPMENT CONSENT ORDERS

- 3.7.1 The Applicant has made reference to the grant of development consent for Brechfa Forest West Wind Farm Order 2013, with particular regard to the need to provide a new electricity connection for that development. The Applicant has also made reference to precedents in:

- The National Grid (King's Lynn B Power Station Connection) Order 2013¹⁷;
- The National Grid (North London Reinforcement Project) Order 2014¹⁸;

3.7.2 The need for the development is considered in detail in Chapters 4 - Section 4.3, 7 and 8 of this Recommendation Report.

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 5.7 of this Recommendation Report.

3.9 TRANSBOUNDARY EFFECTS

3.9.1 The SoS undertook a screening exercise to determine whether the proposed development would result in any likely significant effects on the environment in another European Economic Area (EEA) State. This is set out in the Transboundary Screening Matrix [OD-001].

3.9.2 Under Regulation 24 of the EIA Regulations and on the basis of the information available from the Applicant, the SoS is of the view that the proposed development is not likely to have significant effects on the environment in another EEA State.

3.9.3 In reaching this view the SoS applied the precautionary approach (as explained in the Planning Inspectorate Advice Note 12 Transboundary Impacts Consultation). Consultation under Regulation 24 of the EIA Regulations was therefore not considered necessary.

3.9.4 The ExA has had regard to the ongoing duty of the SoS under Regulation 24 to have regard to transboundary matters throughout the Examination. The ExA did not consider that any new information came to light during the Examination that would have prompted the need to reconsider the SoS's transboundary screening opinion [OD-001].

3.9.5 The ExA is also satisfied that with regard to Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, there are no transboundary biodiversity matters needing to be addressed and there are no matters outstanding in relation to transboundary effects that would argue against the DCO being made.

¹⁷ SI2013/3200

¹⁸ SI2014/1052

3.10 LOCAL IMPACT REPORT

3.10.1 Section 104 of PA2008 states that, in deciding the application, the SoS must have regard to any Local Impact Report (LIR) within the meaning of s60(3). There is a requirement under s60(2) of PA2008 to give notice in writing to each Local Authority falling under s56A inviting them to submit LIRs. This notice was provided in the Rule 8 letter of 13 October 2015 [PD-009 and PD-010].

3.10.2 The relevant host authority for this proposal is CCC, who submitted a LIR at D1 of the Examination [REP1-025]. The principal matters raised in the LIR are:

- Landscape character and visual impacts:

CCC considers that the proposed development would have a negative effect on the above. In particular, there would be negative impacts on the landscape character and qualities of Towy Valley Registered Landscape of Outstanding Historic Interest in Wales (RLOHIW) and the Towy Valley Special Landscape Area (SLA). Negative impacts on the visual amenity of local residents; impacts upon recreational users of the wider public footpath network; and cumulative effects arising from converging/diverging lines at viewpoint 5 would also arise.

- Ecology;

CCC considered that there is potential for negative impacts on lowland mixed deciduous woodland and wet woodland, badgers and dormice. Further negative impacts were identified in relation to mature trees and birds; however, CCC suggested mitigation proposals put forward would enable the impacts to become positive in some cases.

CCC concluded that neutral impacts would occur upon the River Towy/Afon Tywi SAC, River Towy/Afon Tywi SSSI, the bog at Rhydargaeuau, the pingo complex at Alltwalis, the purple moor grass and rush pasture, otter and reptiles.

The re-creation of native habitats within the area of plantation woodland to be felled was considered to be a positive effect of the proposed development.

- Noise, Vibration and Air Quality;

Noise impacts associated with the proposed development were judged by CCC as having a neutral effect, subject to acceptable operation phase mitigation measures.

In respect of air quality, CCC judged that dust impacts were likely to occur during the construction phase, resulting in a negative impact.

- Traffic and Transport;

CCC judged that negative impacts would occur during the construction phase of the proposed development due to the increase of traffic movements. However, subject to mitigation being secured such as traffic management, the impacts could be reduced and become neutral.

- Public Rights of Way (PRoW) and Countryside Access;

It is considered by CCC that the public footpath network would experience negative impacts during the construction phase from diversions and temporary closures. The operation of the overhead line would also result in negative visual impacts resulting from the position of poles and associated wiring next to, and visible from the public footpath network.

As there is no proposed permanent closure or diversion to be put in place during the operational stage of the proposed development, the effect is judged to be neutral.

- Historic Environment;

A neutral impact was predicted in relation to undergrounding of the line upon archaeological remains and beneath the RLOWHIW; however, where the overhead line is within the latter designation, CCC considered a negative impact would occur.

It was also predicted that negative impacts would occur on a small number of buildings, although minor to negligible in terms of significance.

- Land Use, Agriculture and Forestry;

CCC concluded that negative impacts would occur on farming practices during the construction phase of the proposed development, although considered these to be minor and short term. During the operational stage, CCC considered that a neutral impact would occur on farming practices, due to it being unlikely land would be taken out of productive use.

- Socio-economics, Recreation and Tourism;

CCC considered that the proposed development would have a negative impact upon the landscape and visual amenity of the area and therefore diminish the experience of public access users and visitors.

The diversion of existing PRoW during the construction stage was judged to have a neutral impact. Job creation and construction opportunities during the construction phase were judged by CCC to represent a positive impact.

- Geology, Hydrogeology and Ground Conditions;

CCC considered that negative impacts, minor to negligible, could occur on sand and gravel extraction areas. CCC concluded that negative pollution impacts could be mitigated through requirements within the DCO.

- Hydrology, Drainage and Flood Risk;

CCC did not raise any positive, negative or neutral impacts on hydrology, drainage and flood risk at the time of the submission of the LIR, as it had not yet had the opportunity to assess an application for Land Drainage Consent.

- 3.10.3 The above matters are considered in Chapter 4, Section 4.1, Chapter 5 and Chapter 7 of this Recommendation Report.

THE DEVELOPMENT PLAN

- 3.10.4 The relevant Local Development Plan (LDP) to the application is the Carmarthenshire LDP. This plan was adopted by the host authority, CCC in December 2014.

- 3.10.5 Paragraph 4.1.5 of EN-1 advises that the SoS may consider that matters outside of the relevant NPSs such as local planning policy may be relevant to the decision maker. Where there is the potential for conflict between local and national policy to arise, NPS EN-1 states that national policy should take precedence.

- 3.10.6 Section 19 of CCC's LIR [REP1-025], identifies those policies of the LDP considered relevant and whether those identified comply with the proposed development as submitted. CCC have identified the following policies where, in their opinion, the proposed development does not comply with:

- SP1 - Sustainable Places and Spaces (see Sections 4.4 and 5.2 of this Recommendation Report);
- SP13 - Protection and Enhancement of the Built and Historic Environment (see Section 5.7 of this Recommendation Report);
- SP14 - Protection and Enhancement of the Natural Environment (see Section 5.3 of this Recommendation Report);
- SP17 - Infrastructure;
- GP1 - Sustainability and High Quality Design (see Section 5.1 of this Recommendation Report);
- EQ1 - Protection of Buildings, Landscapes and Features of Historic Importance (see Section 5.7 of this Recommendation Report);
- EQ5 - Corridors , Networks and Features of Distinctiveness (see Section 5.2 and 5.7 of this Recommendation Report); and
- EQ6 - Special Landscape Areas Chapter (see Section 5.2 of this Recommendation Report).

- 3.10.7 For those policies where non-compliance is identified, the only issue on each occasion is the Applicant's proposal to erect poles 84-86 within the Towy/Tywi Valley SLA (the original Application Option A) and RLOHIW (Section 19 of SoCG with CCC [REP1-025]). This was addressed by the consideration of Option B.
- 3.10.8 CCC identified the following policies where, in their opinion, the proposed development does comply:
- SP2 - Climate Change (see Section 5.13 of this Recommendation Report);
 - SP9 - Transportation (see Section 5.10 of this Recommendation Report);
 - SP10 - Sustainable Mineral Development;
 - GP3 - Planning Obligations (see Section 9.8 of this Recommendation Report);
 - TR1 - Primary and Core Road Networks;
 - TR2 - Location of Development; Transport Considerations;
 - TR3 - Highways in Development; Design Considerations;
 - EQ3 - Regional and Local Designations ;
 - EQ4 - Biodiversity(see Section 5.3 of this Recommendation Report); and
 - MPP3 - Mineral Safeguarding.
- 3.10.9 The Applicant's Planning Statement [APP-119], Table 7.1, assesses the proposed development against the policies set out in the LDP. In paragraph 6.4.1, the Applicant concludes that the proposed development does not conflict with any individual policies or with the Local Development Plan as a whole. Chapter 4, Section 4.4 and Chapter 5 of this Recommendation Report deals with compliance of the proposed development with local plan policies.

THE SECRETARY OF STATE'S POWERS TO MAKE A DCO

- 3.10.10 The ExA was aware of the need to consider whether changes to the application made during the Examination meant that the application had changed to the point where it was a different application and whether the SoS would have power therefore under s114 of PA2008 to make a DCO having regard to the development consent applied for.
- 3.10.11 The SoS 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.
- 3.10.12 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.
- 3.10.13 In exercising this power, the SoS may wish to take into account the following views of the ExA 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 ExA's procedural decision of 1 March 2016 [PD-036 and PD-037] sets out the reasons for the acceptance into the examination of the minor changes to the route alignment.

4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES

4.1 MAIN ISSUES IN THE EXAMINATION

4.1.1 In accordance with s88 of the Planning Act 2008 (as amended) (PA2008) and Rule 5 of The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), the Examining Authority (ExA) made an initial assessment of the principal issues, prior to the Preliminary Meeting (PM) held on 6 October 2015 [EV-001]. Principal issues were identified from the ExA's consideration of the application documents [APP-001 to APP-149] and Relevant Representations (RR) [RR-001 to RR-030] received. This was sent to all Interested Parties (IP) and Affected Persons (AP) and Statutory Parties on 3 September 2015 [PD-005] and was part of the agenda for the PM held on 6 October 2015. The ExA received no requests during the PM for any additions to be made to the list of principal issues [EV-001 and EV-002].

4.1.2 The ExA confirmed that the principal issues have broad headings, and that all the issues would be covered by the relevant heading in the principal issues [PD-009]. The ExA confirmed that all issues would be examined in accordance with national policy and under the procedure established in PA2008 and relevant secondary legislation as set out in Chapter 3 of this Recommendation Report.

4.1.3 The principal issues informed the ExA's first written questions (FWQ) [PD-011] and decisions as to which topics might require oral examination through hearings. The principal issues identified by the ExA were as follows:

- Compulsory Acquisition (CA) including issues related to:
 - the requirement for the powers sought;
 - the need to establish a compelling case in the public interest;
 - have all reasonable alternatives to CA been explored;
 - financial arrangements - is adequate funding likely to be available to enable the promoter to carry out the CA within the statutory period;
 - whether the purposes stated for the acquisition are legitimate and sufficient to justify the inevitable interference with the human rights of those affected;
 - accuracy of the Book of Reference (BoR);
 - whether any statutory undertakers will suffer detriment that may be caused by the carrying on of the undertaking in question;
 - the adequacy of any protective provisions set out in the draft Development Consent Order (DCO); and
 - crown land.
- Draft DCO including issues related to:
 - the description of the development and definitions used;
 - protective provisions;

- integral elements of the application i.e. Option A 3.3km; Option B 3.56 km of undergrounding;
 - consistency with that which has been applied for; and
 - obligations such as s106 agreements and unilateral obligations.
- Economic and Social including issues related to:
 - the impact on the local economy;
 - the impact on local services and facilities;
 - the impact on agricultural activities;
 - the impact on tourism and local recreational users; and
 - the adequacy of the baseline assessment methodologies and any proposed mitigation measures to avoid, reduce or compensate for adverse impacts.
 - Environmental Impact Assessment and its adequacy;
 - Habitats, Ecology and Nature Conservation;
 - Historic and Archaeological;
 - Landscape and Visual including issues related to:
 - visual impact of the proposals during construction and operation, including adequacy of methods of assessment of impact and accuracy of illustrative material;
 - effects on the landscape of the areas in which the proposed development lies and from where the proposals are theoretically visible; and
 - consideration of the effectiveness of the mitigation proposals (for construction, operation and decommissioning), including the degree to which they are secured via the draft DCO.
 - Operational;
 - Route optioneering including issues related to:
 - the route optioneering concept and process;
 - consideration of the infrastructure against the Holford Rules¹⁹ and in the context of residential and public amenity, including the location and impact of the proposed development; and
 - undergrounding.
 - Traffic and Transport.

4.1.4 Four of the issues identified in the initial assessment CA, DCO, LVIA and route optioneering required to be further amplified and all others

¹⁹ http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010013/2.%20Post-Submission/Application%20Documents/Environmental%20Statement/CFAppDoc04_Annex15.2_FINAL.pdf

became less important or fell away during the course of the examination.

- 4.1.5 The ExA had regard to all the points made in the representations at the PM. The ExA's findings and conclusions in respect of these issues are set out in Chapters 4 and 5 of this Recommendation Report, except for matters relating to CA or the draft DCO, which are contained in Chapters 8 and 9 respectively. All representations, even if not explicitly mentioned, have been fully considered in reaching the conclusions set out. The ExA has had regard to all important and relevant matters in putting forward this recommendation to the Secretary of State (SoS).
- 4.1.6 The ExA reviewed the submitted application documents, which were accepted for examination on 24 June 2015 [PD-001]. On the 6 July 2015 the ExA issued a procedural decision to request a revised Book of Reference and other related documents to rectify minor discrepancies [PD-004]. The Applicant provided the revised documentation on the 21 August 2015 [APP-134 to APP-147].

ISSUES ARISING FROM WRITTEN SUBMISSIONS

- 4.1.7 Thirty RRs were received in the pre-examination period [RR-001 to RR-030]. The issues raised informed the initial identification of the principal issues [PD-005]. A number of issues were raised in written representations (WR), nearly all of which fell within the categories of issues identified in the ExA's initial assessment of principal issues. The issues raised by IPs also informed the written questions that the ExA asked during the course of the Examination [PD-011 and PD-019]. They were also matters that were examined at the Issue Specific Hearings (ISHs), the Open Floor Hearings (OFHs) and the Compulsory Acquisition Hearings (CAHs). Following the PM, the ExA issued first written questions (FWQs) for which responses were received at D1.
- 4.1.8 A number of IPs were critical of the consultation process (see Section 4.6 and Chapter 8 of this Recommendation Report) carried out by the Applicant [REP1-002, REP1-004, REP1-008, REP1-016, REP2-023, REP3-007, REP3-015 and REP4-005]. The criticisms related primarily to the CA process.
- 4.1.9 The legislative tests for the adequacy of public consultation were considered by the SoS for the Department Communities and Local Government (DCLG) during the acceptance stage of the application as set out at s55 of PA2008. The SoS decided to accept the application for examination [PD-001]. In reaching that decision, in respect of s55(3)(e) of PA2008, the SoS had regard to the matters set out in s55(4) of PA2008, and concluded that the Applicant had complied with Chapter 2 of Part 5 of PA2008 pre-application procedure. In respect of s55(3)(f) of PA2008, he had regard to the extent to which those matters set out in s55(5a) of PA2008 have either been complied with or followed, and concluded that the application (including accompaniments) was of a satisfactory standard [PD-002]. The SoS

took into account the views of relevant local authorities when coming to this decision [AoC-001 to AoC-005].

- 4.1.10 The ExA has no power to revisit the decision to accept the application or the conclusions already reached by the SoS in relation to the consultation process. However, the substantive cases made by IPs expressing such concerns, and the relevant issues raised, were fully explored and taken into account during the course of the Examination.
- 4.1.11 The issues raised by IPs informed the written questions that the ExA asked during the course of the Examination [PD-011 and PD-019]. They were also matters that were examined at the ISHs, the OFHs and the CAHs.
- 4.1.12 The ExA's findings and conclusions to all the issues raised in the written and oral submissions are summarised in the remainder of Chapter 4 and also in Chapters 5, 6, 8 and 9 of this Recommendation Report.

ISSUES ARISING IN LOCAL IMPACT REPORTS

- 4.1.13 One Local Impact Report (LIR) was submitted at D1 from Carmarthenshire County Council (CCC) [REP1-025].
- 4.1.14 Most of the matters raised in the submitted LIR reflect those in the ExA's initial assessment of principal issues. The issues arising from the CCC LIR were as follows:
 - Socio-Economics, Recreation and Tourism;
 - Ecology;
 - Traffic and Transportation;
 - Public Rights of Way and Countryside Access;
 - Hydrology, Drainage and Flood Risk;
 - Landscape and Visual;
 - Cumulative effects;
 - Noise, Vibration;
 - Air Quality;
 - Ecology;
 - Historic Environment;
 - Land Use, Agriculture and Forestry; and
 - Geology, Hydrogeology and Ground Conditions.
- 4.1.15 CCC's LIR was prepared by its Planning Services Division with input from CCC's officers specialising in ecology, landscape and conservation, public access / recreation, noise and air quality and transportation. The LIR also contained input from specialist consultants in the area of landscape and visual impact (see paragraph 1.9 of [REP1-025]).
- 4.1.16 CCC's Planning Committee on 5 November 2015 endorsed the content of the LIR as the Council's technical assessment of the evidence in the project documents and professional judgement of officers [REP1-013].

- 4.1.17 the Planning Inspectorate Advice Note 2 (The role of local authorities in the development consent process, February 2015) states:
- "Written representations and LIRs are distinct documents giving a local authority the opportunity to express information differently. The LIR is usually a technical document setting out an evidence based assessment of the impacts of a proposal on the communities affected. A written representation is the most appropriate document for a local authority to set out its view on the application i.e. whether or not it supports the application and its reasons."*
- 4.1.18 The members of the Council passed the following motion on 10 July 2013 (see paragraph 1.4 of [REP1-025]):
- "That Carmarthenshire County Council finds it totally unacceptable that the proposed Brechfa Forest wind farm(s) National Grid connection should be made via an overhead line supported by wooden pylons. As the Council itself has no statutory power in this matter, we ask the UK Energy Secretary to ensure that the connection cable is laid underground for its entire length".*
- 4.1.19 The members of CCC maintained the position it took in July 2013 throughout the examination, that the entire connection should be underground and the project in its current form was contrary to the Carmarthenshire Local Development Plan (LDP) Policies (December, 2014) [REP1-013]. The opposition of CCC members was re-iterated at the OFH on the 1 December 2015 by Councillor Linda Davies Evans under agenda item 2 [EV-008].
- 4.1.20 Only the Applicant provided written comments [REP2-032 and REP2-035] on CCC's LIR [REP1-025]. The Applicant and CCC, during the examination, reached agreement on a number of issues raised in the LIR via agreed requirements in the draft DCO Option A Version F [REP8-015] and draft DCO Option B Version A [REP8-023] and Statements of Common Ground (SoCG) [REP1-082 and REP2-038 and REP2-037 and REP7-018].
- 4.1.21 However, the undergrounding of the line beneath part of the Tywi/Towy Valley Special Landscape Area (SLA) and Registered Landscape of Outstanding Historic Interest in Wales (RLOHIW) was a matter of disagreement throughout the examination which is described in [PD-014] and is discussed further in Section 4.6 of this Recommendation Report. NRW and CCC considered that the Applicant had under assessed the likely impact on the designated landscape and consider that the effect of the proposed OHL development at the southern slopes of the Towy/Tywi Valley would be significant and unacceptable. NRW and CCC did, however, consider that that these significant adverse impacts could be avoided by means of a short southern extension to the section of route proposed for undergrounding and believed that these concerns were fully addressed by the design changes contained in Option B [PD-015].

- 4.1.22 The ExA has had regard to all the matters raised by the LIR and these have been further explored and considered during the course of the Examination and are drawn upon throughout the report.

4.2 STATEMENTS OF COMMON GROUND (SOCG)

- 4.2.1 SoCGs were prepared between the Applicant and:

- CCC on:
 - environmental issues [REP1-082];
 - landscape and visual issues [REP2-037];
 - historic environment [REP2-038]; and
 - the DCO [REP7-018];
- Natural Resources Wales (NRW) on:
 - environmental matters [REP2-036]; and
 - landscape and visual issues [REP2-039].
- Dyfed Archaeological Trust and Cadw on:
 - historic environment [REP1-083].

4.3 THE PRINCIPLE OF THE DEVELOPMENT

- 4.3.1 The proposed development is the installation of a new 132kV electric line of 28.6km (Option A approximately 25.3 km above ground and 3.3km below ground; Option B approximately 25.04km above ground and 3.56km below ground), connecting the consented Brechfa Forest West Wind Farm²⁰ to an existing overhead line near Llandyfaelog, in Carmarthenshire South Wales (see Figure 1.1 [APP-076]). The project is a Nationally Significant Infrastructure Project (NSIP) comprising the installation of an electric line above ground which will be wholly in Wales, as defined in Sections 14(1)(b) and 16 (1)(b) of PA2008.

- 4.3.2 National Policy Statement (NPS) EN-1 explains circumstances where applications for consent for new electricity network infrastructure developments may be considered under PA2008. Paragraph 3.7.7 of EN-1 states:

"...new lines will have to be built, and the location of renewable energy sources and designated sites for new nuclear power stations makes it inevitable that a significant proportion of those new lines will have to cross areas where there is little or no transmission infrastructure at present, or which it may be claimed should be protected from such intrusions."

- 4.3.3 The circumstances outlined within EN-1 paragraph 3.7.7 pertain to the proposed development in that the Applicant is proposing to provide a connection from a renewable energy source, the consented Brechfa Forest West Wind Farm, to the existing electrical distribution network

²⁰ <http://infrastructure.planninginspectorate.gov.uk/projects/wales/brechfa-forest-west-wind-farm/>

at Llandyfaelog. The Applicant's position is that the implementation of the proposed development is essential to facilitate the export of low carbon electricity from the South Wales Region and maintain the UK's energy security of supply [APP-119]. The ExA agrees this is in compliance with policy in EN-1.

NEED FOR THE DEVELOPMENT

- 4.3.4 Paragraph 4.1.2 of EN-1 sets out a presumption in favour of development for nationally significant energy infrastructure. This presumption applies *"unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused."* On that basis, it was important to ensure that the policy basis for the proposed development was thoroughly reviewed, commencing with its primary elements: the establishment of the need case and the development of options to meet need.
- 4.3.5 EN-1 explains 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 the types of energy infrastructure covered by this NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions. It advises that all applications for such development should be assessed on the basis that there is a need for those types of infrastructure and that the scale and urgency of that need is as described for each of them in Part 3 of EN-1.
- 4.3.6 EN-1 sets out, in section 3.7, the key reasons why the Government believes that there is a need for new electricity network infrastructure. At paragraph 3.7.7, it states that:
- "The urgency of need for new generating capacity means that the need for new transmission that is required to connect that capacity will be similar."*
- 4.3.7 Paragraph 4.1.5 of EN-1 states that the energy NPSs have taken account of the relevant TANs in Wales. The seven Strategic Search Areas (SSAs) are shown on Maps 1-8 of TAN 8. The SSA boundaries are at a *"broad brush"* scale. Not all of the land within the SSAs may be technically, economically and/or environmentally suitable for major wind power proposals; however the boundaries are seen as encompassing sufficient suitable land, in one or more sites, to deliver the Assembly Government's energy policy aspirations. In Table 1 of TAN 8 Brechfa is identified as an SSA.
- 4.3.8 The Applicant's need case is set out in the Environmental Statement (ES) Chapter 3, and Project Alternatives in Section 3.2 [APP-058]. The need for this connection project is the requirement for the Applicant to connect a new source of electricity generated by renewable energy i.e. Brechfa Forest West Wind Farm (the need for which has been defined in EN-1) to the network operated by the Applicant to allow efficient distribution to electricity end users.

- 4.3.9 Section 9 of the Electricity Act 1989 (the Electricity Act) places a statutory duty upon the Applicant as an electricity distributor to develop and maintain an efficient, co-ordinated and economical system of electricity distribution in order to facilitate competition in the supply and generation of electricity. This places an obligation on them to connect new generating stations to the transmission system via connection agreements [APP-081].
- 4.3.10 The Electricity Act also confers a duty under s38 and Schedule 9 to ensure that in formulating any development proposals, a licence holder i.e. the Applicant, shall have regard to:
- "...the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest."*
- 4.3.11 The Applicant is required to do what can be reasonably done to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects [APP-081]. NPS EN-5 at paragraph 2.2.6 clearly states these duties which are placed on the Applicant.
- 4.3.12 In February 2011, the Applicant received a request for a connection offer from RWE Innogy UK Ltd (RWE) with respect to the then proposed Brechfa Forest West Wind Farm [APP-119]. The Applicant is obligated to provide the connection offer. The Applicant is licenced to distribute electricity through its electricity systems in South Wales where the Applicant is the Distribution Licence holder. It is obliged, under its licence, to offer least cost, compliant connections to persons seeking connections to the distribution system within the Licence areas.
- 4.3.13 The question of need for the electrical connection was not explicitly raised elsewhere by any party during the course of the examination.

ExA conclusion on the Applicant's need case

- 4.3.14 The ExA 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 and EN-5. The owner of Brechfa Forest West wind farm which has a made DCO is requesting the connection. The ExA gives further consideration to the various impacts of the project and proposed mitigation in Chapter 5 of this Report, and the question of alternatives in Section 4.6 of this Report, and how these relate to the generic impacts in EN-1 and EN-5. However, in terms of broad matters of principle, the ExA is satisfied that the need for the proposed development has been established.
- 4.3.15 The distinction between Option A and B are for Chapters 4 and 5 of this Recommendation Report localised to approximately 260m of ground on the southern slopes of the Towy Valley and are only related

to landscape character effects on the SLA and historic landscape effects on the RLOHIW. Both CCC and NRW believe these effects would be mitigated to residually insignificant effects by undergrounding of the overhead line between poles 84-86 proposed in Option B.

4.4 CONFORMITY WITH NATIONAL POLICY STATEMENTS AND OTHER KEY POLICY STATEMENTS

NATIONAL POLICY STATEMENTS

4.4.1 Section 104(3) of PA2008 requires that an application for development consent should be decided in accordance with the relevant National Policy Statement (NPSs), subject to the exceptions set out in subsections (4)-(8). Subsections (4) to (8) of PA2008 include where:

- such a determination would lead to the UK being in breach of its international obligations;
- such a determination would lead the SoS to be in breach of any duty imposed on the SoS by or under any enactment;
- the adverse impact of the proposed development would outweigh its benefits; and
- any condition prescribed for deciding an application otherwise than in accordance with a NPS is met.

4.4.2 As explained in Chapter 3 of this Recommendation Report, the relevant energy NPSs are EN-1 and EN-5. 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.

4.4.3 The Applicant assesses the compliance of the proposed development against relevant NPSs in Section 4 of the Planning Statement [APP-119]. Further information on the extent to which the ES is compliant with the requirements of EN-1 and EN-5 is provided in Appendix 7.2 to Chapter 7 of the ES [APP-084].

National Policy Statement EN-1

4.4.4 EN-1 notes 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. This means ensuring that there is:

- sufficient electricity capacity (including a greater proportion of low carbon generation) to meet demand at all times, including a safety margin of spare capacity to accommodate fluctuations in supply or demand;
- reliable associated supply chains to meet demand as it arises; a diverse mix of technologies and fuels, (including primary fuels imported from a wide range of countries); and
- effective price signals, so that the market can react in a timely way to minimise imbalances between supply and demand.

- 4.4.5 EN-1 specifically considers the need for new electricity network infrastructure and concludes that there is an urgent need for new electricity transmission and distribution infrastructure to be provided.
- 4.4.6 The general principles of assessment set out in EN-1 relevant to the proposed development relate to ES, habitats and species regulations, consideration of alternatives, good design, climate change adaption, safety, health and national security.
- 4.4.7 The ES includes information about the main alternatives that have been studied. The main reasons for the Applicant's choices are set out in the ES Alternatives Chapter 3 [APP-058].
- 4.4.8 The Applicant contends that the proposed development demonstrates compliance with the principles of good design through routing, siting, and design, to minimise or to mitigate adverse impacts. The resilience to climate change of the Applicant's proposed development is detailed in its Climate Change Resilience Report [APP-085] and within individual topic chapters of the ES. The Applicant submits that its assessment is in accordance with section 4.8 of EN-1.
- 4.4.9 EN-1, Part 5 sets out the generic impacts of energy infrastructure projects which must be considered in the ES which accompanies the application. The generic impacts relevant to the proposed development have been addressed in the ES which has assessed the potential effects arising during construction, operation and decommissioning of the proposed development and the inter-relationship of these effects.

National Policy Statement EN-5

- 4.4.10 EN-5 indicates that the decision-maker should start its assessment of applications for infrastructure covered by it, on the basis that need has been demonstrated.
- 4.4.11 EN-5 does not seek to direct applicants to particular sites or routes for electricity networks infrastructure. It notes that the general location of electricity network projects is often determined by the location, or anticipated location, of a particular generating station in relation to the existing network. In other cases the requirement for a line may be the result of the need for more strategic reinforcement of the network. EN-5 accepts that the most direct route for a new connection may not be the most appropriate given engineering and environmental considerations.
- 4.4.12 EN-5 Part 2 sets out the basis for assessing such proposals. It advises, for a variety of topic areas, what the applicant's own assessments should address and what principles should be adopted in decision-making. It also advises on the weight to be given to certain issues and on the treatment of mitigation measures, particularly how these may be enforced through requirements or obligations. Any assessment should also cover those issues raised in EN-1.

- 4.4.13 ES Chapter 3 on Alternatives Option A [APP-058] and Option B [CR-003], and the Strategic Optioneering Report (SOR) Option A and B [APP-122], explains the assessment that the Applicant has made of the alternatives to the preferred connection.

ExA Conclusion on Conformity with NPSs EN-1 and EN-5

- 4.4.14 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 ExA is satisfied that the application has taken into account the general principles of assessment set out in EN-1 that are relevant to the proposed development. The impacts of the project and general conformity with EN-1 and EN-5 are discussed in subsequent sections of Chapter 4 and Chapter 5 of this Recommendation Report. The ExA considers in later chapters of this Recommendation Report whether the proposed development achieves 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 4.6 of this Recommendation Report.

CONFORMITY WITH SHORELINE MANAGEMENT PLAN (SMP²¹)

- 4.4.15 The Applicant submitted a Welsh Marine licence application to NRW on 11 November 2015 (CML1551).
- 4.4.16 NRW in their response [REP4-004] to the ExA' second written question (SWQ) -OM2-05 [PD-019] stated:

'The Marine Licence Application submitted to and accepted by NRW does not have any implications for the SMP.'

CONFORMITY WITH THE DEVELOPMENT PLAN POLICIES

- 4.4.17 EN-1, paragraph 4.1.5, confirms that other matters which the SoS 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 SoS's decision-making, given the national significance of the infrastructure.
- 4.4.18 The Planning Statement for draft DCO Option A [APP-119] and draft DCO Option B. Section 3 of [CR-002] sets out the key Carmarthenshire local plan policy documents against which the proposed development should be considered. It describes in Section 6 an assessment of the proposed development against the adopted and saved local planning policies and concludes that the proposed development would be broadly consistent with the objectives of those

²¹ South Wales Shoreline Management Plan2(Lavernock Point to St. Anns Head) [REP-004]

plans as regards minimising adverse effects arising from construction and operational activities. As indicated in Chapter 3 of this Recommendation Report, the LIR also makes reference to relevant local planning policies [REP1-025].

4.4.19 There are no specific local policies that are applicable to the construction and operation of this type of infrastructure. However, there are many policies that seek to control effects of the type that are likely to be created by the proposed development. The ExA has given consideration to relevant local Development Plan policies, in line with NPS guidance, in Chapter 5 and the ExA conclusions on the case for development consent in Chapter 7 of this Recommendation Report.

4.4.20 CCC's LIR [REP1-025] states on pages 58 and 59:

"A full appraisal of the proposal against local planning policies is set out in Section C of the LIR. The proposed development complies with some policies but is against others. A summary is provided below:

In Compliance:

- *SP2 Climate Change*
- *SP9 Transportation*
- *SP10 Sustainable Mineral Development*
- *GP3 Planning Obligations*
- *TR1 Primary and Core Road Networks*
- *TR2 Location of Development – Transport Considerations*
- *TR3 Highways in Development – Design Considerations*
- *EQ3 Regional and Local Designations*
- *EQ4 Biodiversity*
- *MPP3 Mineral Safeguarding*

Not In Compliance:

- *SP1 Sustainable Places and Spaces*
- *SP13 Protection and Enhancement of the Built and Historic Environment*
- *SP14 Protection and Enhancement of the Natural Environment*
- *SP17 Infrastructure*
- *GP1 Sustainability and High Quality Design*
- *EQ1 Protection of Buildings, Landscapes and Features of Historic Importance*
- *EQ5 Corridors, Networks and Features of Distinctiveness*
- *EQ6 Special Landscape Areas"*

4.4.21 For those policies where non-compliance is identified, the consistent issue on each occasion is the Applicant's proposal to erect poles 84-86

within the Towy/Tywi Valley SLA and RLOHIW²² (Section 19 of REP1-025).

- 4.4.22 CCC members maintained the position it took in July 2013 that the entire connection should be underground and the project in its current form is contrary to the following Carmarthenshire Local Development Plan Policies (December, 2014) in its WR [REP1-013]:

- *"SP13 Protection and Enhancement of the Built and Historic Environment*
- *SP14 Protection and Enhancement of the Natural Environment*
- *SP17 Infrastructure*
- *GP1 Sustainability and High Quality Design*
- *EQ1 Protection of Buildings, Landscapes and Features of Historic Importance*
- *EQ6 Special Landscape Areas."*

- 4.4.23 Section 4.6 of this Recommendation Report addresses further the issue of non-compliance with CCC local planning policies.

4.5 ADEQUACY OF ENVIRONMENTAL STATEMENT AND ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

- 4.5.1 EN-1 at section 4.2 sets out the expected content of an ES accompanying an application for development consent.

- 4.5.2 Prior to submission, the Applicant issued written notification to the SoS under Regulation 6(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (the 'EIA Regulations'), notifying that they intend to issue an ES for the proposed development. The Applicant also requested a scoping opinion from the SoS [APP-115]. The SoS' scoping opinion was taken into account by the Applicant in further refinement of the Environmental Impact Assessment (EIA) process and the content of the ES [APP-115 and APP-116], prior to submission of the application.

- 4.5.3 The adequacy of the assessment of potential impacts within the EIA/ES Option A [APP-056 to APP-075], was highlighted in the initial identification of principal issues [PD-005].

- 4.5.4 CCC, NRW and a number of IPs raised concerns regarding the content of the EIA/ES, including the conclusions of the impact assessment and proposed mitigation, in their RRs [RR-001 to RR-003; RR-005 to RR-016 RR-018; RR-021 to RR-030]. These concerns were raised again in WR [REP1-006, REP1-008, REP1-011 and REP1-022]. The Applicant's responses can be viewed at [REP1-027 and REP2-030 to REP2-031]. The concerns are detailed in Chapters 4 and 5 of this Recommendation Report and include:

²² See Section 4.6 of this report

- the application of the Holford Rules (Section 5.2 of this Recommendation Report);
- pLCA6 Towy Valley southern slopes (Section 4.6 and 5.10 of this Recommendation Report);
- overbearing visual effects (Section 5.2 of this Recommendation Report);
- consultation process (Section 5.2 and Chapter 8 of this Recommendation Report);
- cumulative landscape visual effects including wirescape (Section 5.2 of this Recommendation Report); and
- socio-economic effects (Section 5.2 and Chapter 8 of this Recommendation Report).

4.5.5 During the course of the examination matters related to the impact assessment [APP-054 to APP-080], including the adequacy of the assessment of significant effects, have been resolved to the satisfaction of CCC in SoCGs [REP1-082, REP2-038, REP3-047 and REP7-018] and NRW [REP2-039], with the exception of the undergrounding of the line beneath part of the SLA and the RLOHIW in the Towy/Tywi valley which was a matter of disagreement throughout the examination [PD-014 and PD-038]²³.

4.5.6 The Habitats Regulations Assessment (HRA) information is considered separately in Chapter 6 of this Recommendation Report.

4.5.7 In the case of draft DCO Option A, the Applicant provided information on the environment and its assessment of these issues consisting of the following:

- Scoping Report [APP-115];
- ES [APP-056 to APP-075];
- Thirty three supporting appendices [APP-081 to APP-114];
- Figures [APP-076 to APP-080]; and
- A standalone Non-Technical Summary [APP-054 and APP-055].

4.5.8 And for Option B:

- Statement of Applicant [CR-001];
- Summary of addendum to the Environmental Statement [CR-002]; and
- Addendum to the Environmental Statement - Figures Parts 1 -6 [CR-003 to CR-009].

4.5.9 The Applicant considered cumulative effects in the ES for Option A [APP-056 to APP-075] and Option B [CR-003]. The Applicant's approach to assessing cumulative effects and a description of the plans and projects taken into account is included in the assessment [APP-074 for Option A and CR-003 for Option B]. The ExA is content that the Applicant's approach as described and clarified in response

²³ Paragraphs 4.6.62-4.6.69 of this report addresses this non-compliance

[REP1-018] to questions (FWQs DLV05; EIA02; EIA13; EIA14 and EIA21 [PD-011]) has addressed the matter of cumulative effects for EIA in an appropriate manner [REP1-028]. At paragraph 9.3.9 of the CCC SoCG [REP1-082] it states:

"The parties to this SOCG agree with the stated conclusions on the absence of any significant cumulative effects."

4.5.10 NPS EN-1 Paragraph 4.2.4 states:

'The IPC should request further information where necessary to ensure compliance with the EIA Directive.'

4.5.11 The ExA investigated the adequacy of the information provided in the ES for the original application, Option A in FWQs [PD-011] and SWQs [PD-019] and in questions put to the Applicant orally at the EIA and other Environmental Matters ISH [EV-018] [REP3-045]. The Applicant's responses to the ExA written questions can be found at [FWQ REP1-028 and SWQ, REP4-027]. The Applicant's responses are examined throughout Chapters 4 and 5.

4.5.12 The ExA reviewed the submitted Environmental Report (Addendum to the Environmental Statement [CR-002 to CR-008] for Option B against the original ES in its procedural decision of the 1 March 2016 [PD-038]. The ExA was satisfied that the environmental effects of the proposed change lay within the envelope of the original ES. The application (as changed) was still of a sufficient standard for examination.

Conclusion on Adequacy of Environmental Statement/Environmental Impact Assessment

4.5.13 Overall, in the light of the submitted documentation and the submissions received, the ExA considers that the ES, as supplemented with the additional information secured during the Examination, provides an adequate basis for the environmental impact assessment. In turn the ExA also consider that the various elements of the environmental impact assessment, supplemented by the information received in response to written and oral questions and submissions by IPs, forms an adequate basis for the ExA report and recommendation and decision making by the SoS. It is the view of the ExA that the overall environmental information supplied for Option A and Option B, is sufficient (Schedule four Parts 1 and 2 of the EIA Regulations) for the SoS to take into consideration before making a decision in compliance with Regulation 3(2)²⁴ of the EIA Regulations.

²⁴ 3.- Prohibition on granting consent without consideration of environmental information

3.—(1) This regulation applies to—

(a) every application for an order granting development consent for EIA development received by the Commission; and (b) every subsequent application for EIA development received by a relevant authority on or after 1st March 2010.

4.6 CONSIDERATION OF ALTERNATIVES

INTRODUCTION

- 4.6.1 The Applicant's need case justifies the project requirement, as concluded in Section 4.3 of this Recommendation Report. It does not in and of itself, justify the chosen alignment without examination (see paragraph 4.1.2 of EN-1). The ExA is clear that the starting point for the consideration of alternative routes for the proposed development is that the ExA can only consider this in the context of the application before the ExA. The ExA cannot recommend granting of a DCO for a scheme that follows a different route or using different locations for works other than those in any draft DCO accepted for Examination.
- 4.6.2 The EIA Regulations require that an ES should include an outline of the main alternatives that have been studied by the Applicant and an indication of the main reasons for its choices, taking into account the likely significant environmental impacts of each alternative.
- 4.6.3 EN-1 (Paragraph 4.4.1-4.4.2) states:
- "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.*
- However:*
- Applicants are obliged to include in their ES, as a matter of fact, information about the main alternatives they have studied. This should include an indication of the main reasons for the Applicant's choice, taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility."*
- 4.6.4 In the case of the proposed development, the alternatives that have been considered are detailed in Chapter 3 of the ES [APP-058]; in the SOR [APP-122] and Lifetime Costs Report [APP-124] covering:
- alternative technology options;
 - alternative route options; and
 - principle of undergrounding.
- 4.6.5 These options were consulted on during the statutory pre-application consultation process. A recurring theme during each stage of consultation was the desire of IPs to see the connection completely undergrounded, the Applicant reported on this in the Consultation Report submitted with the application (see Section 2.3.3 of APP-050).

(2) Where this regulation applies, the Secretary of State or relevant authority (as the case may be) must not (in the case of the Secretary of State) make an order granting development consent or (in the case of the relevant authority) grant subsequent consent unless it has first taken the environmental information into consideration, and it must state in its decision that it has done so

- 4.6.6 The ExA addressed the adequacy of the information provided on alternatives, in FWQs [PD-011] (FWQs DLV06, DLV19, DLV20, DLV21, DLV22 and EIA05) and SWQs [PD-019] (SWQs HA2-04 and OM2-03) and in questions to the Applicant at the EIA and environmental matters ISH under Agenda item 7.4 [EV-018]. The Applicant provided a written record of its responses in this hearing at [REP3-043 and REP3-045]. The Applicant's responses to the ExA's written questions can be found at [FWQ, REP1-028; SWQ, REP4-027].
- 4.6.7 The ExA's approach to examining alternatives in this Recommendation Report is to first examine the overall alternatives/technological options assessed by the Applicant in the ES, followed by the four alternatives proposed by IPs.
- 4.6.8 The Applicant's methodology for the assessment of alternatives (see Figure 1.2 of Appendix 5.1 of APP-076) was to initially identify an area of search in which the Applicant identified six potential strategic options (Appendix 6 of APP-122 and Figure 8.1 of APP-076).
- 4.6.9 A study area was then identified to map constraints (Appendices 3.1 and 3.2 of [APP-045]). The Applicant initially had a number of potential route corridors (Figure 2.5 of APP-076). After consultation the Applicant's preferred route corridor was chosen (Figure 2.6 of APP-076) .
- 4.6.10 There were a number of potential route alignments within the Applicant's preferred corridor. After consultation the Applicant's preferred alignment was chosen (see Figure 1.1 of APP-076). The Applicant's preferred alignment, following consultation, is the basis of the proposed development i.e. the DCO application. Paragraphs 4.6.24- 4.6.30 of this Recommendation Report describe the process of consultation on options in more detail.
- 4.6.11 IPs have suggested four alternatives to the Applicant's preferred alignment in their representations in writing, at the OFHs under agenda item 2 [REP3-006, REP3-016 and REP3-026] and the environmental matters ISH under agenda items 7.3, 7.4, 9.1 and 9.2 [EV-019]. The ExA examined them each in turn namely:
- undergrounding of the whole route;
 - utilising the existing Altwallis overhead line²⁵;
 - utilising trunking adjacent to A485²⁶; and
 - undergrounding of a 260m southern extension to the underground cable section in the Tywi valley., Option B
- 4.6.12 The Applicant's responses to the proposed additional alternatives can be found at [REP3-041, OFHs; REP3-043, ISH on Environmental Matters; and REP3-045, Applicant's response to ExA questions at all

²⁵ Only raised at the OFH on 30 November 2015

²⁶ *ibid*

hearings in December 2015] and are explored further in this section of the Report.

ALTERNATIVE ROUTE/TECHNOLOGICAL OPTIONS ASSESSED BY THE APPLICANT

- 4.6.13 The Applicant has produced a Strategic Optioneering Report (SOR) [APP-122], a Lifetime Costs Report [APP-124] and a Report into Underground Cable (UGC) Costs [REP1-046], that examined the costs of engineering options available to connect the Brechfa Forest West Wind Farm to the electricity network.
- 4.6.14 The Applicant believes there are a number of different ways in which the electrical connection can be made. These options were explored in detail in the SOR [APP-122]. The options included:
- Technology solutions:
 - transfer using overhead line;
 - underground cable; and
 - assessment of the voltage of the connection.
 -
 - Route options, including:
 - alternative connection points;
 - separate or combined route corridor(s)/connection points for the wind farm²⁷; and
 - alternative alignments for the preferred route corridor between the wind farm and the connection point.
- 4.6.15 The Applicant's SOR sets out in detail, the characteristics of the Applicant's existing network in south and west Wales [APP-122]. It explained why the Swansea North Grid Supply Point (GSP) (Figure 8.1 [APP-076]) is the preferred GSP for the Applicant:
- "The distribution network in the Carmarthen and Brechfa Forest area is part of the Swansea North Group, this means that the electricity which is distributed is taken from or to the GSP at Swansea North Substation" (Figure 1.1 of APP-115).*
- 4.6.16 Current levels of electricity generation already feed into the Swansea North Group such that any new sources of generated electricity must connect to Swansea North GSP. The Applicant argues that there are compelling technical reasons for using the Swansea North GSP (see Appendix 5 of APP-122), but importantly it is the closest grid supply point to the Brechfa Forest West Wind Farm.
- 4.6.17 Section 6 of the SOR [APP-122] explains the rationale for the structure of the proposed development which is a 132kV connection.

²⁷ Originally three wind farms were planned for but the proposed development is now only for a single wind farm

Consideration was given to 33kV and 66kV connections but these were ruled out because:

- there is no existing 66kV network within the Swansea North GSP network;
- a 66kV network would require two circuits, additional transformers and would consequently incur costs over and above those associated with a 132kV connection; and
- transformer capacity and circuit rating of the 33kV network found that it could not provide sufficient capacity without substantial substation works, the installation of additional transformers and the creation of at least five additional 33kV circuits.

4.6.18 Section 7 of the SOR [APP-122] sets out the consideration of options for connection to the 132kV network to the Swansea North GSP.

4.6.19 In the SOR [APP-122], the Applicant explored six route options. The ExA believes the optioneering exercise is in congruence with national [REP1-053 and REP1-054] and international [REP1-057] best practice. The Applicant provided a comparative tabulation of all six options on a single table[REP1-045] with:

- technical compliance/deliverability;
- environmental; and
- costs.

compared for each of the six options, in response to the FWQ DLV19 [PD-011]:

- Option 1 Blaengwen: A 132kV connection to the substation serving Alltwalis wind farm then utilisation of existing Western Power Distribution (WPD) infrastructure to Rhos and ultimately Swansea North GSP;
- Option 2 Rhos/Lampeter: A new 132kV connection to Rhos or Lampeter Substation and utilisation of existing WPD network to Swansea North GSP;
- Option 3 Carmarthen: A new 132kV connection to Carmarthen Substation and utilisation of existing WPD network to Swansea North GSP;
- Option 4 Ammanford: A new 132kV connection to Ammanford 132kV Substation and utilisation of existing WPD network to Swansea North GSP;
- Option 5 Swansea North (via EE circuit): A new 132kV connection to the EE route, south of Carmarthen, at Llandyfaelog, and utilisation of existing WPD network to Swansea North GSP; and
- Option 6 Swansea North (direct): A new a 132kV connection direct to Swansea North GSP without using any existing WPD network.

4.6.20 The Applicant's assessment concluded that Option 5 represented the preferred connection option [APP-122]. It was found to be consistent with the Applicant's existing assets and initial assessments suggested

that it would require approximately 30km of overhead line (OHL) to be built. Option 5 was chosen by the Applicant because it:

- had the lowest financial cost (substantially lower than options 1,2,3 and 6);
- was substantially shorter than option 6 (which would be 50km long and therefore have a potentially greater environmental impact);
- it would not lead to increased system failure risk (option 4); and
- it would not compromise generation and transmission in a neighbouring Distribution Network Operator (DNO) area (options 1, 2 and 3 could potentially do so).

4.6.21 Option 5 comprises the installation of the Applicant's apparatus within Brechfa Forest West Wind Farm substation site (delivered via the consent for the Brechfa Forest West wind farm²⁸) and the construction of a new 132kV circuit from that substation to the point of connection on the Applicant's existing network near Llandyfaelog. From this point the generated electricity is to be routed back to Swansea North GSP utilising three existing tower line circuits (see Figure 1.1 of APP-076).

4.6.22 Works to utilise the Applicant's existing network from the EE²⁹ route to Swansea North GSP does not form part of the proposed development for which consent is sought and will instead be undertaken by the Applicant using existing permitted development powers and under s37 of the Electricity Act 1989 and planning consents under the TCPA 90.

ExA's conclusion on strategic optioneering

4.6.23 The ExA has considered the question of alternatives i.e. strategic optioneering in the light of the relevant policy and legal requirements. The ExA is satisfied the optioneering has followed policy and best practice and the ExA was given no reason to doubt the Applicant's analysis. The ExA is content that the Applicant has met the tests in the NPS and has provided compelling evidence to support its preferred Option 5. The ExA is content that all the tests in relevant policy and legal requirements have been met and the SoS can be assured the option selection process has been robust and its outcome is appropriate in strategic terms.

²⁸ A number of IPs argued that the Brechfa Forest substation should be moved to mitigate impacts on wildlife and trees [REP1-006][REP1-008] [REP1-010] [REP1-011] [REP1-022][REP3-005-006][REP3-025]. The Applicants response can be viewed at page 8 of [REP2-031] paragraph 3.13.1 of [REP3-041] [REP3-045]

²⁹ Tower EE42, situated approximately 10km south of Carmarthen and approximately 3km east of the Afon Tywi estuary (Grid Reference: 239734, 212646)

APPLICANT'S APPROACH TO THE ASSESSMENT OF THEIR PREFERRED OPTION 5 TO ARRIVE AT THEIR PREFERRED ALIGNMENT

- 4.6.24 The Applicant initiated the identification of a study area for its route corridor analysis for the Applicant's preferred Option 5 [APP-122]. The Applicant's initial study area chosen was informed by:
- NPS EN-1 and EN-5;
 - Guidance:
 - National Grid - NG Our Approach to Design and Routeing 2012 [REP1-053 and REP-054]; and
 - International CIGRE Guidelines Part 1 [REP1-057] best practice;
 - the Holford Rules³⁰; and
 - a detailed assessment of the environmental baseline of the County of Carmarthenshire.
- 4.6.25 The Applicant undertook a desk-based assessment of environmental constraints within the study area between Brechfa Forest and south to the Welsh coast (Stage 1a and 1b shown on Figure 1.2, of [APP-047 and APP-076]). This assessment identified the internationally and nationally designated areas and features, as well as local designations. The Applicant's identification of these constraints and a high-level assessment of their potential sensitivity to the proposed development resulted in the delineation of an area of search that was considered to be an appropriate study area for the proposed development (Appendices 3.1 and 3.2 of [APP-045]).
- 4.6.26 The Applicant concluded that it would be possible to identify an area which would avoid nationally designated areas such as national parks and AONBs and that as such, an assumption that an all OHL connection could be made was reached. As the Applicant undertook its route corridor constraints analysis, this assumption was revisited and corroborated [APP-122].
- 4.6.27 In the summer of 2013, the Applicant carried out a Stage 1 Consultation (non-statutory) with statutory consultees, elected representatives and public interest groups to assist in the selection of the preferred route corridors required to connect the three wind farms³¹ that were, at that time, still proposed to be connected to the electricity transmission network. The Stage 1 Consultation responses led to the identification of the preferred route corridors (Figure 2.5 of [APP-076]).

³⁰ http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010013/2.%20Post-Submission/Application%20Documents/Environmental%20Statement/CFAppDoc04_Annex15.2_FINAL.pdf

³¹ At the time, now just one

- 4.6.28 Stage 2 Consultation (non-statutory) on the preferred route corridors was carried out from mid February 2014 to mid-April 2014 with all Stage 1 consultees and the public (Stage 2 shown on Figure 1.2 of [APP-076]). Following the analysis by the Applicant of all Stage 2 consultation commentary and feedback responses, and consideration of other technical, environmental, social and economic information, the Applicant selected its preferred route corridor, which was announced in August 2014 (Figure 2.6 of [APP-076]). The feasible route corridor option presented for consultation by the Applicant consisted of a choice that the Applicant believed would be adequate and sufficient for installation of an OHL along the entire corridor, allowing for the consideration of undergrounding some route sections where technical, economic or environmental issues suggested that this may be justified [REP1-053 to REP1-055].
- 4.6.29 In response to the ExA FWQ DLV22 the Applicant provided full details of its Route Alignment Selection Study [REP1-047 to REP1-053].
- 4.6.30 The Stage 3 statutory consultation was carried out with consultees, persons on the Applicant's preferred route alignment with interest in the land (PILs) and the community within the vicinity of the proposals between November 2014 and January 2015 (Stage 3 shown on Figure 5.1, 4 maps of [APP-076]). The Applicant consulted on the proposed development, which included the detailed OHL and underground section and the related works that are integral to the proposed development and the preliminary environmental information (PEI) which was in the form of a draft ES. This alignment was the basis for Applicant's 29 May 2015 application which was accepted for examination on the 24 June 2015.

ALTERNATIVE OF UNDERGROUNDING OF THE WHOLE ROUTE

Introduction

- 4.6.31 During the Stage 2 eight-week consultation period February to April 2014, a total of 273 responses were received (Section 2.2.3 of [APP-050]). The main themes raised by respondents were:
- Opposition to overhead lines and a preference for the whole route to be placed underground so as to minimise landscape and visual impact; and
 - Too much emphasis being put on the cost of undergrounding by the Applicant and the preservation of the landscape and views should be more important than cost.
- 4.6.32 The Applicant addressed the undergrounding alternative in its Lifetime Costs Report [APP-124] and Undergrounding Cable Costs Report [REP1-046].

Policy Context

- 4.6.33 EN-5 at paragraph 1.7.5 explains that Government decided against a presumption for undergrounding in designated landscapes because of

environmental and security of supply issues that may result and instead, Government states that decisions on undergrounding should be made via the guidance contained within EN-5 on a case-by-case evaluation.

4.6.34 Paragraph 2.8.2 of EN-5 states that:

"Government does not believe that development of overhead lines is generally incompatible in principle with developers' statutory duty under section 9 [sic] of the Electricity Act to have regard to amenity and to mitigate impacts."

4.6.35 Paragraphs 2.8.8 and 2.8.9 of EN-5 discuss undergrounding and the need for a balanced consideration of relevant factors. The guidance contained within EN-5 goes on to say that although Government expects that overhead lines will often be appropriate and their effects can often be mitigated, where there are **serious concerns** about the potential adverse landscape and visual effects of a proposed overhead line mitigation may be appropriate.

4.6.36 Paragraph 2.8.9 of EN-5 expands on the factors that should be taken into account, noting that:

- the impacts and costs of both overhead and underground options vary considerably between individual projects (both in absolute and relative terms);
- each project should be assessed individually on the basis of its specific circumstances and taking account of the fact that Government has not laid down any general rule about when an overhead line should be considered unacceptable; and
- the benefits from the non-overhead line alternative should clearly outweigh any extra economic, social and environmental impacts, provided that any technical difficulties in undergrounding are surmountable.

4.6.37 Paragraph 2.8.9 of EN-5 says that in comparing an OHL with an underground option, the decision-maker should consider:

"...the impacts and costs of overhead and underground options in the context of the landscape into which the proposed line would be set (in particular, the impact on residential areas and those of natural beauty or historic importance eg AONBs); the additional costs of undergrounding or subsea cabling and the environmental and archaeological consequences of undergrounding (EN-5, para 2.8.9)"

4.6.38 The Applicant has a duty (Schedule 9 of the Electricity Act 1989), when formulating proposals, to have regard to the environment (EN-5 Paragraph 2.26) [APP-081].

Representations provided as evidence for and against undergrounding of the whole route

- 4.6.39 The RRs received from J Harrison [RR-003], Robert Jones [RR-007], N. Marriott-Tuft [RR-009], M Davies [RR-010], Rhodri Glyn Thomas AM [RR-011], Jonathan Edwards MP [RR-012], David and Pauline Duke [RR-013 and 018], J Hower [RR-014], J Chaudhri [RR-015], B Kilkelly [RR-025], C Harris [RR-027], Grwp Blaengwen [RR-028], L Morris [RR-029], and BJP on behalf of twenty one landowners [AS-004] all requested the whole of the 28.6km connection to be placed underground. They made reference to the serious concerns regarding the effects of the proposed development on their landscape and visual amenity (see 5.2 of this Recommendation Report).
- 4.6.40 These requests for the total undergrounding of the route were re-iterated in the following:
- RRs for D1, [REP1-001 to 011; REP1-016 to 018; REP1-021 to 022];
 - Oral contributions to Hearings OFHs 30 November and 1 December 2015 and Environmental Matters Hearing – 8 & 9 December 2015 [EV-004 to EV-008 and EV-018 to EV-022]; and
 - WRs of oral evidence at hearings [REP2-002, REP2-004, REP2-007, REP2-009, REP2-013, REP2-017].
- 4.6.41 The Applicant's responses can be found at [REP1-027, REP2-031 and REP3-041, REP3-043 and REP3-045]. The Applicant's approach to undergrounding was set out within its Appendix 1.1 to the Route Alignment Selection Report [REP1-045] and is summarised within the ES within Chapter 3 Project Alternatives [APP-058].
- 4.6.42 The ExA asked eight questions of the Applicant on undergrounding in its FWQs (DLV05, DLV08, DLV12, DLV20, DLV21, DLV22, DLV 24 and DCO34) [PD-011]. The Applicant's responses can be viewed at [REP1-028]. The ExA also pursued the issue of undergrounding at the Environmental Matters ISH on the 8 December 2015 under agenda items 7.4 and 9.2 [REP3-043].
- 4.6.43 All this evidence is assessed in Section 5.2 dealing with Landscape and Visual impacts, of this Recommendation Report and summarised in the rest of section 4.6 to this Recommendation Report.

The Applicant's consideration of undergrounding against EN-5 'serious concerns' test

- 4.6.44 It is noted by the ExA that landscape and visual effects have been one of the principal drivers in the routing of the proposed development. For this reason the approach taken by the Applicant in its landscape and visual impact assessment (LVIA) of the chosen route alignment is critical to the serious 'concerns test' at paragraph 2.8.8 of EN-5.
- 4.6.45 The Applicant's approach was to divide the study area into thirteen distinct project Landscape Character Areas (pLCA), which the route

alignment options would cross through and to assess each for their landscape character, susceptibility to the type of development proposed and value. The Applicant also considered in their LVIA the general character of the landscape along the route with reference to regional landscape character areas; landscape elements; and the SLA designation, the Towy/Tywi Valley SLA.

- 4.6.46 Where the potential presence of an overhead line was considered to create a **serious concern** (EN-5 paragraph 2.8.8), which could have equated to a highly significant (major) adverse impact (as defined by the LVIA EIA methodology employed by the Applicant [APP-064]) then mitigation in the form of undergrounding was considered. The Applicant, in reaching a decision as to whether undergrounding would be an appropriate form of mitigation, gave consideration as to the potential for significant effects to arise, for example to archaeological resources or sensitive habitats (Appendix 13 of REP3-045 and Section 4.5 of REP1-046), in accordance with EN-5 Paragraph 2.8.9.
- 4.6.47 The Route Alignment Selection Report was submitted in response to the FWQs [PD-011] as DLV22 Appendix 1 Route Alignment Selection Report [REP1-047 to REP1-051 and REP1-052, REP1-058 and REP1-059].
- 4.6.48 The Applicant decided that undergrounding was only required to mitigate what would otherwise be highly significant (major) adverse impacts across the Twyi/Towy Valley. In all other instances, the assessment of environmental effects, whether on tourism [APP-072], visual receptors [APP-064], historic environment [APP-066] residential receptors (noise and vibration)[APP-069]and (air quality) [APP-070] or biodiversity[APP-065] were considered by the Applicant not to be significant enough to warrant mitigation in the form of undergrounding in other areas of the proposed development. The Applicant did not believe it was justified as an alternative for undergrounding the remaining parts of the proposed route [APP-122].
- 4.6.49 CCC in their SoCG [REP1-082]state at paragraphs 7.6.10- 7.6.13:

"The parties agree that undergrounding can be appropriate in certain circumstances to mitigate the environmental effects of an overhead line and in this context are mindful of paragraphs 2.8.8-2.8.9 of EN-5.

...The parties agree that undergrounding would be the most appropriate form of mitigation in the following locations:

- *Section B: Towy valley (east of Carmarthen)*
- *Section C1: northern part of the Towy valley (River Gwili)*
- *Section E3 (part): Lower Cothi valley (Lower Cwm Cothi - south of Brechfa)*
- *Section E5: Cothi valley (Cwm Cothi - south of Brechfa)*
- *Section E7 (including the southern portion of Section E8): Upper Cothi valley (between Brechfa and Abergorlech).*

In addition, CCC considers that undergrounding is also appropriate for the southern slopes of the Towy Valley (see below).

Of the sections listed above it is agreed that it is only Section B Towy Valley and Section C1 northern part of Towy Valley are relevant within the context of Brechfa West wind farm only (the Proposed Development). The parties agree with the methodology used to identify the appropriateness of undergrounding as mitigation."

- 4.6.50 CCC in their LIR [REP1-025] clearly only supported undergrounding in the Towy/Tywi Valley SLA. However, CCC members maintained their position that the whole route should be undergrounded.

Costs of undergrounding

- 4.6.51 It is noted that the costing of the proposed development and the Applicant's duties under Schedule 9 of the Electricity Act 1989 as amended by the Utilities Act 2000, has also been one of the principal drivers in the routing of the proposed development [APP-081]. Schedule 9 clearly states:

"It is obliged, under its Licence, to offer least cost, compliant connections to persons seeking connections to the Distribution system within the Licence areas."

- 4.6.52 For this reason the ExA examined the costs of undergrounding in the FWQs [PD-011] (Questions to Applicant, DLV19, DLV20, DLV21, and EIA04) and in questions put orally to the Applicant at the Environmental matters ISH under agenda item 9.2 [REP3-043]. The Applicant's responses can be found at [FWQ REP1-028].

- 4.6.53 The Applicant argued that the costs identified are robust. The difference between all underground or all overhead being £23 million is, in the opinion of the Applicant, significant and should be given due consideration when the appropriateness of either option is considered against national policy EN-5 paragraph 2.8.9 .

- 4.6.54 J Harrison in [REP1-010] stated:

"... there is lack of information from WPD regarding the difference in costs between overhead versus undergrounding the cables from an independent adviser."

- 4.6.55 In response to the ExA's FWQ DLV20 [PD-011] the Applicant stated [REP1-028] that:

"In response to comments raised in Stage 1 consultation the Applicant undertook to consider the lifetime costs of underground cable and OHL. Lifetime costs include both for the construction and operational phases of the connection and resulting cost is informed both by the construction cost of £986,000 per km and by the costs of losses and of operation and maintenance. The Lifetime Costs report was issued at Stage 2 consultation and it was subsequently revisited and re-issued

as an application document [APP-124] in 2015. The report concludes that the lifetime costs of a 28km OHL would be £5.11 million and for UGC, £28.14 million."

4.6.56 The Applicant argued that the costs identified are robust as they are informed both by independent consultants, Balfour Beatty Utility Solutions (BBUSL) and their Lifetime Costs Report [APP-124] and by the Applicant's experience of operating both OHL and underground cable in the terrain of South Wales. The difference between all underground or all overhead being £23 million is, in the opinion of the Applicant, significant and should be given due consideration when the appropriateness of either option is considered against national policy EN-5 paragraph 2.8.9.

4.6.57 County Councillor Linda Evans' oral representation at the OFH on 1 December 2015 [EV-008] pointed out that the entire onshore length (47km) of the Dudgeon Offshore Wind Farm grid connection in Norfolk was being laid underground. She stated:

"Obviously the cost of an UG connection was not considered prohibitive, so there can be cases where there is justification for a whole route to be undergrounded." [REP3-006]³²

4.6.58 The Applicant responded stating [REP3-041]:

"... a wholly underground line would be contrary to the national advice in the NPS, would be disproportionate, engineeringly inefficient and uneconomic. It would set an inappropriate and wrong precedent where consistency and fairness of decision making in accordance with the nationally applicable guidance is hugely important."

4.6.59 The Applicant additionally pointed out that Dudgeon Offshore Wind Farm is of a different magnitude of scale to the Brechfa Forest Connection project. The Applicant stated:

"The total cost for the Dudgeon project is expected to be up to £1.3bn and the output is planned to be 402 Megawatts in comparison with approximately 84 Megawatts at Brechfa" [REP3-045].

The Applicant further stated:

"The Dudgeon connection would require up to eight circuits at 132kV whereas Brechfa is one circuit. Eight circuits would most likely require multiple overhead tower circuits at 132kV or alternatives engineering solutions at higher voltages of 275kV or 400kV."

4.6.60 The Applicant pointed out that at Dudgeon Offshore Wind Farm a few sensitive stretches of the route (e.g. main river and main road crossings) will be completed using HDD techniques that will allow the

³² Grwp Blaengwen WRs [REP3-005][REP3-006]

installation of the cables to take place without disturbance to surface features. The Applicant considers for the remaining part the ground conditions in Norfolk are likely to be far more favourable to support the installation of underground cables as opposed to the undulating and mixed terrain and ground conditions for the Brechfa Connection [REP3-045].

4.6.61 Mr and Mrs Kilkelly also queried undergrounding costs [REP2-007 and REP3-028] and in answer to question DLV21 [PD-011] the Applicant stated the difference of costs between an all overhead and an all underground connection is also provided within the Lifetime Cost Report [APP-124]. The Applicant pointed out that the costs to construct an all underground connection would be £27.61 million and for all overhead it would be £4.2 million. The lifetime costs would be £28.14 million for underground and £5.11million for an all overhead connection.

4.6.62 Grwp Blaengwen [REP3-006] queried the fact that the Applicant has cited the much greater cost of underground cabling compared to OHL as the reason why the vast majority of the route should be OHL, they asked:

*"It is interesting to see how much less per kilometre the Norfolk undergrounding seems to be costing than the figure quoted by WPD. Admittedly, trenching in **Norfolk's terrain might be easier and cheaper**,³³ but can WPD really justify the very much larger figure quoted for Carmarthenshire? ... Perhaps the cost per km of undergrounding elsewhere along the route is not nearly as much and should be recorded separately for clarity and transparency. For a 132kv connection UG Carillion costs are quoted to be 47km costing £30m equating to £630,000 per km, whereas WPD is quoting £986,000 per km, a substantial difference which we would like explained."*

4.6.63 The Applicant responded saying it based its assessment on the costs of undergrounding by taking the average of three costs per km calculations derived from three underground cable options [REP3-043]. The Applicant explained that these options were informed by a desk-based assessment of three potential routes which would comprise 100% underground cabling, prepared by the Applicant's environmental consultants avoiding areas of particular environmental sensitivity. These three options were costed by an established engineering company with significant undergrounding experience (Balfour Beatty Utility Solutions). Balfour Beatty Utility Solutions provided costs in June 2013 for each of the three options³⁴ ranging

³³ ExA emphasis

³⁴ The prices provided for each of the three route options included for the wide variance in ground type with consideration given to specialist traffic management on major intersections and roads above 30mph [REP1-028][REP1-046]

from £950,340 to £1,003,230 per km. Their report [REP1-046]³⁵ was used to inform the Lifetime Costs Report [APP-124].

ExA conclusion on undergrounding the whole route

4.6.64 The ExA has, in line with EN-5 paragraph 2.8.8:

"...to balance these [the effects of overhead lines] 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)."

4.6.65 A number of IPs raised the example of, a recent electricity transmission project in Norfolk which was totally undergrounded albeit acknowledging that *"...trenching in Norfolk's terrain might be easier and cheaper"* [REP3-006]. EN-5 at paragraph 1.7.5 clearly states decisions on undergrounding are best taken within a more flexible policy framework using case by case evaluation. The proponents of undergrounding the whole route did not provide persuasive evidence³⁶ demonstrating how the Norfolk case was similar to the case of the proposed development i.e. topography, ground conditions, geology, environmental etc to enable a clear comparison.

4.6.66 The additional cost of placing the connection underground, compared to the above ground route proposed, is calculated by the Applicant as more than £23 million [APP-124 and REP1-045]. The ExA has no reason to believe that these costs have not been transparently arrived at. The ExA confirmed through oral questioning at the Environmental Matters ISH on the 8 December 2015, that the costs were based on the worst case scenario and had factored in *"difficult ground conditions"* into their three underground cost options under agenda item 9.2 [REP3-043] and page 7 of 10, last paragraph REP3-006]. Even if the "Carillion" Norfolk undergrounding costs per km³⁷ were applied to the proposed development, the ExA estimates an undergrounding option of the whole route would still be over 3.5 times more expensive than the lifetime costs of a wholly OHL.

4.6.67 The ExA believes that given the evidence presented, undergrounding of the whole route would not be justified. In line with EN-1 paragraph 4.4.3, EN-5 paragraph 2.8.8-2.8.9 and TAN 8 (Annex C paragraph 2.12), the ExA believes undergrounding of the whole route can be excluded because:

- the proponents were not persuasive in the evidence they provided (provided in Section 5.3 of this Recommendation)

³⁵ Commissioned in 2013

³⁶ A number of links to press stories on the Norfolk project were provided but no analysis or detail of the Norfolk undergrounding costs was provided [REP3-005 and REP3-006]

³⁷ For a 132kv connection UG Carillion costs are quoted to be 47km costing £30m equating to £630,000 [REP3-006]

- Report) in making a case for its suitability in terms of "**serious concerns**" on landscape and visual issues; and
- the associated additional costs (>3 times) of undergrounding would not be proportionate or cost effective option.

ALTERNATIVE OF USING THE EXISTING ALTWALLIS OVERHEAD LINE

Introduction

- 4.6.68 The ExA reminded all parties at the at the beginning of the Environmental Matters hearing on the 8 December 2015 under agenda item 7.2 on alternatives (Session 3[EV-021]) that EN-1 at paragraph 4.4.1 clearly states:

"...this NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option."

- 4.6.69 EN-1 at paragraph 4.4.3 states:

"Therefore where an alternative is first put forward by a third party after an application has been made, the IPC may place the onus on the person proposing the alternative to provide the evidence for its suitability as such and the IPC should not necessarily expect the applicant to have assessed it."

Assessment of Altwallis line Alternative

- 4.6.70 The alternative of using the Altwallis line was raised by IPs in their WRs; J Harrison [REP1-010], Jilina Gardner [REP1-006] and in the oral evidence submitted at the OFHs under Agenda item 2[EV-006].
- 4.6.71 J Harrison states in her WR [REP1-010]:
- "I am sure the inspector is aware that there is already a line out from Altwallis wind farm to Rhos substation, although WPD previously said it could not take 3 wind farms electric into it, please be aware that it is now only 1 wind farm so surely it could be upgraded. ... I ask the inspector to look into this as it would be much more environmentally friendly to upgrade existing routes than litter our countryside even more."*
- 4.6.72 The ExA in their FWQ DLV19 [PD-011] requested a comparative table of the options studied by the Applicant, which included this Altwallis option. This was provided as DLV19 Appendix 1 Options Comparison [REP1-045]. The table showed that costs of this option were nearly three times the cost of the OHL and also had significant engineering and compliance issues.
- 4.6.73 The ExA directed the Applicant to respond orally at the OFH on the 30 November 2015 under Agenda item 3 of [EV-006] to this option. The Applicant stated it had considered this alternative but rejected it at an

early stage [APP-122]. As the nature of the connection offer from RWE was altered, it was revisited, analysed again and still found to be unsuitable.

- 4.6.74 The Applicant explained that even if there were wider capacity to take this option it would not be without problems. The existing line is currently strung with 175mm conductors which would need to be removed and upgraded. The existing pole configurations were set to take the 175mm conductors. However, these conductors are no longer used in the industry and would be insufficient to take the additional loads (Agenda item 3 of [EV-006]).
- 4.6.75 The Applicant further explained there would also be a requirement to construct an additional connection from Brechfa to Alltwalis, approximately 5km in length given the topography. The Applicant argued that the local network north of Carmarthen is not robust enough to take further capacity. The detail of this is set out in the SOR (APP-122 section 8).
- 4.6.76 The Applicant argues that it is not feasible in engineering terms to use the Alltwalis line to feed into the existing network as it is, because the Rhos to Swansea North connection would be placed at unacceptable risk of not complying with the key performance requirement P2/6 (a minimum engineering requirement to ensure continuity of supply). In order to avoid these issues the entire relevant 132Kv network (approximately 120 towers) would need to be rebuilt with larger L7 (26 m high) pylons. The Applicant argued this would be wholly disproportionate in terms of cost (Section 8.2 of APP-122).
- 4.6.77 The IPs did not respond to the Applicant's evidence under agenda item 3 of the OFH [EV-006]. The ExA pointed out that the IPs could raise this alternative again at the Environmental Matters hearing on the 8 December 2015. Under agenda item 9.1 of the Environmental matters ISH [EV-021] the Applicant was asked by the ExA to reprise their answer to FWQ DLV19, where the Applicant provided a comparative tabulation of the Altwallis option with compliance/deliverability, environmental and costs compared for each of the other five options. The ExA gave the IPs the opportunity to respond under this agenda item. None of the IPs availed themselves of this opportunity. Under Agenda items 7.3 and 7.4 the IPs also had the opportunity to question the Applicant on its analysis of the Altwallis alternative. None of the IPs availed themselves of this opportunity. It was noted by the ExA that, following the OFHs, the Altwallis line alternative was not raised again in the examination.
- 4.6.78 The Applicant's arguments on this alternative went unchallenged by any other evidence placed before the examination by IPs.

ExA Conclusion on utilising the Altwallis line

- 4.6.79 The ExA has, in line with EN-5 paragraph 2.8.8:

"...to balance these [the effects of overhead lines] 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)."

4.6.80 The evidence presented by the Applicant was unchallenged by any other evidence placed before the Examination. The ExA found the Applicant's response to its FWQ DLV19 to be persuasive in terms of disproportionate costs and the potential landscape impacts associated with reconductoring [REP1-045]. In line with EN-1 paragraph 4.4.3 and EN-5 paragraph 2.8.8, the ExA believes the Altwallis line alternative can be excluded because:

- The associated additional costs and potential landscape impacts of this alternative would not be a proportionate or cost effective option [REP1-045];
- The ExA is clear that the starting point for the consideration of alternative routes for the proposed development is that it can only consider this in the context of the application before us. The ExA cannot recommend granting a DCO for a scheme that follows a different route or using different locations for works other than those in any draft DCO accepted for Examination; and
- The proponents failed to provide the evidence for its suitability.

ALTERNATIVE OF TRUNKING ADJACENT TO A485

4.6.81 This was raised by IPs in their RRs, WRs and in the evidence submitted at the OFHs on the 30 November 2015, which are set out below. Mrs Miles [REP3-016 and REP3-019] stated on behalf of thirty other landowners:

"A further option which we respectfully suggest warrants greater examination is that when the A485 road improvement schemes were carried out, large pipes were buried under or adjacent to sections of the road and, we are wondering why these could not be used for undergrounding the connection, a win-win that mitigates some of the cost and keeps the landscape untouched."

4.6.82 The ExA specifically directed the Applicant to address the A485 trunking option in its oral and written responses. The Applicant's responses to the OFH oral evidence was provided at the hearing under Agenda item 3 [EV-006] and in writing on page 10 and 11 of [REP2-031]. The Applicant set out in that response that they are aware that there is a trunking area adjacent to the road. The Applicant looked at this alternative, and is of the opinion that the trunking in the A485 is not of a sufficient size to support underground electricity cables.

4.6.83 The Applicant pointed out that for undergrounding to occur at this voltage, there is a need for bespoke ducting to ensure safety, continuity of supply and security. It cannot be placed in a road where other services may be affected, even if the ducting were big enough

and capable of dealing with the heat which the Applicant contends it is not (see page 6 of [REP3-041]).

- 4.6.84 The Applicant pointed out there are strict requirements governing thermal properties and safety regulations of operating such infrastructure³⁸. The Applicant is only aware of telecoms infrastructure installed in the A485 and, notwithstanding this, would not be a safe undergrounding solution that met industry standards [REP2-031].
- 4.6.85 The ExA gave the IPs the opportunity to respond to the Applicant's evidence under Agenda item 3 of the OFH [EV-006]. None of the IPs availed themselves of this opportunity. All parties were reminded that the Environmental Matters hearing would be addressing the questions of alternatives, optioneering and undergrounding under agenda items 7.3, 7.4, 9.1 and 9.2 [EV-020]. None of the IPs raised this option at this hearing. The Applicant's arguments on this alternative was unchallenged by any other evidence placed before the examination. It was noted by the ExA that, following the OFHs, the A485 alternative was not raised again in the examination.

ExA Conclusion on utilising the trunking in the A485

- 4.6.86 The ExA has no reason to doubt that the Applicant has considered the use of the trunking in the A485. The evidence presented by the Applicant was unchallenged by any other evidence placed before the Examination. In line with EN-1 paragraph 4.4.3, the ExA believes the A485 trunking alternative can be excluded because:
- the trunking in the A485 is not of a sufficient size to support underground electricity cables;
 - there are strict requirements governing thermal properties and safety regulations of operating such infrastructure, and the ducting is not capable of dealing with the heat in 132kv cables (see page 6 of [REP3-041]); and
 - the proponents did not provide the evidence for its suitability.

ALTERNATIVE OF A SOUTHERN EXTENSION TO THE UNDERGROUND SECTION OF ELECTRICITY LINE

- 4.6.87 This potential alternative arose as a result of responses from CCC [REP1-026] and NRW [REP1-020] to the OHL impacts on the Towy/Tywi Valley SLA and RLOHIW, from poles 84-86. The Applicant considers that the changes are not justified, but was prepared to include the alteration as an alternative within the application. The Applicant's position is explained in detail in its letter of 19 November 2015 and the accompanying note [AS-009] and in its letter of the 24 February 2016 [CR-001 and CR-002].

³⁸ Electricity Safety, Quality and Continuity Regulations 2002 (as amended)

- 4.6.88 On 22 October 2015, NRW [REP1-020] proposed that there be an alteration to the positioning of a terminal pole arrangement and consequentially, a short extension of the section of cable which is proposed to be placed under ground within Section A (see [APP-006] of the proposed development. This would result in an additional section of approximately 260m of overhead line being placed underground. This change would remove the need for pole numbers 85 and 86 and a change in the positioning of pole 84, which would also become a terminal pole.
- 4.6.89 NRW and CCC considered that the change was necessary to mitigate the impact of the OHL on this part of the Towy/Tywi Valley SLA and RLOHIW. The Applicant concluded in their ES [APP-064] that effects on the Towy/Tywi Valley SLA (pLCAs 5 to 8) would be "minor - not significant".
- 4.6.90 However, NRW and CCC considered that the Applicant has under assessed the likely impact on the designated landscape and consider that the effect of the proposed OHL development at the southern slopes of the Towy/Tywi Valley would be significant and unacceptable. NRW and CCC did, however, consider that that these significant adverse impacts could be avoided by means of a short southern extension to the section of route proposed for undergrounding [PD-014].
- 4.6.91 As stated above the Applicant does not consider that the additional undergrounding is justified but because of what it regards as the "minor" nature of the change and because it is the only element of further mitigation suggested as appropriate by CCC and NRW's consultants, it was prepared to include it in the application as an alternative Option B. The Applicant proposed to make an application to provide that the alternative additional section of undergrounding can be included as an alternative (Option B) within the examination [PD-014].
- 4.6.92 The proposed alternative was discussed under Agenda item 7.5 of the EIA ISH on the 8 December 2015 [EV-020]. A Procedural Decision (PD) was issued by the ExA, dated 7 December 2015, to accept a note regarding "Proposal for Alternative Southern Extension to Underground Section as Scheme Variation" into the Examination and to request additional information from the Applicant [PD-014].
- 4.6.93 The question of a separate draft DCO for Option B was also raised by the ExA in [PD-014] on the 7 December 2015. In response, the Applicant submitted Option B details into the Examination on the 24 February 2016 [CR-001 to CR-026] and these were accepted by the ExA in a PD on the 1 March 2016 [PD-038].
- 4.6.94 The documents submitted by the Applicant included a draft DCO for Option B [CR-011] and an EM for Option B [CR-013]. These documents were subsequently updated by the submission of the Applicant's final draft DCO [REP8-023] and EM [REP8-025].

- 4.6.95 It was the view of the ExA that it did not consider the change to be so material that it constituted a materially different project because:
- the option did not change the order limits in any way. No additional land is required to accommodate the alternative and that no change to the Classes within the Book of Reference is necessary, the land remains within Class 1;
 - having reviewed the submitted Environmental Report (Addendum to the ES [CR-002- CR-009] against the original ES, the ExA was satisfied that the environmental effects of the proposed change lie within the envelope of the original ES;
 - no objections to the alternative were received following the Applicant's consultation; and
 - the Applicant screened the change for its potential to give rise to significant effects upon the Afon Tywi SAC. The results of the screening exercise are contained within CR-009. NRW concur with findings of no likely significant effects [EV-029].
- 4.6.96 The ExA considered all the information submitted and concluded that Option B was able to be examined and was accepted into the examination. The alternative proposed in Option B was considered alongside the original application version of the project, Option A. Option B was considered as a potential alternative to this section of the alignment.

Conclusion on the alternative of a southern extension to the underground section of electricity line

- 4.6.97 The ExA recommends that the alternative of undergrounding contained in Option B (Poles 84-86) is included in the recommended DCO that is attached at Appendix D to this Recommendation Report because:
- the change is necessary to mitigate the impact of the overhead lines on this part of the Towy/Tywi Valley SLA;
 - the change is necessary to mitigate the impact of the overhead lines on the Towy/Tywi Valley RLOHIW;
 - no objections³⁹ to the alternative were received following the Applicant's consultation[CR-021];
 - it is compliant with CCC local policies; and
 - both CCC and NRW support this option.
- 4.6.98 Option B became the basis for the ExA's draft recommended DCO to the SoS (Appendix D).

CONCLUSION ON THE CONSIDERATION OF ALTERNATIVES

- 4.6.99 The ExA considers that the Applicant has addressed the case in relation to:

³⁹ See [REP6-010]

- alternative technology options;
- alternative route options;

and the four alternatives to the Applicant's final alignment which were raised by IPs at the OFHs [EV-004 to EV-008] and ISH [EV-018 to EV-022] namely:

- undergrounding of the whole 28.6 km;
- using the existing Altwallis overhead line;
- utilising Trunking adjacent to A485; and
- alternative of a 260m southern extension to the underground section of electricity line.

4.6.100 The EIA Regulations state at Schedule 4, Part 1 (18) that an ES (in this case, Option A [APP-056 to APP-075] and Option B [CR-003]) needs to provide:

"An outline of the main alternatives studied by the Applicant and an indication of the main reasons for the Applicant's choice, taking into account the environmental effects."

4.6.101 Under the EIA Regulations⁴⁰, there is no requirement to assess all potential alternatives, only a requirement to provide a review of those alternatives that have actually been considered. Also, the ExA has borne in mind that from a policy perspective, EN-1 does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option.

4.6.102 In relation to undergrounding of the whole route, the ExA has taken into account:

- the landscape in which the proposed development would be set as noted from the site inspections [EV-003 and EV-009];
- the additional cost of undergrounding [REP1-046]; and
- the potential environmental and archaeological consequences [REP1-047].

4.6.103 The ExA also had regard to other relevant matters including socio-economic, biodiversity and historic heritage issues⁴¹, which are detailed in [CR-003] in respect of Option B. Whilst the technical difficulties associated with total undergrounding alternative are surmountable, the ExA was not persuaded that the benefits of such an option would clearly outweigh any extra economic, social and environmental impacts [REP1-047].

4.6.104 In relation to the alternatives of using the existing Altwallis overhead line and the trunking adjacent to A485, the ExA has taken into account the evidence presented by all parties. The ExA was not persuaded that

⁴⁰ Schedule 4, Part 1 (18) and Part 2 (27)

⁴¹ Agenda item 7.4 [EV-018]

these two alternatives were plausible because the IPs did not "*provide the evidence for their suitability*"⁴² in their representations that supported these alternatives.

- 4.6.105 The ExA is clear that the starting point for the consideration of alternative routes for the proposed development is that we can only consider this in the context of the application before us. The ExA cannot recommend granting a DCO for a scheme that follows a different route or using different locations for works, other than those in any draft DCO accepted for Examination or accepted in to it. With regards to the Altwallis line alternative, it fails the above test but in addition the associated additional costs and potential landscape impacts of this alternative would not be proportionate or cost effective option [REP1-045]. In line with EN-1 paragraph 4.4.3, the ExA believes the Altwallis alternative can be excluded because the proponents failed to provide the substantive evidence for their suitability.
- 4.6.106 The ExA believes the A485 trunking alternative can be excluded because the trunking in the A485 is not believed to be of a sufficient size to support underground electricity cables. There are strict requirements governing thermal properties and safety regulations of operating such infrastructure, and the ducting is not capable of dealing with the heat in 132kv cables (see page 6 of [REP3-041]). In line with EN-1 paragraph 4.4.3, the ExA believes the A485 trunking alternatives can be excluded because the proponents failed to provide the substantive evidence for their suitability.
- 4.6.107 The ExA recommends that the alternative Option B of undergrounding Poles 84-86 is included in the recommended DCO that is attached at Appendix D to this Recommendation Report.
- 4.6.108 For the avoidance of doubt Option B is the basis for the ExA's recommended DCO to the SoS (Appendix D of this Recommendation Report).
- 4.6.109 The ExA believes that the proposed development represents an efficient and economical means of connecting the new electricity generating source to the electricity transmission and distribution network to supply current and anticipated future levels of demand.
- 4.6.110 The ExA 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 to Option B.
- 4.6.111 A large number of representations were received requesting different ways of connecting to the electricity transmission system. The ExA is content that the Applicant has met the tests in the NPS and has provided compelling evidence to support Options A and B. The ExA is

⁴² EN-1 paragraph 4.4.3

content that all the tests in relevant policy and legal requirements have been met. The ExA considers that the examination of alternatives has been addressed adequately and that the requirements of EN-1, EN-5 and the EIA Regulations are met.

4.7 MITIGATION MEASURES

- 4.7.1 A series of mitigation measures have been proposed within the ES Sections [APP-056 to APP-075], Construction Environmental Management Plan (CEMP) [REP4-026] and the Environmental Mitigation Table [REP5-029]. They have been secured through the draft DCO requirements in the Applicant's final DCOs for Option A [REP8-015] and Option B [REP8-023].
- 4.7.2 All works on-site will be undertaken in compliance with the final CEMP as secured by Requirement 21, which is contained in Schedule 3 to the draft DCO for Option A [REP8-015] and for Option B [REP8-023]. Requirement 21 was the subject of a number of alterations during the course of the examination, which are discussed further in Chapter 9
- 4.7.3 Chapter 9 of this Recommendation Report contains a description of key draft DCO requirements, and explanation of modifications either agreed by the Applicant or proposed by the ExA, together with the identification of who has responsibility for discharge of specific requirements.

5 GOOD DESIGN

5.1 POLICY

5.1.1 The overarching National Policy Statement for Energy (NPS) EN-1 provides advice on 'good design'. It states at paragraph 4.5.1 that when applying "good design" applicants 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 aesthetic as far as possible.

5.1.2 However, it is acknowledged, however that the nature of much energy infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of the area.

5.1.3 Policy advice contained within EN-1 is relevant to all energy infrastructure, including power stations, substations, wind farms and overhead lines. EN-1 at paragraph 4.5.3 does recognise however that the opportunities to demonstrate good design may differ depending upon the type of infrastructure proposed, in that there may be:

'...very limited choice in the physical appearance of some energy infrastructure, there may be opportunities for the applicant to demonstrate good design in terms of siting relative to existing landscape character, landform and vegetation.'

5.1.4 This advice, to consider how a development will fit within the environment, is expanded upon within the NPS for Electricity Networks Infrastructure EN-5 which states at paragraph 2.5.2 that:

"...proposals for electricity networks infrastructure should demonstrate good design in their approach to mitigating the potential adverse impacts which can be associated with overhead lines."

5.1.5 Policy indicates, therefore, that good design in its widest sense should apply to all aspects of the proposed development.

5.1.6 PPW, widens the concept of design. At paragraph 4.11.1 it states that, *"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."*

5.1.7 TAN 12 addresses design and CCC agrees (see paragraph 10.3.3 of [REP1-082]) that the Planning Statement [APP-119] demonstrates that the proposed development is in conformity with TAN 12. CCC also agrees Option B complies with LDP Policy GP1- Sustainability and High Quality Design (Section 19.5 of [REP1-025]).

GOOD DESIGN APPLICANTS APPROACH

- 5.1.8 The Applicant's Planning Statement [APP-119] details the consideration given to good design relative to the individual scheme elements that comprise the proposed development. Table 2.1 Mitigation Embedded into the Design [APP-119] sets out the changes made to the scheme to improve its design, from the beginning and as a result of environmental and technical studies, and consultation responses. The ExA first round of written questions [PD-011 questions DLV08;DLV12; DLV18;DLV19;DCO04; EIA15], sought to test the extent to which good design in respect of the function of the proposed development have been provided by the following approaches: :
- Wood pole or lattice tower;
 - Conductor size;
 - Options, corridors and alignments (influenced by policy and best practice, including the Holford Rules and the Applicant's Schedule 9 statement)[REP1-047 to REP1-059][APP-081];
 - Siting of individual poles;
 - Limits of Deviation (secured within the draft recommended DCO in Article 5, Requirements 3, 5, 6 and 27 and the certified Deviation Plan [REP3-036]; and
 - Undergrounding.
- 5.1.9 The Applicants responses can be viewed at [REP1-028] and are explored in detail in Sections 4.6 and 5.2 of this Recommendation Report.
- 5.1.10 The Electricity Act 1989 confers a duty upon the Applicant 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, fauna and geological or 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 proposals would have on natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects [APP-081].
- 5.1.11 A number of RRs raised what amounted to design concerns about the alignment, Holford Rules and its components in their RRs [RR-005 to RR-016 RR-018; RR-021 to RR-030] WRs [EV-005, REP3-006, REP3-010, REP3-016 and REP3-026]. These matters are dealt with in section 4.6 of this Recommendation Report and in section 5.2 of this Recommendation Report.

ExA Conclusion on Design

- 5.1.12 The ExA notes the design of the proposed development, has been engineering led but informed by socio-economic and environmental considerations. The ExA acknowledges that where options existed

these have been considered on the basis of their technical performance, the potential for environmental effects and cost (see Section 4.6 of this Recommendation Report). The ExA is satisfied that, the proposed development is acceptably sited and designed. It follows that the bulk of planning considerations in the remaining sections of this Recommendation Report will address matters of impact mitigation and design detail (to the extent that this is important and relevant), rather than the principle of development.

- 5.1.13 CCC believes the proposed development is in conformity with TAN 12 - Design. However, CCC believes only Option B complies with LDP Policy GP1- Sustainability and High Quality Design (see Section 19.13-15 of LIR [REP1-025]). The ExA concludes that appropriate consideration has been given to good design by virtue of the siting and routing and is in accordance with EN-1 and EN-5.

5.2 LANDSCAPE AND VISUAL EFFECTS

INTRODUCTION

- 5.2.1 This section reports on landscape and visual matters (alternatives as they are relevant to landscape and visual effects are discussed in Section 4.6 of this Recommendation Report and the Holford Rules are addressed in this section of the Report) as set out in EN-1 and EN-5. The reporting below on landscape and visual effects is organised by the sections which the Applicant used in its assessment [APP-064] namely:

- Construction;
- Operation; and
- Decommissioning.

POLICY

National Policy Statements

- 5.2.2 EN-1 (paragraph 5.9.5) requires the Applicant to carry out a landscape and visual assessment and report it in the ES. The assessments are to include effects on landscape components, on landscape character and on views and visual amenity during construction of the project and its operation (EN-1, paragraph 5.9.6). Factors to be taken into account when judging impact on a landscape include the existing character of local landscape, its current quality, how highly it is valued and its capacity to accommodate change (EN-1, paragraph 5.9.8).
- 5.2.3 EN-1 accepts that virtually all nationally significant energy infrastructure projects (NSIPs) will have effects on the landscape, but that the aim should be to minimise harm to the landscape; having regard to siting, operational and other relevant constraints and providing reasonable mitigation where possible and appropriate (EN-1, paragraph 5.9.8). EN-1 requires the decision-maker to judge if any adverse effect on the landscape would be so damaging as not to be offset by the benefits of the proposed development, including the need

(EN-1, paragraph 5.9.15). The extent to which impacts are temporary or reversible should also be taken into account (EN-1, paragraph 5.9.16).

- 5.2.4 EN-1 advises against refusing consent on the basis of local landscape designation, and to consider whether visual effects on sensitive receptors, such as local residents or visitors, outweigh the benefits of the project (EN-1, paragraph 5.9.14 and 5.9.18). Mitigation measures as a means to reduce the effects of a project such as reduction in scale, appropriate siting or design and landscape schemes are encouraged, while recognising that such measures can result in operational constraint and reduction in function (EN-1, paragraph 5.9.21 to 5.9.23).
- 5.2.5 The NPS for Electricity Networks Infrastructure EN-5 refers specifically to the fact overhead lines can give rise to adverse landscape and visual effects. EN-5 continues that mitigation can be achieved for the most part, but in particularly sensitive locations the potential adverse landscape and visual effects may make it unacceptable in planning terms (EN-5, paragraph 2.8.2).
- 5.2.6 Further tests set out in EN-5 include:
- In the context of EN-1, which sets out the need for electricity lines including overhead lines of 132kV and above (EN-1, paragraph 3.7.10), EN-5 sets out the need for decision-makers to balance any serious concerns about the potential adverse landscape and visual effects of a proposed line against other relevant factors (EN-5, paragraph 2.8.8);
 - Consideration of impacts and costs of overhead and underground options in the context of the landscape into which the proposed line would be set (in particular, the impact on residential areas and those of natural beauty or historic importance eg Areas of Outstanding Natural Beauty (AONB), see Section 4.6 of this Recommendation Report); the additional costs of undergrounding and the environmental and archaeological consequences of undergrounding (EN-5, paragraph 2.8.9); and
 - EN-5 requires consideration of mitigation opportunities in addition to the Holford Rules which can include: consideration of network reinforcement options, selection of the most suitable type and design of support structure, and more specific measures such as landscape schemes comprising off-site tree and hedgerow planting for softening and screening (in agreement with relevant landowners) and screening which can comprise localised planting in the immediate vicinity of residential properties and principal viewpoints (EN-5, paragraph 2.8.10 to 2.8.11).

National Planning Policy Wales

- 5.2.7 Welsh Government (WG) planning policy context is established through a number of documents, which together set out the WG's land use planning policies. Planning Policy Wales (PPW) which was adopted

on the 7 July 2014 is supplemented by 23 topic based Technical Advice Notes (TANs). The TANs (see section 3.4 of this Recommendation Report) shape the production of development plans in Wales, and the principles and objectives contained within them prescribe the national guidance for specific environmental topics.

- 5.2.8 The Wales Spatial Plan (WSP) 'People, Places, Futures,' (8 July 2008), establishes a strategic a framework to guide future development. It includes policy interventions and strategies for a number of sub-regions.
- 5.2.9 These documents are considered to be material considerations when determining planning applications under the Town and County Planning Act 1990 and the Planning and Compulsory Purchase Act 2004. Their relevance to an application for Development Consent is commented upon within paragraph 1.1.1 of EN-1. This states that local planning documents may, according to the determining authority, be "*important and relevant to its decision*" even though they are not the principal policies that an NSIP should be assessed against.
- 5.2.10 Paragraph 5.1.2 of PPW sets out the WG's objectives for the conservation and improvement of the natural heritage, which includes geology, landforms and biodiversity and Wales' natural beauty and amenity:

"Promote the conservation of landscape and biodiversity, in particular the conservation of native wildlife and habitats";
- 5.2.11 The proposed development would not pass through any statutory landscape designations such as national parks or AONB. It does pass through a Special Landscape Area (SLA) and a Registered Landscape of Outstanding Historic Interest in Wales (RLOHIW). The SLA is a local landscape designation, which PPW states at paragraph 5.3.11 should not unduly restrict otherwise acceptable development. The RLOHIW is discussed in the Historic Environment section of this Recommendation Report (Section 5.9).

Local policy

- 5.2.12 Local planning policy relevant to landscape matters and visual effects is set out in the ES in paragraphs 9.2.30 to 9.2.32 [APP-064]. CCC's LIR [REP1-025] discusses the policy context in section C.
- 5.2.13 Section 4.4.17 of the ES [APP-064] and the Statement of Common Ground (SoCG) with Carmarthenshire County Council (CCC) [REP2-037] detail the relevant local policies. In respect to landscape and visual matters, CCC consider that the proposed development would not comply with local policy where it is proposed to erect poles 84-86 within the Towy/Twyi Valley SLA and RLOHIW i.e. Option A (Section 19 of [REP1-025]). The RLOHIW will also be considered in section 5.7 of this Recommendation Report.

Natural Resources Wales

5.2.14 LANDMAP is a GIS based landscape resource developed by Natural Resources Wales (NRW), where landscape characteristics, qualities and influences on the landscape are recorded and evaluated into a nationally consistent data set:

- LANDMAP Guidance Note 1: Guidance for Wales LANDMAP and Special Landscape Areas presents the approach for using LANDMAP to identify local landscape designations, SLAs;
- LANDMAP Information Guidance Note 3: Guidance for Wales Using LANDMAP for Landscape and Visual Impact Assessment of Onshore Wind Turbines provides advice on how LANDMAP should be used within the Environmental Impact Assessment (EIA) process for onshore wind farms and their surrounding infrastructure.

5.2.15 NRWs SoCG [REP2-039] at Section 2.6.1 states:

"The understanding of existing landscape and visual conditions in the vicinity of the Proposed Development which is set out within section 9.5 and appendices 9.1 to 9.8 of chapter 9 (Volume 6.4 APP-086-094) of the ES is sufficiently comprehensive and is accurate. In particular:

- *The baseline assessment in appendix 9.2⁴³ makes optimum use of all five layers of LANDMAP (see NRW's section 42 consultation response dated 16 January 2015 included as Appendix 1);*
- *The assessment in appendix 9.3 of effects on locally designated Special Landscape Areas is based on the correct current adopted boundaries and draws appropriately on relevant information published by CCC regarding the reasons for designation/protection (see NRW's section 42 consultation response dated 16 January 2015 included in Appendix 1).*
- *The landscape along the route of the Proposed Development has been divided in appendix 9.2 (Volume 6.4 APP-088) into thirteen clearly described Project Landscape Character Areas (pLCAs) based primarily on LANDMAP data. With the exception of the northern boundary of pLCA6, these are agreed to be suitable as a basis for the prediction of the effects of the Proposed Development on different landscapes along the route, and for appropriate judgements to be made regarding the significance of the landscape effects and the desirability of undergrounding certain sections of the route under the terms set out within NPS EN5."*

⁴³ [APP-088]

APPLICATION OF THE HOLFORD RULES⁴⁴

5.2.16 EN-5 states that the Holford Rules should be followed in the design of overhead lines, and decision makers should take them into consideration of alternatives and the need for additional mitigation measures (EN-5, paragraphs 2.8.5 to 2.8.7). For convenience the ExA sets out the Holford Rules (excluding the associated notes) below, as they appear, with Rule numbers, and will refer to them by Rule number throughout this section:

- *" Rule 1: avoid altogether, if possible, the major areas of highest amenity value, by so planning the general route of the line in the first place, even if total mileage is somewhat increased in consequence;*
- *Rule 2: avoid smaller areas of high amenity value or scientific interest by deviation, provided this can be done without using too many angle towers, i.e. the bigger structures which are used when lines change direction;*
- *Rule 3: other things being equal, choose the most direct line, with no sharp changes of direction and thus with fewer angle towers;*
- *Rule 4: choose tree and hill backgrounds in preference to sky backgrounds wherever possible. When a line has to cross a ridge, secure this opaque background as long as possible, cross obliquely when a dip in the ridge provides an opportunity. Where it does not, cross directly, preferably between belts of trees;*
- *Rule 5: prefer moderately open valleys with woods where the apparent height of towers will be reduced, and views of the line will be broken by trees;*
- *Rule 6: where country is flat and sparsely planted, keep the high voltage lines as far as possible independent of smaller lines, converging routes, distribution poles and other masts, wires and cables, so as to avoid a concentration of lines or "wirescape"; and*
- *Rule 7: approach urban areas through industrial zones, where they exist; and when pleasant residential and recreational land intervenes between the approach line and the substation, carefully assess the comparative costs of undergrounding."*

5.2.17 In this section, the ExA reports matters that relate to compliance with the Holford Rules as they apply to landscape and visual matters. The general reporting on alternatives is covered in Section 4.6 of this Recommendation Report.

The Applicants Position

5.2.18 The Applicant's position is that the Holford Rules were addressed throughout the optioneering and corridor and alignment selection

⁴⁴ EN-5 Footnote 12: Notes and explanations of the Holford Rules are available on the National Grid website <http://www.nationalgrid.com/NR/rdonlyres/E9E1520A-EB09-4AD7-840BA114A84677E7/41421/HolfordRules1.pdf>

stages (see Section 4.6 of this Recommendation Report on alternatives for more detailed reporting on the options, route corridors, alignments and selection process adopted). The Applicant argues its route corridors were:

- informed by the Holford Rules;
- chosen to avoid residential areas as far as possible on the grounds of general amenity;
- chosen so as to keep high voltage overhead lines away from smaller lines to avoid the creation of 'wirescape'; and
- also chosen to avoid areas of highest amenity value (see paragraphs 9.2.35-9.2.36 and Table 9.1 of [APP-064]).

5.2.19 The application of the Holford Rules in the optioneering resulted in a preferred overhead line route alignment (Works No. 1 and 3) and an underground cable route (Work No. 2). The route was subdivided into thirteen pLCAs and the route was assessed against a range of environmental and socio-economic criteria, compliance with the Holford Rules, cost, and professional judgement [APP-122].

5.2.20 In response to the ExA's first written question (FWQ) DLV13 to the Applicant [PD-011] and during questioning at the EIA ISH on 8 December 2015 (Agenda items 7.3 and 7.4 [EV-019]), the Applicant set out and confirmed it had considered compliance with the Holford Rules, together with other technical and environmental factors, at each stage of refining the routeing process [REP1-028 and REP1-043] and sections 5.2-5.9 of [REP3-043] respectively.

5.2.21 NRW and CCC in their respective SoCGs ([REP2-037] and [REP3-039]) state at Section 2.5.1 that:

"The criteria/indicators used to determine landscape character susceptibility to change arising from the type of development proposed (as set out in paragraph 9.4.9 of chapter 9 of the ES) are appropriate and adequately reflect the objectives of the Holford Rules."

5.2.22 A number of IPs queried the application of the Holford Rules [EV-005, REP3-006, REP3-010 and REP3-016]. Grwp Blaengwen [RR-028] stated at the OFH on 30 November [EV-005] that Holford Rule 7 had not been fully observed by the Applicant. They pointed out that although they might not have formally designated SLAs etc to the North of the River Towy/Afon Twyi, the description "pleasant residential and recreational land" most certainly applied.

5.2.23 Brechfa Forest and Llanllwni Mountain Tourism Cluster Group (BALM) in [REP3-025] stated Brechfa Forest is designated as a principle site for recreation within the Rights of Way Improvement Plan for Carmarthenshire. Therefore, under the Holford Rules consideration should be given to undergrounding the route through the forest.

- 5.2.24 The Applicant's complete responses to these points can be viewed at [REP3-043 and REP3-041]. The Applicant stated at paragraphs 5.4.4 to 5.4.8 of [REP3-043]:

"5.4.4 Holford Rules represent a set of guidelines (not inflexible 'rules') for the routeing overhead lines and identify the landscape opportunities that might be present and might be used to limit the effects of an overhead line development. The language used includes 'minimise' and 'prefer'.

5.4.5 It is not possible to comply with every one of the seven rules at all sections of any given route and from all visual perspectives (e.g. rule 3 refers to 'other things being equal' and is potentially contradictory with rule 5 as preferred valleys are very unlikely to be straight and to directly link two desired connection points).

5.4.6 A balance must be struck between the Holford Rules and other considerations.

i. The Holford Rules must be supplemented by consideration of other non landscape and visual constraints (such as the presence of residential properties, or areas of ecological or cultural heritage value).

ii. The Holford Rules must also be supplemented by the professional judgement of a landscape architect with each specific development (including its scale) considered in light of its specific landscape character context.

5.4.7 A high degree of inconsistency with the Holford Rules may result in serious landscape and visual concerns and may give rise to justification of undergrounding under the terms of EN5. HOWEVER:

5.4.8 Minor inconsistencies with the Holford Rules, especially for smaller scale wooden pole infrastructure, will not necessarily cause serious landscape and visual concerns."

Conclusion on the application of Holford Rules

- 5.2.25 It has been demonstrated to the ExA's satisfaction that alternative routes were explored and considered for compliance with Holford Rules as part of the various stages of the routeing process. This is explained in further detail in Section 4.6 of this Recommendation Report. The ExA finds that the Applicant has been diligent about considering a range of routeing options and sites for the various elements of the proposed development in relation to landscape and visual matters. The work was carried out over a number of years and the level of investigative work exploring the options has been proportionate and in accordance with policy expectations.
- 5.2.26 Areas which IPs raised concerns for landscape and visual reasons are described in the relevant sections of this Recommendation Report. The

ExA has had due regard for the concerns expressed by IPs about the potential significance of adverse effects the proposed overhead line would have on the landscape and views. These are reported more fully below in this section of the report.

LANDSCAPE AND VISUAL EFFECTS OF THE PROPOSED DEVELOPMENT (OPTIONS A AND B)

Applicant's methodology for Landscape and Visual Impact Assessment

- 5.2.27 The Landscape and Visual Impact Assessment (LVIA) is reported in the ES [APP-064] at Chapter 9 and in supporting appendices [APP-086 to APP-094] for Option A and Section 9 of [CR-003] for Option B. The LVIA describes that the proposed development (Option A and Option B) lies outside any nationally designated areas e.g. AONBs, National Parks. The proposed development would also not be visible when viewed from any such designations [APP-064]. No IP disagreed with this assessment in the course of the examination.
- 5.2.28 The LVIA identifies 13 pLCAs and uses these to frame the assessment following the route in a south to north direction from an existing overhead line near Llandyfaelog to Brechfa Forest West Wind Farm (Figures 1.1, 2.1, 9.2, 9.3 and 9.4 [APP-076] Option A and Option B).
- 5.2.29 There is one SLA designated by CCC in their Local Development Plan that would be affected by the proposed development. This comprises the Towy/Tywi Valley SLA (which coincides with pLCAs 5, 6, 7 and 8). Amendments to the boundary of the Towy/Tywi Valley SLA were adopted as part of the Local Development Plan 2014. Figure 9.2 (maps 1 to 4 of [APP-076]) shows the new boundary which is based on an analysis of LANDMAP data. Appendix 9.3 [APP-089] provides a baseline description and analysis of the Towy/Tywi Valley SLA.
- 5.2.30 Mitigation of the landscape and visual effects of both the underground and overhead sections of the proposed development is primarily embedded within the design of the proposed development and its routeing. Details of the project design, route selection process and the landscape and visual criteria used for the selection of the final route are provided in Chapter 3, Alternatives, of the ES [APP-058] for Option A and Section 9 of [CR-003] for Option B (Alternatives are addressed at Section 4.6 of this Recommendation Report).
- 5.2.31 In the SoCGs with NRW [REP3-039] and with CCC [REP2-037], at Section 2.3.1, it states in both:
- "The description of the Proposed Development provided within the ES, including the stated limits of deviation, provides a clear understanding of its likely location, scale and appearance and is sufficient for an assessment to be undertaken of its likely worst case landscape and visual effects. In particular:*

- *The length of the connection is approximately 28.6km approximately 25.3km overhead and approximately 3.3km⁴⁵ underground).*
- *The maximum 2m vertical limit of deviation for all pole structures has been correctly included to enable assessment and visualisation of the likely worst case effects on the landscape and on views."*

5.2.32 In the SoCGs with NRW [REP3-039] and with CCC [REP2-037], at Section 2.5.1, it states:

"The methodology used for the landscape and visual assessment is consistent with current best practice guidelines and meets the requirements set out by the Secretary of State in his scoping opinion. In particular:

- *The methodology is in accordance with current published guidance as set out in the Guidelines for Landscape and Visual Impact Assessment (3rd Edition 2013). It correctly distinguishes between landscape effects and visual effects, the levels of significance are defined appropriately, and the assessment process is transparent and follows recommendations as set out in current guidance'. (Extract from NRW's section 42 consultation response dated 16 January 2015.)*
- *The criteria/indicators used to determine landscape character susceptibility to change arising from the type of development proposed (as set out in paragraph 9.4.9 of chapter 9 of the ES) are appropriate and adequately reflect the objectives of the Holford Rules."*

5.2.33 Both NRW and CCC agree that the assessment can be relied upon as a reasoned explanation of the potential impacts of the proposed development [REP2-037 and REP3-039].

ExA's conclusions on the Applicant's approach to the assessment

5.2.34 The ExA agrees with NRW and CCC that the LVIA parameters, including the extent of the study area, are appropriate given the topography and landscape designations. The ExA agrees that the methodology adopted by the Applicant, the study area and the baseline has been accurately established and all potential receptors identified.

Examination of Applicant's Assessment

5.2.35 Twenty one of 30 RRs [RR-003,RR-006,RR-008 to RR-016,RR-019 andRR-022 to RR-030] made reference to the operational effects of the proposed development on:

⁴⁵ Option A. Option B has 3.56km underground and 25.04km above ground

- landscape effects;
- visual effects;
- development of wirescape; and
- the overbearing nature of the 132kV overhead line.

5.2.36 Landscape and visual impact comprised a large proportion of the points heard at the open floor hearings (OFHs) and continued to be a topic with more evidence presented in Written Representations (WRs) and at Issue Specific Hearings (ISHs).

5.2.37 The ExA undertook an accompanied [EV-009 and EV-010] and an unaccompanied [EV-003] site inspection. The ExA asked twenty four first written questions (FWQ) [PD-011] and four second written questions (SWQ) [PD-019] on Design, Landscape and Visibility. The Applicant's responses can be viewed at [REP1-028] and [REP4-027]. The ExA asked additional questions at the EIA ISH [EV-019] under agenda items 7.1 to 7.5 [EV-018]. The Applicant's responses can be viewed at [REP3-043 and REP3-045].

Construction Effects⁴⁶

Landscape Character Effects

5.2.38 The construction phase effects on landscape character for the overhead and underground sections of the proposed development is addressed in the Applicant's ES appendix 9.2 [APP-088]. The Applicant did not identify any significant effects i.e. alone or cumulative, (cumulative effects on landscape character during construction were not raised by any IPs), due to the limited physical scale and short duration of the proposed works, and the generally limited extent of the proposed undergrounding of existing overhead Applicant assets. The assessment concluded that no significant areas of additional tree removal or management have been identified that would be required as a consequence solely of construction phase requirements.

5.2.39 The impact of the removal of a large area of forestry specifically pLCA13: Brechfa Forest West was raised by IPs at the OFHs [EV-004 to EV-007] and EIA ISH [EV-018 to EV-022].

5.2.40 The Applicant's response [REP3-041] argued that the impact on trees as a result of the proposed development, and as confirmed with NRW [EV-018 to EV-022], would be the same as ordinary felling in a managed forest. There is no loss of ancient woodland, veteran trees or trees with a special status.

5.2.41 Requirement 16- Trees to be affected, in the in the ExA's recommended DCO (Appendix D of this Recommendation Report) stipulates that:

⁴⁶ Cumulative effects considered further in this Report in a separate section below

"A protocol shall be prepared, submitted to and approved by the relevant planning authority for the identification of trees to be affected by the works. The protocol shall require information on the species and dimensions of the tree(s) to be affected and the nature of the works to be undertaken to be provided to the relevant planning authority for prior approval a minimum of two weeks before the works commence to such trees. Works shall be undertaken to the affected trees in accordance with the approved information."

5.2.42 This Requirement was not altered in the course of the examination.

Visual Effects

5.2.43 The Applicant's assessment concluded that there are no visual receptors along the route of the proposed development for:

- Residents (R) and Groups (G);
- Footpath users (FP);
- Road users (RU); and
- Other recreational or visitor location i.e. Cycle Route (CR)

that would experience a highly significant (major) or significant (moderate) visual effect as a result of the temporary activities (including undergrounding of the Applicant's existing overhead assets) associated with the construction of an overhead section of the proposed development [APP-064]. The Applicant argued that along the alignment, the effects of constructing the overhead sections of the proposed development would be limited due to:

- the small scale of the equipment and the activities required; and
- the short duration of the construction works within any given individual location along the route.

5.2.44 The temporary nature of the undergrounding construction activities (a maximum of nine months for the various compounds and individual directional drilling locations) was noted by the ExA.

5.2.45 The Applicant argued that of the receptors identified (section 9.6.37 of [APP-064]), significant (moderate) construction phase visual effects would be limited to:

- a single residential property adjacent to the A485 - R96 Frondeg (which is located in a slightly elevated position within approximately 10m of a section of open trenching proposed along the northern highway verge);
- users of FP42 (the Celtic Way adjacent to the proposed satellite construction compound);
- users of FP32 (a riverside footpath which would run close to several areas of directional drilling and trenching operations within an open riverside setting); and
- users of FP26 (which would pass between the proposed cable laydown area and southernmost directional drilling entry/launch compound close to terminal pole 86).

5.2.46 The assessment in the ES concluded that it is only in these four locations where it is considered that effects would remain significant despite their temporary nature. The Applicant argues that the effects, however, would be limited to a maximum duration of approximately nine months, with the likelihood that the duration would be no greater than three months in any individual location. The proposed alignment and approach to construction has been reviewed by the Applicant in all cases to ensure that no further reductions in the temporary but significant (moderate) visual effects identified are necessary and practicable [APP-064].

5.2.47 The SoCG with CCC states [REP2-037] states at section 2.8:

"In line with CCC's section 42 consultation response dated 16 January 2015:

- *The likely landscape and visual effects resulting from the construction of the development are properly identified and reasonably described and assessed."*

5.2.48 At paragraph 9.3.9 of the CCC SoCG [REP1-082] it states:

"The parties to this SOCG agree with the stated conclusions on the absence of any significant cumulative effects."

5.2.49 No evidence was submitted to the Examination challenging the Applicant's and CCC's overall assessment conclusions on construction effects.

ExA's Conclusion on Construction Effects

5.2.50 Given the evidence presented, the ExA believes that taking these effects as a whole, the effects on the character and quality of the landscape would be minor.

5.2.51 The ExA believes the loss of landscape resource would be negligible because of the limited physical scale and short duration of the proposed works. This conclusion is supported by CCC.

5.2.52 The loss of trees in Brechfa Forest would be the same as ordinary felling in a managed forest. There would be no loss of ancient woodland, veteran trees or trees with a special status (this is secured by Requirement 16 in the ExA's recommended DCO (Appendix D of this Recommendation Report)).

5.2.53 Significant moderate visual effects were identified by the Applicant, but the ExA concludes, that due to the scale and temporary nature these are acceptable in accordance with the section 2.8 of EN-5. The ExA agrees that the proposed development's construction would have

a minor visual effect (including cumulative effects⁴⁷) because of the small scale and temporary nature of the activities.

Operational Effects

- 5.2.54 The operational phase effects on landscape character and visual effects has been assessed in ES Chapter 9 [APP-064 and APP-088 to APP-094] (Appendix 9.2-Volume 6.4 and Appendices 9.3 to 9.8) for Option A and Option B in Section 9 of [CR-003] for the overhead and underground sections of the proposed development. In assessing operational phase effects, the overhead sections of the proposed development have been assumed to be a permanent feature that will not be decommissioned⁴⁸ and removed within a foreseeable timeframe [APP-064].

Landscape Character Effects

- 5.2.55 Appendix 9.2 of the Applicant's ES [APP-088] provides the detailed assessment of the operational effects of the overhead sections of the proposed development on the 11 pLCAs identified along the overhead sections of the route by the Applicant. These consist of pLCAs 1 to 6 to the south of the Towy valley i.e. inclusive of the Towy/Tywi Valley SLA and its margins, and pLCAs 9 to 13 to the north of the Towy/Tywi Valley. pLCAs 7 and 8 are the underground sections of the route.
- 5.2.56 The assessment of landscape character effects in the Applicant's ES included consideration of how the introduction of the wooden poles and cables would cumulatively interact with the presence of existing electricity infrastructure in the local landscape. The assessment of the effects of the overhead sections of the proposed development in each pLCA has taken account of the minor operational phase landscape benefits that would be a consequence of the undergrounding of the Applicant's existing overhead assets in a small number of locations [APP-088 and REP5-030].
- 5.2.57 The ES assessment of the degree of landscape change predicted to arise as a result of the introduction of overhead sections of wooden poles to the proposed development is assessed as low in regards to all of the pLCAs in the ES. The minor beneficial landscape effect of undergrounding a small number of short sections of the Applicant's existing overhead assets has not been assessed as significantly offsetting the minor adverse effects of the introduction of the overhead line within any of the pLCAs through which it would pass [APP-088 and REP5-030]⁴⁹.

⁴⁷ This is discussed further below in this section 5.2

⁴⁸ Requirement 25 of the recommended DCO (Appendix D of this Report). During the course of the examination the wording "hereby approved" was removed

⁴⁹ 1.92 km in total [REP5-030]

- 5.2.58 A number of IPs challenged the Applicant's assessment of the potential degree of change in the landscape in their RRs and WRs. These are described in this Recommendation Report later in this section 5.2.
- 5.2.59 The detailed assessments in the ES are provided in Appendix 9.2 of the Applicant's ES [APP-088] for the 11 pLCAs affected by overhead sections of the route did not identify any highly significant (major) effects and only one significant (moderate) landscape character effect (at pLCA10). The Applicant argued that this reflects the scale of the proposed development and the attention to detail taken in its design and routeing.
- 5.2.60 The significant (moderate) landscape character effect identified at pLCA10 is as a result of balancing landscape and ecological constraints in the bog habitat location with pine stand in the vicinity of pole 127 (see Requirement 5⁵⁰ of the recommended DCO in Appendix D of this Recommendation Report). The Applicant argues that the assessment here of a localised significant (moderate) effect on landscape character, is not considered sufficient to justify re-routeing or undergrounding of the overhead line i.e. it is not a 'serious concern'.
- 5.2.61 It is the Applicant's professional judgement that the results of the assessment are considered to fall below the threshold of serious landscape and visual concerns as referenced in paragraph 2.8.8 of EN-5.
- 5.2.62 The Applicant's evidence on wirescape was disputed by IPs in their WRs and oral evidence under agenda item 7.2 at the Environmental Matters ISH on the 8 December 2016 [EV-020] during the Examination and is described in this Recommendation Report in this section 5.2.
- 5.2.63 The ES's detailed assessments contained in [APP-088] did not identify any highly significant (major) and only one significant (moderate) residual landscape character effect along the overhead sections of the proposed development.
- 5.2.64 These assessments have been reached despite the presence of existing overhead power lines, particularly within pLCAs 1 to 3, potentially creating the risk of an adverse wirescape emerging. The ExA visited these pLCAs on his Accompanied Site Inspection [EV-009 to EV010] and his Unaccompanied Site Inspection [EV-003] (VP3- West of Llandyfaelog VP3 just off A484 and Southwest of Bancycafel VP6 just off B4309).
- 5.2.65 In respect of pLCA 10, it was noted by the ExA that the Applicant has concluded that no additional mitigation is necessary and that the level of landscape character effect in these locations does not constitute

⁵⁰ (5) was added in the course of the examination

'serious concerns' under the terms of paragraph 2.8.8 of EN-5 and does not justify undergrounding of the proposed development.

5.2.66 The ES's detailed assessments of landscape character effects on:

- the very short northern section of pLCA6 (directionally drilled);
- the pLCAs 7 and 8; and
- the short section of pLCA9 (open trench).

contained in the Applicant's landscape character assessment [APP-088] for Option A and Section 9 and 10 of [CR-003] for Option B concluded that the permanent operational effects of the underground cabling on landscape character and historical setting within all of these areas would be negligible and not significant.

5.2.67 CCCs SoCG [REP2-037] states at sections 2.8.2-2.8.3:

"No significant effects on landscape character along the route of the Proposed Development have been identified in section 9.7 of chapter 9 of the ES other than a significant (moderate) localised effect within pLCA10. Paragraph 9.7.12 explains why this effect on pLCA10 is considered to be acceptable and unavoidable and concludes that it would not give rise to serious landscape concerns under the terms set out in NPS EN5 such that undergrounding would be justified. This conclusion in respect of pLCA10 is accepted by CCC.

CCC agrees with the overall assessments of the effects on landscape character for every pLCA with the exception of pLCA6 – Towy Valley Southern Slopes. The extent of agreement with regard to the assessment of pLCA6 is set out in detail in section 3 of this SOCG."

5.2.68 As stated by NRW and CCC above, they considered that the change was necessary to mitigate the impact of the OHL on pLCA 6 of the Towy/Tywi Valley SLA and RLOHIW. The Applicant concluded in their ES [APP-064] that effects on the Towy/Tywi Valley SLA (pLCAs 5 to 8) would be "minor - not significant".

5.2.69 However, NRW and CCC considered that the Applicant has under assessed the likely impact on the designated landscape and consider that the effect of the proposed OHL development at the southern slopes of the Towy/Tywi Valley would be significant and unacceptable. NRW and CCC did, however, consider that that these significant adverse impacts could be avoided by means of a short southern extension to the section of route proposed for undergrounding [PD-015].

5.2.70 CCC have identified the following policies where, in their opinion, the proposed development does not comply with. For those policies where non-compliance is identified, the only issue on each occasion is the Applicant's proposal to erect poles 84-86 within the Towy/Tywi Valley SLA and RLOHIW (Section 19 of SoCG with CCC [REP1-025]). This was addressed by the consideration of Option B below:

- SP1 - Sustainable Places and Spaces;
- SP13 - Protection and Enhancement of the Built and Historic Environment;
- SP14 - Protection and Enhancement of the Natural Environment;
- SP17 - Infrastructure;
- GP1 - Sustainability and High Quality Design;
- EQ1 - Protection of Buildings, Landscapes and Features of Historic Importance;
- EQ5 - Corridors , Networks and Features of Distinctiveness; and
- EQ6 - Special Landscape Areas Chapter.

pLCA6 – Towy Valley Southern Slopes Option B

- 5.2.71 This alternative is described in Chapter 1 discussed in detail in Sections 2.2 and 4.6 of this Recommendation Report. The ExA in reaching its conclusion on this matter has taken into account all the representations made both in writing and orally at the ISHs. The ExA has weighed all the relevant and important matters in the balance that would be associated with this alternative Option B.
- 5.2.72 The ExA noted the importance nationally of this particular landscape and the essential characteristic of its integrity, both matters important in defining 'Value' in LVIA methodological terms, are the reasons why CCC argued that the impacts of Poles 84-86 amount to 'serious concerns' for the purposes of EN-5 paragraph 2.8.8. When analysed in the context of the Holford Rules, CCC and NRW argued, Rules 1 and 2 were relevant. The list of areas to be avoided under these Rules is not exclusive. The RLOHIW is unique to Wales and designates landscapes of national significance. Likewise, EN-5 paragraph 2.8.9 bullet 1 refers to examples, including landscapes of historic importance.
- 5.2.73 The conclusion that the ExA has reached (see Section 4.6 of the Recommendation Report) is that there are very strong grounds, for preferring the alternative Option B because:
- the suggested alternative of undergrounding Poles 84-86 was very strongly supported by CCC and NRW;
 - the matters explained by CCC amount to "serious concerns" for the purposes of EN-5 paragraph 2.8.8 i.e. one national cycle path (NCR47) and PRowS 28/20/1 and 28/20/2 between Poles 84 and 86 the experience of users of these routes when in proximity to the OHL will be eroded [REP1-082];
 - it should be inferred from the fact that the Applicant is prepared to put forward the undergrounding of Poles 84-86 that the costs of undergrounding are acceptable to them[CR-001 to CR-012];
 - no additional significant effects were identified by the Applicant when considering the additional undergrounding for Option B [CR-002 to CR-012]; and

- no objections were raised to Option B⁵¹ [CR-021].

Conclusion on Landscape Character in Operation

- 5.2.74 The ExA has recommended in Section 4.6 that the alternative Option B of undergrounding Poles 84-86 is included in the recommended DCO that is attached at Appendix D to this Recommendation Report.
- 5.2.75 This recommendation of Option B would allow the proposed development to achieve compliance the following CCC local policies: SP1, SP13, SP14, SP17, GP1, EQ1, EQ5 and EQ6 (see Section 19 of CCC's LIR [REP1-025]).

Visual Effects

- 5.2.76 The ES provides detailed assessment tables for the four categories:
- residents (R) and Groups (G);
 - footpath users (FP);
 - road users (RU); and
 - 'other' locations of visual receptor.
- 5.2.77 These are provided in Appendices 9.5 to 9.8 of the ES [APP-091 to APP-094] and did not identify any highly significant (major) visual effects on any of the individual visual receptors assessed. The Applicant argues that this conclusion reflects the optioneering process undertaken, which sought to minimise visual effects by maintaining a distance of at least 80m and generally 100m away from any residential property. Although footpath users in particular are identified as potentially highly susceptible to visual changes, no locations have been identified where the presence of:
- more substantial elements of the infrastructure i.e. four pole terminal positions or twin pole structures with multiple stays; and
 - the length of the route over which a high degree of visual change
- would combine to result in a highly significant (major) operational phase visual effect for the proposed development.
- 5.2.78 The ES has identified significant (moderate) operational phase visual effects on some residential [APP-091], footpath [APP-092] and other recreational receptors [APP-094]. Where a pLCA is not listed below, no significant visual effects have been identified within that area. The locations of these receptors are identified within [APP-091, APP-092 and APP-094]:
- pLCA1: Residents of Penyback (R4), Cilwg (R5) and Fynnon Wen and Black Bush (G12);

⁵¹ HV and E Jones made a WR in support of Option B [REP6-010].

- pLCA2: Residents of Lanfryn (R15) and Lygad Yr Efail, Llyswen, Star Forge (G18). Users of the campsite at Llanygad-Yr-Efail (RT1);
- pLCA3: Residents at Bwlch-y-gwynt (R26). Users of the FP12 PRoW Landyfaelog 10.;
- pLCA4: Residents at Delfryn (R39), Ucheldir (R40), Gelliddu Farm (R41), Brynheulog and Beulah Fawr Farm (G60), Kings Oak and Plas y Wern (G63), Green Cottage, School House and Login Cottage (G67). Users of the footpaths at FP19 Cistercian Way and FP22 PRoW Llangunnor 6;
- pLCA5: Residents of a single property at Tyllwyd Mawr (R71);
- pLCA6: Residents at Nant Farm (R79). Users of the FP26 PRoW Llangunnor 20; Option B mitigates this effect to the satisfaction of R9;⁵²
- pLCA9: Residents at Pengerddi (R102), Rhyd Fwyalchen (R109), Nantfelys (R110), Brynawel (R111) and users of the footpaths at FP44 PRoW Abergwili 8, FP46 PRoW Bronwydd/Newchurch PP2/CCC promoted Bronwydd walk and FP47 CCC Promoted Bronwydd Walk;
- pLCA10: Residents at Pentre Bach (R125), Pentremawr (R134) and North of Rhydargaeau (Tiffany Lodge, Clos Yr Eos, Llwynreos) (G137). Users of CCC Promoted Cycle Route HP11 (CR6);
- pLCA11: Residents at Trewithina House and Haulfryn (G147), Glanboncath (R153), Troed-Rhiw- Newydd (R155), Nant y Boncath (R156) and Llywn Newydd (R161). Users of footpath at FP64 PPRoW Llanpumsaint 9. Users of the CCC Promoted Cycle Route HP11 (CR6); and
- pLCA12: Residents at Dyffryn Croes, Dyffryn Croes House and 2 Dyffryn Croes (G169), Derlwyn Mansion and Derlwyn Cottage (G170), Cil Clyn (R171) and Llwynteg (R177). Users of footpath at FP65.

5.2.79 The ES concluded that no highly significant (major) operational phase visual effects would arise as a result of the operation of the overhead line. Significant moderate residual visual effects would be experienced by the relatively small number of receptors identified above. The proposed routeing has been reviewed by the Applicant in each case and the Applicant has concluded that no further reductions of the visual effects identified are practicable. No locations along the route have been identified by the Applicant as requiring the introduction of screen planting (see Applicant's response to FWQ DLV09 [REP1-028] and paragraph 9.7.38 of [APP-064]).

5.2.80 This was disputed by a number of IPs and is detailed in this Recommendation Report later in section 5.2.

⁵² [REP6-010]

- 5.2.81 The ExA queried with the Applicant in FWQ DLV10 whether 'significant (moderate)' is significant in terms of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (EIA Regulations).
- 5.2.82 The Applicant responded [REP1-028] stating that the residual significant (moderate) landscape and visual effects identified in ES Chapter 9 are not considered to equate in any individual location to a serious landscape or visual concern that would justify undergrounding under the terms set out in EN-5.
- 5.2.83 In addition the Applicant in response to the ExA's FWQ DLV08 [REP1-028] stated:
- "The additional undergrounding of existing overhead assets that are now confirmed (over and above those that had already been confirmed at ES stage) would result in some further reduction of wirescape effects along the route but the overall landscape effects of the proposed development would remain as reported in the ES (i.e. any further reduction in wirescape compared to that already reported in ES Chapter 9 [APP-064] would be beneficial but highly localised and of negligible significance)."*
- 5.2.84 Section 4.6 of this Recommendation Report deals with the ExA's assessment of the Applicant's approach to considering the total undergrounding of the OHL and IPs arguments in favour.
- 5.2.85 A number of IPs [REP3-002 to REP3-006, REP3-010 to REP3-13, REP3-016, REP3-019, REP3-021 to REP3-022, REP3-026 and REP3-032 to REP3-034] argued that there would be an overbearing and unacceptable level of effect on their residential visual amenity. It was noted by the ExA that there is no published guidance that sets out the criteria for establishing whether or not the presence of a development unacceptably affects living conditions i.e. overbearing.
- 5.2.86 The Applicant has used the following description of overbearing level of visual effect⁵³ which could potentially arise in respect of two possible interrelated scenarios [APP-064]. It is based upon their assessment of best practice and professional judgement. The ExA believes the Applicant's definition of overbearing is appropriate [APP-064] i.e.:
- *"Where overhead poles and lines would be located in such close proximity to the/a main outlook(s) from a private residential property (whether from internal areas or in important views from within the external curtilage) that it would be unduly dominated by them. This might include where the more substantial elements of overhead line infrastructure coincide at close proximity with principal views from a private residential property (e.g. a four*

⁵³ Not defined in GLVIA3

pole termination point with several cable stays at close proximity within the centre of a principal view); and

- *Where a very wide extent of the available views from a private residential property coincides with visibility of a substantial length of the overhead line - either panning across the available view or with a large number of pole structures (particularly twin pole structures) visually stacked and receding into the far distance."*

5.2.87 The ES concluded that since no highly significant (major) visual effects have been identified at any residential property the potential for the proposed development to give rise to such an overbearing effect is at the outset considered low [APP-091].

5.2.88 The assessment in the ES concluded that in every case an overbearing and unacceptable effect on residential visual amenity would not occur [APP-064 and APP-091].

5.2.89 CCCs SoCG [REP2-037] states at sections 2.8.5-2.8.7:

"2.8.5 Appendices 9.5 to 9.8 to chapter 9 of the ES provide a detailed assessment of the visual effects of the Proposed Development on various categories of visual receptor (residents, footpath users, road users and 'other' locations). Some significant (moderate) visual effects on some visual receptors are identified and these are summarised in section 7 of chapter 9 of the ES.

2.8.6 Appendices 9.5 to 9.8 of Chapter 9 of the ES detail the extent and frequency of the significant (moderate), but localised, visual effects.

2.8.7 Section 9.7 of chapter 9 of the ES does not identify any overbearing effects on residential visual amenity at any property such that it might come to be widely regarded as an unsatisfactory place in which to live. CCC agrees with this assessment and conclusion."

Specific concerns raised in representations and ASV by IPs - landscape, overbearing and wirescape effects

5.2.90 The ExA undertook an accompanied [EV-009 and EV-010] and an unaccompanied [EV-003] site inspection. All IPs who requested that the ExA visit their property were visited on the 1 December and 11 December 2015. The ExA visited the following five residential properties:

- **Mrs Reed:** Mrs Reed on behalf of her family made seven representations in writing to the examination [REP2-009, REP3-012, REP4-007, REP5-009, REP5-053, REP6-034 and REP8-036 and REP3-012]. Pole 116 is on her property. Approximate distance to closest pole in metres (m) is 140m⁵⁴;

⁵⁴ Mrs Reed's own estimate given at CAH 10 February 2016 [EV-028]

- **Mr and Mrs Miles:** Mr and Mrs Miles made the following representations in writing to the examination [REP2-017, REP3-002, REP3-019, REP4-010 and REP5-017]. Mrs Miles presented evidence orally at the OFH on 30 November 2015 [EV-005] and the CAH on the 2 & 3 December 2015 [EV-014 and EV-016] and 10 February 2016 [EV-029]. Mrs Miles requested details of undergrounding of the existing 11KV line running through her property. Mr and Mrs Miles are concerned that the height of the poles are intrusive and would be overbearing on the amenity of their residence. The line also runs through all of the Mr and Mrs Miles' fields and could create a "wirescape". Poles 138-144⁵⁵ are on her property. Approximate distance to closest pole in metres is 250m⁵⁶ to pole 139;
- **Mr and Mrs Davies:** Mr and Mrs Davies made twelve WRs to the examination [REP2-001, REP3-010, REP3-021, REP3-033, REP4-008, REP4-051, REP4-055, REP4-057, REP5-013, REP5-014, REP6-037] [REP7-002]. At the CAH on the 2 December 2015 [EV-014] and 10 February 2016 [EV-029] Mr Davies raised the issue of the overbearing nature of poles on their residential amenity [REP3-010]. Poles 153-154⁵⁷ are on their property. Approximate distance to closest pole in metres is 100m⁵⁸ to pole 153. The Davies submitted their own "photomontage" [REP3-010];
- **Mr and Mrs Kilkelly:** Mr and Mrs Kilkelly made an RR [RR-025] and nine representations in writing to the examination [REP1-008, REP1-016, REP1-017, REP2-007, REP3-026, REP4-009, REP4-019, REP5-015, REP5-016, REP6-005, REP7-006 and REP8-042]. (Appendix B). At the OFH on 1 December 2015 [EV-005] and the CAH 3 December 2015 [EV-014] and 10 February 2016 [EV-029] Mr and Mrs Kilkelly noted the whole line should be undergrounded to prevent an overbearing intrusion on their amenity. Poles 170-181 are on their property. Approximate distance to closest pole in metres (m) is 180m to pole 173⁵⁹; and
- **Mrs and Dr Woods** made 2 RRs [RR-023 and 024] and 5 representations in writing [REP1-001 and 004, REP2-010, REP3-011 and REP4-022]. They have no pole on their land. Approximate distance to closest pole is approximately 80m to pole 76 (on DA & WG Jones' land) [REP5-031].

5.2.91 In response to Mrs Miles, the Applicant proposes to dismantle 11kV overhead between Poles P110 and P108A (poles 143-144 of the proposed development) and replace with 11kV underground cable. The total length of undergrounding is 134m [REP5-030]. This will be secured via an easement.

⁵⁵ Between poles 143-144 existing 11kv will be undergrounded [REP5-030]

⁵⁶ ExA estimate from site visit

⁵⁷ Between poles 153-154 existing 11kv will be undergrounded [REP7-016]

⁵⁸ ExA estimate from site visit

⁵⁹ Mr Kilkelly did estimate it to be 300m at the CAH 10 February 2016 [EV-026 to EV-030] but the ExA felt this was an overestimate based on his site visit

- 5.2.92 The Applicant argued that the photomontage provided by Mr Davies [REP4-051] is inaccurate and the Applicant has provided their own wireline as Appendix 3 in [REP5-035].
- 5.2.93 The ExA undertook an accompanied site inspection [EV-009 and EV-010] on the 1 December 2015 to Mr and Mrs Davies' property. Poles 153-154 are on their property. The approximate distance to the closest pole in metres is 100m to pole 153. Mr Davies' photomontage clearly shows it to be much closer. The Applicant challenged the photomontage at the EIA ISH on 8 December 2015 [REP3-043]. Mr Davies did not contend with the Applicant's position [EV-020]. The ExA believes that the photomontage provided by Mr Davies [REP4-051] is inaccurate.
- 5.2.94 At a hearing on 11 February 2016 [EV-031] the Applicant agreed to meet with two landowners, Mrs Reader and Mr and Mrs Davies to discuss the alignment as proposed, their concerns and to investigate opportunities for them to be addressed. The Applicant undertook this action in response to the ExA's suggestion that it would be helpful.
- 5.2.95 The Applicant is prepared to underground part of the 11kV network which crosses Mr and Mrs Davies' land [REP7-016]. This would be achieved outside of the DCO process via an easement. Similarly the Applicant is prepared to use a different route to enable access to pole 154. Mrs Reader's priority is to move pole 155 north of the existing track. The Applicant proposes to move pole 155 20m north from its current position subject to Mrs Reader's consent. This would be achieved via an amended micro-siting allowance under the compulsory acquisition Heads of Terms (HoTs) for pole 155 but still within the Order limits.
- 5.2.96 Mr and Mrs Davies confirmed that they welcome the proposals to further mitigation by way of undergrounding the existing 11kV line, as outlined at paragraph 5.4.1 of the review [REP8-006 and REP7-016].

At the CAH on the 2 December 2015 [EV-014], Mrs Woods on behalf of her husband and herself requested modifications which would avoid the need for the line to run over their land. The Applicant removed Mrs Woods from the BoR at D5 [REP5-031]. The pole was not on their land. The pole was removed and the cable undergrounded i.e. this. Permitted development for diversion of existing WPD apparatus, is achieved under the Town and Country Planning (General Permitted Development) Order 2015.

s106 Landscape and Ecological Enhancement

- 5.2.97 The Applicant has prepared a Development Consent Obligation under s106 of the Town and Country Planning Act 1990 with CCC in respect of the proposed development to be signed by the parties [REP7-011]. The purpose of the agreement is to deliver landscape and ecological enhancement via a grant fund which will be available to qualifying

persons (any owner of any qualifying land) on qualifying land (land within 3km of the Order Limits) for the:

- laying (and fencing) of hedgerows;
- planting of trees and woodland creation; and
- planting of new hedgerows/hedgerow plants.

5.2.98 The fund is to be used exclusively for the purposes set out in the draft s106 Schedule [REP7-011]. Both parties agree that the successful implementation of the Fund will be sufficient to comply with national and local policy concerning enhancement, in particular EN-1 paragraph 5.3.15, and CCC LDP Policies SP1, SP14, GP1, EQ4 and EQ6. Both parties agree that the works are enhancements to the extent that they are not required to mitigate otherwise significant environmental effects [REP2-037].

5.2.99 All hedgerows affected by the undergrounding would be translocated (temporarily removed and replaced) and low level groundcover would be restored without significant lasting effects on landscape character or views. This is secured by Requirement 28 in the ExA's recommended DCO (Appendix D of this Recommendation Report).

Conclusion on Operational Effects

5.2.100 The ExA agrees with the Applicant, NRW and CCC's overall assessments (including cumulative effects) of the effects on landscape character for every pLCA with the exception of pLCA6 – Towy Valley Southern Slopes, as discussed in Section 4.6 of this Recommendation Report.

5.2.101 The ExA has recommended in Section 4.6 of this Recommendation Report that the Option B alternative of undergrounding Poles 84-86 becomes the basis of the recommended DCO that is attached at Appendix D to this Recommendation Report.

5.2.102 The ExA does not believe any overbearing effects on residential visual amenity at any properties will become widely regarded as an unsatisfactory place in which to live because:

- The scale of the proposed development is not sufficiently substantial (i.e. wooden poles (including insulators) will be a maximum of 19m⁶⁰ in height above ground (these dimensions are secured by Article 5 and Requirement 3 of the recommended DCO (Appendix D of this Recommendation Report) to result in an unacceptable level of visual dominance over the distances involved;
- All potentially affected properties enjoy the benefits of some intervening land cover that would soften or partially screen the appearance of the proposed development. The route selection

⁶⁰ The average height of the 201 poles is 13.14m (see Requirement 3 Table 1 of Appendix D)

process achieved a distance of at least 80m from any property and generally more than 100m ([APP-076] Figure 9.4 Maps 1-4);

- There are no properties which the ExA visited, where the main aspect or orientation of the building is sufficiently aligned with specific pole positions for visual dominance to arise; and
- The s106 agreement is to deliver landscape and ecological enhancement via a grant fund which will be available to qualifying persons (any owner of any qualifying land) on qualifying land (land within 3km of the Order Limits).

5.2.103 The ExA believes the effects of wirescape developing via the introduction of an additional overhead electricity line due to the proposed development (19m high wooden poles on average 142m apart) would not materially increase the degree to which overhead electricity lines would become a defining characteristic of the landscape.

5.2.104 The ExA agrees with the Applicant's assessment, that the existing overhead electricity lines are a feature but not a defining characteristic of each of the 13 pLCAs. This would remain the case after the introduction of the proposed development. Based on the above evidence and his site visits the ExA is content that none of the character areas would become defined or dominated by wirescape.

Decommissioning Effects

5.2.105 The ExA is persuaded by the Applicant that the decommissioning phase effects associated with the removal of overhead sections of the development would be similar to those experienced during construction. The decommissioning phase effects of underground sections of the development would be considerably less than for the construction phase (on the assumption that obsolete underground cables would remain in situ) [APP-064].

5.2.106 The ExA is satisfied that Requirement 25⁶¹ in the ExA's recommended DCO (Appendix D of this Recommendation Report), which requires a written scheme of decommissioning and restoration to be submitted for approval by CCC prior to any decommissioning works, would provide sufficient control over any impacts arising from the decommissioning works. The decommissioning and restoration plan would be implemented as approved and the decommissioning of the connection and the restoration works would be completed within 24 months following the approval of the decommissioning and restoration plan [APP-064].

⁶¹ The Applicant responded to the ExA FWQ EIA28 [PD-011] with a commitment to introduce this Requirement. Alterations to the original wording were made i.e. "hereby approved" was removed during the course of the examination and is documented in Chapter 9 of this Report

ExA conclusion on decommissioning effects

- 5.2.107 Given the evidence presented, the ExA believes that taking these effects as a whole, the effects on the character and quality of the landscape would be minor for Options A and B. The ExA agrees the proposed development's decommissioning would have a minor visual impact because of the small scale and temporary nature of the activities.

Cumulative Effects

- 5.2.108 Potential cumulative landscape and visual effects between the proposed development and other proposed developments in Carmarthenshire have been considered within Chapter 9 and 19 of the ES [APP-064 and APP-074] for Option A and in section 9 and 13 of [CR-003] for Option B. The methodology also gave consideration to the inter-relationships with other effects of the proposed development such as biodiversity and heritage.
- 5.2.109 The following reasonably foreseeable future developments in the vicinity of the proposed development have been considered, extending to 1km from the alignment but up to 3km for commercial scale wind farms:
- the Brechfa Forest West Wind Farm, substation, temporary and permanent anemometer masts;
 - at CCC/NRW request the operational Altwalllis windfarm was included;
 - a single large turbine at Nantyclaws (77m to tip at a distance of more than 1km from the proposed development);
 - a number of small scale wind and single turbine proposals (below 50m to tip);
 - two solar energy schemes (and any known associated grid connections); and
 - some consented forestry operations that may result in tree removal.
- 5.2.110 The ES concludes that no significant combined or additional cumulative landscape or visual effects with the proposed development would occur [APP-064]. The potential impacts relate to:
- potential cumulative effects in construction due to tree removal primarily in Brechfa forest;
 - potential cumulative wirescape effects on landscape character towards the southern end of the proposed development in the countryside to the north of Llandyfaelog – these relate to existing overhead lines⁶². The Applicant has judged them alone and cumulatively as not to be significant; and

⁶² No others are currently been proposed

- potential cumulative visual effects arising towards the northern end of the proposed development where combined visibility of existing and proposed wind farms and the proposed development may arise for some residents and users of public footpaths.
- 5.2.111 The Applicant argues that these effects are considered likely to be minor and not significant because of the distances between the developments and their distinctly different appearances.
- 5.2.112 The Applicant contends that the extent of tree removal would be proportionally very small in the context of the overall extent of forestry land use in the local and surrounding area. The Applicant believes the combined effect of all tree removal associated with all of the developments included within the scope of the cumulative assessment would not be significant. Forestry clearance at the northern end of the Proposed Development would occur in close proximity to that directly arising from the construction of Brechfa Forest West Wind Farm.
- 5.2.113 The ExA agrees with the Applicant that given the low landscape value of the affected trees and that the combined sum effect of both developments would not be significant. The contribution of the proposed development to any cumulative effect on landscape elements during construction in this location would also not be significant.
- 5.2.114 The outcome of the assessment in the ES of operational phase landscape character effects (both cumulative and for the proposed development alone) for Option A [APP-064 and APP-074] and Option B at section 9 of CR-003 has taken account of the potential for visual convergence between the proposed development and other overhead power lines already present within the landscape, most notably:
 - four larger scale 33kV transmission lines;
 - 132kV line; and
 - twin 400kV lines on steel lattice towers that would cross the southern end of the scheme within character areas pLCA 1 to 3.
- 5.2.115 Applying the Holford Rules, the ES has assessed the potential risk that an additional overhead line could give rise to a converging 'wirescape', that could result in overhead line infrastructure becoming a more prominent or defining characteristic of these areas. This could potentially create through its addition into the landscape, a disproportionate cumulative effect additively with these other existing features. The Applicant argued that:
 - The existing 33kV, 132kV and 400kV overhead lines and steel lattice towers are already a visible feature but not defining characteristic of these areas;
 - The considerably smaller scale, lower height and tangential alignment of the proposed development means that its visual association with these existing features would be limited;

- These thirteen pLCAs are all judged to be of a relatively low susceptibility and value; and
- Any perception of 'wirescape' would be limited to highly localised effects close to the various existing overhead lines and that there would not be a broader adverse change to landscape character.

5.2.116 CCC in its SoCG [REP2-037] at paragraph 2.8.9 states:

"CCC agrees that no significant cumulative landscape or visual effects would arise. In particular, CCC does not have remaining concerns regarding potential cumulative effects in the southern corridor arising from the convergence with the existing high voltage overhead lines near viewpoint 5. CCC is satisfied that the proposed development would cross below these lines in a location where there are no high sensitivity landscape or visual receptors such that any localised wirescape effects would be limited and acceptable. CCC agrees that it would not be practicable to further mitigate any such effects by re-routing and that undergrounding would not be justified in this location under the terms set out in NPS EN5."

5.2.117 At paragraph 9.3.9 of the CCC SoCG [REP1-082] it states:

"The parties to this SOCG agree with the stated conclusions on the absence of any significant cumulative effects."

ExA conclusion on cumulative effects

5.2.118 The ExA concludes that no significant combined or additional cumulative landscape or visual effects with the proposed development would occur during construction, operation or decommissioning.

Overall Conclusion on Landscape and Visual Effects

5.2.119 Landscape and visual matters were raised as matters of concern by many IPs. The ExA has examined these matters, together with the ExA's own concerns, and where relevant, linked them to related matters of good design.

5.2.120 The ExA considers the s106 funding for:

- the laying (and fencing) of hedgerows;
- the planting of trees and woodland creation; and
- the planting of new hedgerows/hedgerow plants

gives CCC the ability to decide on the most deserving enhancement and is fit for purpose.

5.2.121 The ExA is content that the approach to the use of Holford Rules, consideration of alternatives and cumulative effects was proportionate and is satisfied that the Applicant's route optioneering assessments for Options A and B meet the tests set out in EN-5.

- 5.2.122 The ExA agrees with the Applicant that the proposed development's construction and decommissioning would have a minor visual impact because of the small scale and temporary nature of the activities.
- 5.2.123 The ExA does not believe any overbearing effects on residential visual amenity at any properties will become widely regarded as an unsatisfactory place in which to live.
- 5.2.124 The ExA is content that none of the pLCAs would be defined or dominated by wirescape and agrees with CCC that no significant cumulative landscape or visual effects would arise.
- 5.2.125 The ExA recommends that the alternative of undergrounding Poles 84-86 i.e. Option B, is included in the recommended DCO that is attached at Appendix D to this Recommendation Report (see Section 4.6). This recommendation of Option B would allow the proposed development to achieve compliance the following CCC local policies:
- SP1; SP13; SP14; SP17; GP1; EQ1; EQ5; and EQ6 (see Section 19 of CCC's LIR [REP1-025]).
- 5.2.126 The ExA is satisfied the requirements of EN-1, EN-5, Planning Policy Wales and the relevant local policies have been met for Option A⁶³ and Option B and sees no reason on landscape and visual grounds for the Secretary of State (SoS) not to consent the DCO.

5.3 BIODIVERSITY AND GEOLOGICAL CONSERVATION

INTRODUCTION

- 5.3.1 Issues relating to Habitats Regulations Assessment (HRA) (EN-1 Para. 4.3) are covered in Section 6, Conclusions Relating to Habitats Regulations, of this Recommendation Report.

POLICY

- 5.3.2 The biodiversity, biological, ecological and geological conservation matters of importance to this Examination covered in the policy guidance in EN-1 are sites and species identified and protected through international conventions and European directives, Sites of Special Scientific Interest (SSSIs), regional and local sites, species and habitats that receive statutory protection under the Habitats Regulations and Wildlife and Countryside Act⁶⁴, species with their own legislation such as badgers⁶⁵ (see paragraph 5.3.20 of this Recommendation Report), ancient woodland and veteran trees and other EIA matters (EN-1 section 5.3).

⁶³ Option A would be in conflict with 8 local policies

⁶⁴ Wildlife and Countryside Act 1981 (as amended)

⁶⁵ Protection of Badgers Act 1992

- 5.3.3 EN-1 directs the decision-maker to recognise the need to protect the most important biodiversity and geological conservation interests and to avoid significant harm through mitigation and the consideration of reasonable alternatives as set out in paragraph 5.3.7. EN-1 provides for appropriate compensation measures where significant harm cannot be avoided. It sets out the need for the decision maker to attach appropriate weight to designated sites, habitats and species (EN-1 paragraph 5.3.6 to 5.3.8).
- 5.3.4 TAN 5 addresses nature conservation and CCC agrees (see paragraph 10.3.3 of [REP1-082]) that the Planning Statement [APP-119] demonstrates that the proposed development is in conformity with TAN 5.
- 5.3.5 CCC believes the application is in compliance with local policy EQ4 on biodiversity (section 10.7 of [REP1-082]).

GEOLOGICAL CONSERVATION

- 5.3.6 The Applicant believes that the proposed development design is protective of designated geological conservation sites by avoiding such sites. The presence of any component of the proposed development close to a designated geological site would have the potential to damage or have an adverse consequence of impact to the features of the designated site (Section 12.6 of [APP-067] for Option A and section 4 of [CR-003] for Option B).
- 5.3.7 A Regionally Important Geological (RIG) site is located within the Order limits. The RIG site is designated for the exposed Ordovician bedrock outcropping along a road cutting for the A485 north of Glangwili. The proposed development will pass through this bedrock outcrop albeit below ground level (open cut trench) within the existing carriageway of the A485 and an unnamed lane, before cutting into a field that is situated outside of the RIG designated area [APP-067].
- 5.3.8 The designated geological RIG site is considered to be of very high sensitivity owing to its conservation importance. The Applicant argues that the potential impact to the designated RIG site is, however, considered to be of low magnitude. The underground cable would pass through a small section of the RIG site below ground level within an existing roadway.
- 5.3.9 The ExA agrees with the Applicant's assessment that impact is of low magnitude as the trench will be excavated in the existing roadway.
- 5.3.10 The ES identifies a section of bedrock outcropping above ground to the south west and north east of an unnamed lane along the road cutting for the A485 (paragraph 12.6.45 of [APP-067]). The assessment in the ES anticipates very little change from baseline conditions would occur as a result of the alignment of the proposed development in relation to the RIG site. The Applicant argues that any changes would be barely distinguishable from the pre-development baseline. This would give rise to an overall minor adverse effect. The minor adverse effect is

considered by the Applicant to be long term and permanent, non-reversible and on a local scale owing to the RIG designation.

- 5.3.11 The ExA concurs that this is not significant in EIA Regulation terms.
- 5.3.12 A number of glacial geomorphological features comprising pingos⁶⁶ have been identified in the ES close to the proposed development close to Alltwallis north of Pontarsais. The proposed development has avoided direct impacts to these geomorphological features as part of the design. The sensitivity of the pingo geomorphological features is considered to be high by the Applicant [APP-067].
- 5.3.13 The Applicant argues that the magnitude of impact (taking into account embedded mitigation measures including avoidance of the pingos) is considered to be very low owing to a 'no change' situation to the pre-development baseline condition. The Applicant believes this gives rise to an overall negligible effect. The negligible effect is considered to be long term (duration of the development) and non-permanent, reversible and restricted to a local level [APP-067].

Conclusion on Geological sites

- 5.3.14 There was no evidence presented during the Examination that contradicted the Applicant's assessment either for Option A or B. Requirement 5(3) was inserted at CCC's request) into the recommended DCO (Appendix D of this Recommendation Report) to protect the pingos through strict siting of poles, will avoid impacts on pingos (see 9.5 of this Recommendation Report). The ExA considers that the SoS can conclude there would be no adverse impact on any such sites because of the mitigation secured in the ExAs recommended DCO.

BIODIVERSITY

Biodiversity effects analysis and representations

- 5.3.15 Information on the baseline ecology and biodiversity and its assessment including cumulative effects of these issues is provided in Chapter 10 of the ES [APP-065] and in the ES appendices [APP-078] [APP-095 to APP-100] for Option A and in section 11 of [CR-003] for Option B.
- 5.3.16 The assessment of potential ecological and biodiversity impacts was highlighted in the ExA's principal issues [PD-005].
- 5.3.17 The ExA investigated the adequacy of the information and the assessment provided in the ES in the first [PD-011] and second [PD-019] written questions and in its questions to the Applicant at the

⁶⁶ A pingo is a periglacial landform, which is defined as a nonglacial landform or process linked to colder climates [APP-067]

Environmental matters ISH under agenda item 7.7 [REP3-043]. The Applicant's responses can be found at [REP1-028, REP3-043 and REP4-027]. The ExA noted that CCC agreed with the Applicant's assessment of impacts for HRA matters, the pingo, woodland, hedgerows, purple moor grass, mature trees, tree roosting bats, foraging and commuting bats, birds, dormouse, otter and reptiles (see paragraph 5.8.6 of [REP3-043]). All necessary protected species licences have been identified [REP3-054] and will applied for at the appropriate time.

- 5.3.18 NRW raised points on ecology and biodiversity e.g. EPS licence for Dormice, Horizontal Directional Drilling (HDD) depths under the River Towy/Afon Tywi in their relevant representations [RR-021] and in their written responses to the ExA's FWQ [REP1-019]. Full details of the methodologies employed to support the assessment of effects upon ecology resulting from the construction, operation and decommissioning of the Brechfa Forest Connection are provided in sections 10.4 of Chapter 10 of the ES [APP-065]. NRW agreed that the methodology used for the ecological impact assessment is consistent with current best practice guidelines [REP2-036].

- 5.3.19 CCC reviewed the Applicant's assessment of biodiversity effects at Section 9, pages 16-25 of its LIR [REP1-025] and concluded:

'9.28 The Council considers that there is potential for Negative impacts on Lowland Mixed Deciduous Woodland and Wet Woodland (Section 42 habitats), badger and dormouse, however, these will be at a site scale in relation to woodland and dormouse, whilst disturbance during the construction phase could impact negatively upon badger habitat.

Further Negative impacts have been identified in respect of mature trees and birds; however, the mitigation proposals put forward will enable the impacts to become positive in some cases.

9.29 Neutral impacts have been assessed upon the Afon Tywi SAC, Afon Twyi SSSI, bog at Rhydargaeuau, pingo complex at Alltwalis, purple moor grass and rush pasture, otter and reptiles. Further neutral impacts have been identified which can be assessed as positive providing the mitigation proposed by the applicant is implemented successfully i.e. foraging and commuting bats

9.30 The recreation of native habitats within the area of plantation woodland to be felled has been assessed as Positive.'

- 5.3.20 It is likely that a number of setts (up to 14 currently) will experience temporary disturbance (as defined by Natural England in the Badger Disturbance Guidance document published in 2009) as a result of the construction of the proposed development. A temporary negative impact on this receptor is anticipated only during construction. CCC at paragraph 5.3.9 of SoCG agree with this conclusion [REP1-082]. The ExA is content that the SoS can conclude the requirements of EN-1 have been met.

- 5.3.21 NRW and CCC at paragraph 5.3.6 and 5.3.7 of their respective SoCG's [REP2-036 and REP1-082] state:

"It is agreed that an appropriate survey effort was used for all species and habitats assessed and that the level of survey undertaken and reported in the ES is appropriate for the scale of impact anticipated."

- 5.3.22 NRW in their SoCG [REP2-036] confirm at paragraph 5.3.7 that:

"It is agreed that the ES is comprehensive, and that all of the relevant ecological receptors and impacts associated with the Proposed Development have been considered in Chapter 10 section 10.6-10.8 of the ES (Volume 6.2, APP-065)."

- 5.3.23 NRW at paragraph 5.3.30 and 5.3.31 of their SoCG [REP2-036] state:

"Habitat Management Plan

5.3.30 A Habitat Management Plan (see CEMP Volume 8.6, APP-127) has been developed in consultation with NRW to provide further details on ecological mitigation, compensation and enhancement to be carried out both during and following construction activities. It is agreed that the draft Habitat Management Plan submitted with the ES provides an appropriate and suitable approach to ecological mitigation and enhancement."

"Construction Environmental Management Plan

5.3.31 A Construction Environmental Management Plan (CEMP) (Volume 8.6, APP-127) has been developed in consultation with NRW to provide further details on ecological mitigation to be carried out during construction activities. It is agreed that the draft CEMP (Volume 8.6) provides an appropriate and suitable approach to ecological mitigation during construction at this stage of the proposed development and that the final CEMP, to be agreed by the relevant planning authority will in addition include relevant mitigation for otters, pre-tree felling checks for bats and is appended with the Dormouse Method Statement. The final CEMP will also include contact details for ecological advice and supervision, including copies of EPS 'toolbox talks'. A timetable for work in accordance with the method statement will also be included."

- 5.3.24 A Habitat Management Plan (HMP) [REP3-039] and CEMP [REP4-026] are secured in the ExA's recommended DCO (Appendix D of this Recommendation Report) by Requirements 15 and 21 respectively for Options A and B. The final versions are to be certified documents and also the Requirements secure that they will be drafted in accordance with the outline plans submitted to the Examination. The ExA is confident that through the implementation of a coordinated mitigation strategy i.e. HMP and CEMP, there should be no significant effects, either alone or cumulatively with other proposed development on species associated with habitat loss. NRW and CCC expressed their support for the Requirement's intentions and powers in their

responses to the ExA FWQ [REP1-014 and REP1-019] and at the DCO ISH under agenda item 7 at the DCO ISH [EV-025].

- 5.3.25 No changes to Requirement 15 were made during the course of the examination. The ExA requested more detail on the content of the CEMP following discussions at the 10 December 2015 DCO ISH under agenda item 7 [EV-025]. These details were provided in draft DCO, Option A, Version B [REP3-048] and captured for Option B in [CR-011] and are discussed further in Chapter 9 of this Recommendation Report.
- 5.3.26 CCC in their SoCG [REP1-082] at Section 10.7 state:
- "Both parties agree that the s106 as submitted can be amended to include at (ii) for woodland creation in addition to the planting of trees. The successful implementation of the Fund will be sufficient to comply with national and local policy concerning enhancement, in particular NPS EN-1 paragraph 5.3.15, and CCC LDP Policies SP1, SP14, GP1, EQ4 and EQ6. Both parties agree that the works are enhancement to the extent that they are not required to mitigate otherwise significant environmental effects."*
- 5.3.27 A number of IPs in their RRs [RR-016, RR-026 and RR-028] and WRs [REP1-005, REP1-006 and REP1-022] raised biodiversity issues which were of concern. The Applicant's responses can be viewed at [REP1-027 and REP2-031] and potentially significant matters raised are discussed immediately below in this Recommendation Report.
- 5.3.28 Grwp Blaengwen claimed that the clearance of trees in the Brechfa Forest may affect pine martens, which are a protected species under the Wildlife and Countryside Act 1981. They claimed this would contravene protected species legislation. They contended that if the line were undergrounded, this problem would 'probably' not occur [RR-028].
- 5.3.29 The Applicant responded [REP2-031] stating that the ES (Chapter 10, paragraph 10.5.65 [APP-065]) acknowledges that there is a likelihood that pine marten reside in Brechfa Forest in low numbers. As pine marten are wide ranging, nocturnal animals with a large area of habitat available to them, the residual impact (during construction) was not found to be significant at any level (Table 10.8 of the ES [APP-065]). No specific mitigation has been proposed (or requested by statutory consultees) for pine marten. However, the proposed enhancements for Brechfa Forest outlined in the HMP (which are secured by Requirement 15 in the recommended DCO) are likely to result in an increase in food sources such as small rodents, birds and beetles which are favoured by pine martens [REP2-031]. This evidence was not challenged in the examination.
- 5.3.30 Judith Chaudri in [RR-016] raised the potential of electrified cables affecting birds.

- 5.3.31 The Applicant responded [REP1-027] saying there is no evidence for bird species being present along the proposed route that are susceptible to electrocution impacts (i.e. larger species that perch or nest on wires or poles). The Applicant pointed out that electrocution from transmission lines occurs when birds attempt to rest on an electrical wire or structure causes a short-circuit by bridging the gap between live components and/or live and earthed components. Typically, this occurs when birds sit on a grounded part of the structure and the current is passed through them, or by birds with large wingspans contacting separate power lines simultaneously. The Applicant maintains that there are no large species in the area that like to perch on poles and that have wing spans big enough to bridge the gap between live and earthed components or multiple lines (which would require a wing span of approximately 2m). Perching on wires is also most likely to occur in areas of scrub or grassland where there are few natural perching locations [REP1-027].
- 5.3.32 NRW in their SoCG at paragraph 5.3.4 agreed that electrocution impacts on birds could be scoped out of the ES [REP2-036].
- 5.3.33 Biodiversity was addressed under agenda item 7.7 at the Environmental Matters ISH [REP3-043]. The loss of habitat features such as trees, hedgerows and sections of woodland which could also have an impact upon species of biodiversity interest e.g. dormice, bats, otters and pine marten was addressed [APP-065]. The ExA explored the Applicant's assessment on the extent of impacts and appropriateness of the mitigation and monitoring proposed in the HMP and CEMP [APP-127].
- 5.3.34 None of the IPs listed above provided any evidence that contradicted the oral evidence provided by the Applicant at the hearings (section 5.8 of [REP3-043]).
- 5.3.35 The following Requirements were agreed by all parties to be appropriate under agenda item 7.7 [REP3-043] and are secured in the Recommended DCO:
- Requirement 16 Trees to be affected - see section 5.2.42 of this Recommendation Report. This Requirement was not altered during the course of the examination;
 - Requirement 17 Lighting - provides for details of lighting required to illuminate working areas, including construction compounds shall be submitted to and agreed in writing by the relevant planning authority prior to its first use. The lighting shall be directional and shall not spill onto watercourses, riparian corridors, residential properties or gardens. This Requirement was not altered during the course of the examination;
 - Requirement 28 Hedgerows - stipulates the width of individual hedgerows to be removed shall be restricted to a maximum width

of 8m⁶⁷ within Work No. 2 and 6m within Work No. 1 and Work No. 3. This Requirement was altered as detailed above during the course of the examination The hedgerow within work no.2 shall be translocated and reinstated; and

- Requirement 29 Otter surveys - provides for pre-construction surveys The Applicant responded to the ExA FWQ HA09 [PD-011] with a commitment to introduce this Requirement to provide for pre-construction otter surveys. These details were provided in draft DCO, Option A, Version A [REP2-027] and captured in draft DCO Option B [CR-011].

ExA's Biodiversity conclusions

- 5.3.36 Given the evidence presented, the ExA is satisfied that the Applicant's assessments and mitigation measures proposed for Options A and B, have given due and proportionate regard to the provisions in EN-1 and EN-5 with regard to nationally designated sites, regional and local sites, protected habitats and other species.
- 5.3.37 The ExA is satisfied that NRW and CCC concerns regarding effects on biodiversity have been dealt with adequately [REP2-036 and REP1-082] by the Applicant via the recommended DCO through Requirements 5, 15, 16, 17, 21, 28, 29 and through a s106 Agreement.

5.4 WATER QUALITY AND RESOURCES

POLICY

- 5.4.1 Section 5.15 of EN-1 states that energy infrastructure can have adverse ecological impacts on the water environment, including groundwater, inland surface water, transitional waters and coastal waters. Paragraph 15.15.2 states that where a project is likely to have impacts on the water environment the applicant should undertake an assessment of the existing status of impacts of the project within an ES.
- 5.4.2 As stated in Paragraph 5.15.3 of EN-1, 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; and*
- Any impacts of the proposed project on water bodies or protected areas under the Water Framework Directive and source protection zones (SPZs) around potable groundwater abstractions."*

⁶⁷ The Applicant responded to the ExA FWQ EIA16 [PD-011] with a commitment to introduce this Requirement to provide the dimensions of hedgerow removals

ASSESSMENT OF EFFECTS ON WATER QUALITY AND RESOURCES

- 5.4.3 The ES Chapter 12 [APP-067] considers the potential for impacts upon Geology, Hydrogeology and Ground Conditions with Chapter 13 [APP-068] considering Hydrology and Flood Risk for Option A and in sections 5 and 13 of CR-003 for Option B. Chapter 13 identified current surface abstractions and active discharge consents, whilst Chapter 12 records groundwater abstractions and the location of private water supplies.
- 5.4.4 Both chapters for Option A and Option B conclude that there would be no significant negative impacts (alone or cumulatively) resulting from the proposed development when mitigation measures, which include adherence to NRW Pollution Prevention Guidelines⁶⁸ and an emphasis on the use of trackway for access tracks, are incorporated. Furthermore specific measures to reduce pollution incidents arising from the directional drilling are proposed in Section 1.4 of [REP1-076]. These are secured by Requirements 21 and 24 in the recommended DCO. More detail on the content of the Requirement 24: Frac-out contingency plan was requested by the ExA following discussions at the 10 December 2015 DCO ISH under agenda item 7 [EV-025]. These details were provided in Draft DCO Option A, Version B [REP3-048] and captured for Option B in CR-011.
- 5.4.5 At paragraph 9.3.9 of the CCC SoCG [REP1-082] it states:
- "The parties to this SOCG agree with the stated conclusions on the absence of any significant cumulative effects."*
- At paragraph 4.1.25 of NRW SoCG[REP2-036] it states:
- "Assessment has been undertaken of both the combined and additional cumulative effects.*
- No significant cumulative hydrology or water quality effects would arise. "*
- 5.4.6 The proposed development (Option A and B) will not have any abstraction of water from any watercourses and the Applicant believes that appropriate pollution prevention measures to safeguard the water environment are in place, and therefore concludes that the Water Framework Directive (WFD) watercourses identified will not be affected [APP-068]. The Applicant in its response[REP1-028] to the ExA's FWQ EIA19 [PD-011] stated:

⁶⁸ <https://www.gov.uk/government/collections/pollution-prevention-guidance-ppg>

"The Proposed Development is located within the Western Wales River Basin District. ...No specific relevant environmental objectives have been identified within the River Basin Management Plan: groundwater, for the area through which the Proposed Development passes. The Management Plan lists actions required of industries and other business to improve the water environment by 2015. ... The Environmental Statement (ES) Chapter 12 Ground Conditions [APP-067] identifies embedded mitigation measures to prevent pollution to ground and controlled waters.

5.4.7 The ES Chapter 12 [APP-067] identifies and assesses potential impacts to controlled waters through the creation of pathways to groundwater and surface water resources and via contamination of soils, surface water or groundwater by spillages or through accidental import of contaminated material and spreading, or discharge of liquid wastes and sewage during construction (including frac-out of drilling fluids at HDD sites). NRW agrees (see paragraphs 4.1.25-4.1.27 of [REP2-036]) with the Applicant that taking into account embedded mitigation measures, presented within Chapter 12 of the ES [APP-067], the potential impact on controlled waters are considered to give rise to an overall minor adverse (not significant) consequence of impact.

5.4.8 Correspondence dated 19 September 2014 between the Applicant and Natural Resources Wales (NRW) states that [REP1-028]:

"...with the use of the HDD technique, it is confirmed that there will be no impact upon the River Towy. The cables will be laid at a depth no less than 1m below⁶⁹ the soft bed of the Towy and will emerge no less than 15m from the top of bank. Therefore there will be no requirement for a Water Framework Directive Assessment to be undertaken."

5.4.9 NRW in response [REP1-019] to the ExA's FWQ EIA23 [PD-011] confirmed that a WFD Assessment was not required:

"We agree with WPDs statement that a Water Framework Directive assessment is not required in this case..."

5.4.10 The ExA in coming to its conclusion, notes in respect of the WFD the Applicant concludes that residual construction and operational effects on surface water are not anticipated to have a significant impact on the ability to meet WFD objectives as they would not lead to a deterioration in any element of the water body classification or introduce impediments to the water body attaining Good Ecological Status or Good Ecological Potential or permanent exclusion/compromise to other water bodies in those WFD catchments. The ExA did not receive any evidence to counter this assertion.

⁶⁹ Requirement 8 now specifies 5m [REP8-023]

- 5.4.11 The assessment of potential impacts on water quality was highlighted in the identification of principal issues [PD-005].
- 5.4.12 At paragraphs 4.1.15 and 4.1.16 of NRW's SoCG [REP2-036] it states:
- "4.1.15 The parties agree that the description of the baseline environment used for the construction, operation and decommissioning phases for the hydrology, drainage and flood risk assessment is an appropriate and accurate description of the baseline conditions.*
- 4.1.16 The parties agree that the approach to projected changes to the baseline environment (the future baseline) is appropriate."*
- 5.4.13 At paragraph 4.1.4 of NRW's SoCG [REP2-036] it states:
- "The parties agree that the assessment method for the consideration of construction, operation and decommissioning effects on water quality and supply, drainage and flood risk is appropriate and that it has been applied correctly."*
- 5.4.14 The assessment detailed in the ES Chapter 13, Sections 13.6-13.10, [APP-068] for Option A and in section 5 of [CR-003] for Option B identified that the potential consequence of identified impacts on hydrology (after implemented mitigation) would be of a negligible adverse effect. The ES concluded that long term adverse effects to hydrology as a result of the proposed development are not expected either alone or cumulatively.
- 5.4.15 At paragraphs 4.1.22 to 4.1.24 of NRW's SoCG [REP2-036] it states:
- "4.1.22 The parties agree that the assessment and the prediction of the consequence of effect to the hydrology and flood risk during construction, operation and decommissioning phases is appropriate and are agreed on the conclusions for the significance of effect.*
- 4.1.23 The parties agree that the description of the climate change effects on the hydrology, drainage and flood risk assessments is accurate.*
- 4.1.24 NRW has confirmed to PINS in their relevant representations (RR-021) that it 'agree(s) with conclusions of the FCA which state that the development will have a negligible impact upon flood risk."*
- 5.4.16 Mrs Rentmore and Mrs Medland asserted that their spring well water sources would be tainted by the leakage of creosote chemicals from the wooden poles at the CAH on the 2 December 2015 under agenda item 5 [EV-013]. They also claimed that flow from their wells could be interrupted by the placement of the poles in the ground [RR-016, REP2-001, REP2-016, REP3-013, REP3-021, REP3-030, REP3-033 and REP8-045].

- 5.4.17 The Applicant in direct response to IPs concerns regarding the protection of water supply proposed mitigation to surround the relevant poles i.e. 170, 171 and 172 (these are the three closest poles to water supplies of Mrs Rentmore and Mrs Medland) in a concrete sleeve [REP3-042]. The sleeves have been used in wet areas of West Wales (no contamination has been reported or identified by WPD or NRW [REP4-004]). This mitigation is secured through Requirement 7 - Protection of private water supplies, provides that the underground sections of poles 170, 171 and 172 shall be placed within a concrete sleeve. The purpose of this Requirement is to protect adjacent water supplies. The ExA agrees that this Requirement meets the tests set out in EN-1, paragraph 4.1.7 and meets requests raised by interested parties in the examination as mitigation. The recommended DCO includes this Requirement (Appendix D).
- 5.4.18 Both Mrs Medland and Mrs Rentmore did not believe the proposed mitigation would be effective [REP4-011 and REP4-012].
- 5.4.19 In ExA's SWQ EIA2-06 [PD-019] the ExA directed the following question to the IPs:
- "In your respective representations [RR-016], [REP2-016], [REP3-030] and [REP3-013] you refer to the potential of the wooden poles to taint your water supplies. Can you point to any published evidence where such incidents have occurred?"*
- 5.4.20 No published evidence was provided by the IPs on incidents of water supplies being tainted by the leakage of creosote chemicals from the wooden poles [REP4-056]. It was proffered as evidence by Mrs Rentmore and Mrs Medland that some of their neighbours had noticed that they had observed an "oily sheen" in the vicinity poles been stored on a road (agenda item 5 of the CAH on the 10 February 2016). However, no documented evidence of this was provided.
- 5.4.21 In its SWQ, EIA2-06 [PD-019], the ExA directed the following question to NRW:
- "Does NRW have any record of such pollution incidents?"*
- 5.4.22 NRW responded [REP4-004] to say they had no record of such pollution incidents.
- 5.4.23 Mrs Rentmore further asserted that the flow from their spring well water source would be disrupted by the placement of the wooden poles in the ground [REP6-008]. A report commissioned by Mrs Rentmore and produced by J H Hatherhall and dated March 2016 was submitted to the Examination at D6 [REP6-008]. Mr Hatherhall did not present any evidence orally at hearings.
- 5.4.24 Mr Hatherhall's report used the source-pathway-receptor (SPR) concept to describe pollutant migration which can result in contamination. It is also important when considering potential changes to groundwater flow. By considering the detailed nature of each element of each water

supply SPR linkage the extent to which the proposed construction activity may interrupt the pathway connecting the water supply with its source (surface water or groundwater) can be determined and the degree of risk posed by the works assessed. Mr Haterhall states at section 6.1.2:

"For any PWS it must therefore first be established if there is a risk to mitigate and then, if necessary, mitigation measures to reduce the risk introduced."

5.4.25 Section 6.2 of the J H Haterhall Report [REP6-008]states:

"The risk assessment assumes that there is potential for a connection between the proposed poles and source springs. Such a connection cannot be verified for the reasons outlined above but the conceptual model is such that this must be considered to be a possibility."

5.4.26 The ExA in its Rule 17 letter of the 30 March 2016 [PD-039] directed the following question to Mrs Rentmore:

"Can you (or your hydrogeological consultant Mr Haterhall) point to any published record where wooden overhead line poles whose foundation depths do not exceed 2.7m from natural ground level (Requirement 27 of Draft Development Consent Order (DCO) Version E [REP5-023]) have been shown to have interrupted the pathway connecting any water supply with its source (surface water or groundwater)?"

5.4.27 In response Mrs Rentmore stated [REP8-003]:

"I do not know of any published records of 'interrupted pathways connecting any water supply with its source."

5.4.28 The ExA in its Rule 17 letter of the 30 March 2016 [PD-039] directed the same question to NRW and CCC. In response to the ExA Rule 17 [PD-039] CCC stated [REP8-034]:

"The Council's pollution control and land drainage sections have been consulted. Both have indicated that no incidents have been reported where wooden overhead line poles, whose foundation depths do not exceed 2.7m from natural ground level have been shown to have interrupted the pathway connecting the water supply with its source, surface water or groundwater."

5.4.29 NRW concurred with the CCC response above [REP8-001].

5.4.30 At paragraph 4.1.30 of NRW's SoCG [REP2-036] it states:

"The parties agree that the mitigation measures proposed as set out in the ES Chapter 13, Section 13.9 (Volume 6.2, APP-068) and the CEMP (Volume 8.6, APP-127) are basically reasonable and appropriate."

5.4.31 Mr Hatherall concludes in his report at section 8.1[REP6-008]:

"Since the risk of potential impact remains uncertain, it is considered that it would be responsible to develop, in addition to other mitigation being considered in the Construction Method Statement and Construction Environmental Management Plan, site specific mitigation measures to protect both the quantity and quality of the PWS. An outline of possible measures have been provided in this report to target and reduce potential risks."

5.4.32 The Applicant considers it to be a remote possibility for a wooden pole to affect either the quality or quantity of supply. Mitigation is however proposed on a precautionary basis to allay IP concerns, and this is summarised below [REP8-032]:

- In line with the CEMP [REP4-026] secured via Requirement 21 of the recommended DCO, the proposed mitigation already put forward by the Applicant of placing the poles 170, 171 and 172 in concrete sleeves mitigates the risk of leaching of preservative from the poles and severs the linkage between the source and the receptor (Requirement 7 of the recommended DCO, provides that the underground sections of poles 170, 171 and 172 shall be placed within a concrete sleeve. The purpose of this Requirement is to protect adjacent water supplies (Appendix D of this Recommendation Report));
- In line with the Construction Management Strategy (CMS) [APP-125 and APP-126] and, due to the sensitive nature of the ground conditions, the predominant form of access envisaged is that of vehicles with low bearing pressure tyres or with rubber tracks;
- All other relevant mitigation proposed through the CEMP [REP4-026] will be applicable to ensure the Private Water Supplies (PWS) is not impacted by the works;
- Arrangements for dealing with spills, leaks and unplanned emissions, unplanned damage to the environment and other environmental incidents is detailed in the Pollution Prevention and Emergency Response Plan (which is an appendix to the CEMP);
- An Environmental Incident Response Team, reporting to the Site Manager, shall be trained by the contractors to deal with pollution incidents in conjunction with other safety-related incidents as required (part of CEMP);
- A suitable quantity of pollution control equipment, e.g. spill kits containing absorbent pads, absorbent granules etc. will be kept in the stores for use in the event of an emergency. The Environmental Manager shall ensure that adequate pollution control equipment is maintained and carried by the work crews secured via Requirement 21 in the recommended DCO (Appendix D of this Recommendation Report); and
- Prior to the commencement of works the Applicant has agreed with CCC that it will sample the quality of the water supply at properties occupied by Mr and Mrs Rentmore and Mrs Medland. This will provide CCC with an understanding of current water quality prior to works commencing. Following works, the Council will again sample the water quality to enable a comparison to be

made. Subsequently, both properties will be included within the Council's established PWS sampling regime. This will be secured through an easement between the Applicant and IPs separate from the DCO.

- 5.4.33 The Applicant has clearly taken on board Mr Haterhall's mitigation proposals from section 8 of his report [REP6-008]. Requirements 3, 7, 8, 12, 21, 26 and 27 of the recommended DCO (Appendix D of this Recommendation Report) puts in place mechanisms to manage effects on water quality and resources during design, construction, operation and de-commissioning.

Conclusion on water quality and resources

- 5.4.34 The three nearest poles to the IPs water supplies will have concrete sleeves to encase the base of the poles. Precautionary mitigation measures have been put in place in line with Mr Haterhall's report. The ExA is satisfied there has been no persuasive evidence provided by IPs that spring well water sources would be tainted by the leakage of creosote chemicals or would have its flow disrupted from the wooden poles. However the mitigation proposed by the Applicant clearly addresses the possibility of any potential harm which could arise.
- 5.4.35 The SoS can be satisfied that the proposed development would comply with the WFD and would not result in a failure to meet WFD objectives. They would not lead to a deterioration in any element of the water body classification or introduce impediments to the water body attaining Good Ecological Status or Good Ecological Potential or permanent exclusion/compromise to other water bodies in those WFD catchments. The ExA considers that the water quality and resource issues have been addressed adequately for Options A and B and meets the requirements of EN-1 based on the secured mitigation measures in the recommended DCO (Appendix D of this Recommendation Report).

5.5 FLOOD RISK

POLICY

- 5.5.1 EN-1 states in paragraph 5.7.3 that flood risk is taken into account in the planning process:
- "...to avoid inappropriate development in areas at risk of flooding, 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."*
- 5.5.2 Flood Risk and climate change are considered in section 13.2 of Planning Policy Wales (PPW), this section highlights that flood risk is a material consideration. Paragraph 13.2.4 highlights that:
- "...meeting the Welsh Government's objectives for sustainable development requires action through the planning system to move*

away from flood defence and mitigation of the consequences of new development in areas of flood hazard towards a more positive avoidance of development in areas defined as being of flood hazard."

- 5.5.3 TAN 15 is the technical guidance which supplements the policy set out in PPW in relation to development and flooding. CCC agrees (see paragraph 10.3.3 of [REP1-082]) that the Planning Statement [APP-119] demonstrates that the proposed development is in conformity with TAN 15.

THE APPLICANT'S ASSESSMENT OF FLOOD RISK

- 5.5.4 The ES Chapter 13 [APP-068] addresses Hydrology and Flood Risk. The full description of the baseline environment relating to drainage and flood risk is presented in ES Chapter 13, Section 13.5 [APP-068] and the Flood Consequence Assessment (FCA) [APP-051] for Option A and at section 5 of [CR-003] for Option B.
- 5.5.5 The assessment detailed in Chapter 13, Sections 13.6-13.10, [APP-068] for Option A and section 5 of [CR-003] for Option B identified that the potential consequence of identified impacts on hydrology and flood risk (after implemented mitigation) would be an effect of negligible adverse significance (i.e. not significant in terms of the EIA Regulations); no effect of moderate significance or above (i.e. a significant impact) has been identified by this assessment. The Applicant concluded that long term adverse effects to hydrology and flood risk as a result of the proposed development are not expected.
- 5.5.6 The flood zones traversed by the alignment range from A (very little risk) to C2 (high risk) at river crossings i.e. Tywi/Gwilli, Tywi and Nant Pibwr. TAN15 sets out the Justification Test, which states that a development has to be justifiable to be developed within Flood Zone C1 or C2. The Applicant's flood consequence assessment demonstrates that the requirements of the Justification Test have been met have been met for all three locations (Flood Zone C2) [APP-051]. The proposed development works are temporary, with no permanent structures left in the flood zone that would alter the existing impermeable area on site.
- 5.5.7 The assessment of potential flooding impacts was highlighted in the identification of principal issues [PD-005].
- 5.5.8 At paragraphs 4.1.15 and 4.1.16 of NRW's SoCG [REP2-036] it states:
- "4.1.15 The parties agree that the description of the baseline environment used for the construction, operation and decommissioning phases for the hydrology, drainage and flood risk assessment is an appropriate and accurate description of the baseline conditions.*
- 4.1.16 The parties agree that the approach to projected changes to the baseline environment (the future baseline) is appropriate."*

- 5.5.9 At paragraph 4.1.4 of NRW's SoCG [REP2-036] it states:
- "The parties agree that the assessment method for the consideration of construction, operation and decommissioning effects on water quality and supply, drainage and flood risk is appropriate and that it has been applied correctly."*
- 5.5.10 At paragraphs 4.1.21 to 4.1.24 of NRW's SoCG [REP2-036] it states:
- "4.1.21 The assessment detailed in Chapter 13, Sections 13.6-13.10, (Volume 6.2, APP-068) identified that the potential consequence of identified impacts on hydrology and flood risk (after implemented mitigation) will be of a negligible adverse effect; no consequence of effect of moderate or above has been identified by this assessment. Therefore, long term adverse effects to hydrology and flood risk as a result of the Proposed Development are not expected."*
- 5.5.11 NRW agreed that the assessment and the prediction of the consequence of effect to the hydrology and flood risk during construction, operation and decommissioning phases is appropriate and are agreed on the conclusions for the significance of effect. Also NRW agreed that the description of the climate change effects on the hydrology, drainage and flood risk assessments is accurate (see paragraphs 4.1.22-23 of [REP2-036]).
- 5.5.12 NRW has confirmed in their relevant representations [RR-021] that it *"agree(s) with conclusions of the FCA which state that the development will have a negligible impact upon flood risk."*
- 5.5.13 Chapter 13, Section 13.9 of the ES [APP-068] outlines the consents and licences which may be required to facilitate the development with regard to hydrology, drainage and flood risk. This has been updated in [REP3-054]. Applications will be submitted to NRW for consent should they be required.
- 5.5.14 At paragraph 4.1.30 of NRW's SoCG [REP2-036] it states:
- "4.1.30 The parties agree that the mitigation measures proposed as set out in the ES Chapter 13, Section 13.9 (Volume 6.2, APP-068) and the CEMP (Volume 8.6, APP-127⁷⁰) are basically reasonable and appropriate."*
- 5.5.15 Requirement 26 in the recommended DCO (Appendix D of this Recommendation Report) secures that prior to the commencement of development within areas identified as being at risk of flooding in the flood consequence assessment a flood risk management strategy and a flood evacuation plan will be submitted to and approved in writing by CCC in consultation with NRW. The works shall be implemented in

⁷⁰ Updated I [REP4-026]

accordance with the approved strategy and plan. This Requirement was not altered during the course of the examination.

- 5.5.16 No evidence has been submitted to the Examination challenging the Applicant's, NRW's and CCC's overall assessment conclusions on flood risk.

CONCLUSION ON FLOOD RISK

- 5.5.17 NRW have not raised any concerns with the Applicant's assessment of flood risk in the SoCG and NRW agree with the conclusions of the FCA [REP2-036]. CCC agrees that the proposed development is in conformity with TAN15.
- 5.5.18 The ExA considers that the examination of flood risks for Options A and B has been addressed adequately, takes full account of the additional risk from climate change (see section 5.14 of this Recommendation Report) and meets the requirements of EN-1.

5.6 HEALTH AND ELECTRIC MAGNETIC FIELDS

POLICY

- 5.6.1 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 ES should assess these effects for each element of the project, identifying any adverse health impacts, and identifying measures to avoid, reduce or compensate for these impacts as appropriate.
- 5.6.2 Paragraph 4.13.5 states that, generally, those aspects of energy infrastructure which are most likely to have a significant detrimental impact on health are subject to separate regulation (for example air pollution) so it is unlikely health concerns will either constitute a reason to refuse consents or require specific mitigation. However, health concerns should be taken into account when setting requirements relating to a range of impacts such as noise. Noise, air quality, and other such factors are considered in sections 5.15, 5.16 and 5.12 of this Recommendation Report.
- 5.6.3 EN-5, at 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 (i.e. 50 Hz - ELF) are usually considerably lower than the International Commission on Non-Ionizing Radiation Protection (ICNIRP) guidelines and the related EU Recommendation of 1999 adopted by the Government.
- 5.6.4 The Government has developed a Code of Practice (CoP) with the electricity industry that specifies the evidence acceptable to show compliance with the adopted ICNIRP guidelines. The Applicant has followed this CoP and the proposed development complies [APP-114].

There is no direct statutory provision in the planning system relating to protection from EMFs, nor to the building of power lines near residential or other occupied buildings.

- 5.6.5 However, EN-5 sets out the factors which the applicant should have considered, namely, height, position, insulation and protection (electrical or mechanical); optimal phasing wherever possible; and any new advice emerging from the Department of Health relating to Government policy for EMF exposure guidelines. It states that where it can be shown that EMF exposure is within the relevant public exposure guidelines set out in the CoP, and accords with the policy on phasing, no further mitigation should be necessary. In these circumstances, rerouting a proposed overhead line, or undergrounding it, solely to further reduce the level of EMF exposure, are unlikely to be proportionate mitigation measures.

ASSESSMENT OF EFFECTS

- 5.6.6 The assessment of potential health impacts was highlighted in the identification of principal issues [PD-005].
- 5.6.7 ES Chapter 18 [APP-073] reports upon the assessment work that has taken place on EMFs. The assessment takes into account relevant industry practice and guidance, including the Applicant's standard procedures and designs and that these have been adopted for the proposed development. The assessment states that the proposed overhead line has been designed in accordance with Energy Network Association (ENA) Technical Specifications and satisfies the Electricity Safety Quality and Continuity Regulations 2002 [APP-073 and APP-114].
- 5.6.8 The construction and decommissioning phases of the proposed development has been scoped out of the assessment of EMFs (confirmed by the SoS's Scoping Opinion [APP-116]). This is because the line will not be energised and hence no EMF will be emitted.
- 5.6.9 Three receptor groups were assessed in the operational phase [APP-073]:
- *"Exposure of electricity workers:*
 - *No electricity would be passing through the connection during maintenance therefore there would be no significant impact;*
 - *Exposure of the general public:*
 - *Neither the overhead line or the undergrounded sections would be located in close proximity to any dwellings (minimum distance of 80m) therefore EMF would not present any exposure risk to occupants;*
 - *Impact on wildlife, livestock, agricultural crops or natural habitats:*
 - *Government research suggests that no detectable effects to flora or fauna as a result of EMF have been found."*

- 5.6.10 The Applicant argued that the lack of significant impacts arises through the careful routing of the proposed development with route alignments chosen to avoid passing over or close to residential properties and settlements. Further mitigation is provided through design compliance with the Electricity Safety, Quality and Continuity Regulations 2002 (as amended). With this embedded mitigation in place there is virtually no potential for significant impacts to occur in isolation, or cumulatively with other transmission and distribution infrastructure [APP-073].
- 5.6.11 The only representation received from Public Health Wales was very brief and requested the ExA to consider public health matters [RR-020]. Public Health England (PHE) (By virtue of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 (Regulation 3 and the table in Schedule 1), PHE is a statutory party for 'all applications likely to involve chemicals, poisons or radiation which could potentially cause harm to people and are likely to affect significantly public health'. The prescription of PHE as a statutory party on that basis is not limited to applications in England) in their RR [RR-019] confirm:

"Having reviewed the submitted documentation including the Environmental Statement (ES) dated May 2015, and on the basis of the submitted information PHE is satisfied that the development's potential impacts on public health have been adequately addressed and, where necessary, suitable mitigation has been proposed."

- 5.6.12 Mr Hewer did raise health issues but these all related to the Brechfa Forest West and Altwallis wind farms [REP1-009].

Conclusion on Health

- 5.6.13 The ExA considers that the examination of health risks [APP-073 and APP-114] has been addressed adequately and that the requirements of EN-1 are met. Based on the implementation of the proposed mitigation in the CEMP [REP4-026] which is secured by Requirement 21 in the recommended DCO (Appendix D of this Recommendation Report), for the construction, operation and decommissioning of the Project, the ExA considers there is no evidence that suggests that the proposed development will result in adverse public health impacts. Requirement 21 was the subject of a number of alterations during the course of the examination, which are discussed further in Chapter 9 of this Recommendation Report.

5.7 HISTORIC ENVIRONMENT

POLICY

- 5.7.1 Paragraph 5.8.1 of EN-1 states that construction, operation and decommissioning of energy infrastructure has the potential to result in adverse impacts on the historic environment.

- 5.7.2 The historic environment includes all aspects of the environment resulting from the interaction between people and places through time, including surviving physical remains of past human activity, visible, buried or submerged, landscaped and planted or managed flora. A heritage asset may be any building, monument, site, place, area or landscape or combination of these. Some of these assets will be formally designated; others may not but may have demonstrably equal significance. EN-1 states that the decision-maker should consider the impact on non-designated assets and provide equal weight to them where evidence suggests that the criteria set out within EN-1 paragraph 5.8.4 apply.
- 5.7.3 EN-1 paragraph 5.8.9 notes, regarding archaeological interest, that the applicant should carry out appropriate desk-based assessment and, where such desk-based research is insufficient to properly assess the interest, a field evaluation.
- 5.7.4 EN-1, at paragraphs 5.8.13 to 5.8.15, points to the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets, the contribution of their settings and the positive contribution they can make to sustainable communities and economic vitality. 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.
- 5.7.5 The Holford Rules (Guidelines for the Routing of New High Voltage Overhead Transmission Lines) are relevant to route planning. Holford Rule 2 states that smaller areas of amenity value, or scientific interest, should be avoided by deviation, provided this can be done without using too many angle poles. It advises that, where possible, routes should be chosen which minimise effects on the settings of areas of architectural, historic and archaeological interest. The ExA has had regard to this advice in assessing the effects of the proposed development on the settings of historic assets.
- 5.7.6 In relation to mitigation, paragraphs 5.8.29- 5.8.21 of EN-1 seeks to ensure that any loss as a result of development is recorded before it is removed, but also to impose conditions to ensure work is carried out in a timely manner to identify both suspected but also non-designated assets and ensure appropriate procedures are in place to investigate.
- 5.7.7 Chapter 6 of PPW details The Welsh Government's objectives to preserve or enhance the historic environment.
- 5.7.8 For those policies where non-compliance is identified, the consistent issue on each occasion is the Applicant's proposal to erect poles 84-86 within the Towy/Tywi Valley SLA and RLOHIW⁷¹ (Section 19 of [REP1-

⁷¹ See Section 4.6 of this report

025]). The recommendation of Option B would allow the proposed development to achieve compliance the following CCC local policies: SP13; SP14; EQ1 and EQ5 (see Section 19 of CCC's LIR [REP1-025]).

ASSESSMENT OF EFFECTS

- 5.7.9 ES Chapter 11 [APP-066] for Option A and section 10 of CR-003 for Option B reports upon the potential impact of the proposed development on designated and non-designated heritage assets. It concludes that for Options A and B that there would not be any significant negative impacts either alone or cumulatively and this is primarily as a result of the careful routing of the development which from an early stage sought to avoid areas of historic importance.
- 5.7.10 The desk-based assessment and the assessment of the initial trial excavations is set out in the Outline Archaeological Written Scheme of Investigation (OAWSI) [APP-133 and APP-146], a component of the CEMP [REP4-026]. Mitigation measures are recommended in the OAWSI. Their purpose is to mitigate against the potential for effects on unrecorded historic assets, such as archaeological remains. The incorporation of such mitigation is in accordance with EN-1 paragraph 5.8.22, which states that consideration should be given to requirements to ensure that appropriate procedures are in place for the identification and treatment of such assets.
- 5.7.11 CCC in their LIR [REP1-025] state at paragraph 13.1:
- "There is potential for disturbance to unknown archaeological remains especially along the underground section of the line. Given the potential of this impact the Applicant has included a draft written scheme of investigation (WSI) in the submission documents which details a suitably qualified person being present during works and dealing with archaeological remains if found during the construction phase. The Councils archaeological advisers, Dyfed Archaeological Trust (DAT) have raised no objection to the proposed development are satisfied with the mitigation methodology proposed in the draft WSI. On this basis the impact is judged as Neutral."*
- 5.7.12 CCC in their LIR [REP1-025] go on to state at paragraph 13.2:
- "Within 1km of the works boundary there are 19 listed buildings, of which one is Grade II*, the rest being Grade II. There is also one Grade II* Registered Historic Park and Garden (Bishop's Palace), one scheduled monument (Y Gaer Defended Enclosure) and one Conservation Area (The Parade). The applicant's submitted heritage assessment indicates there will be some minor adverse impacts on the setting of a small number of assets within the study area. This is deemed a Negative impact although minor in terms of significance and the conclusions drawn in WPD's ES are accepted."*
- 5.7.13 Mitigation is secured within the recommended DCO (Appendix D of this Recommendation Report) through Requirement 13, which requires that no stage of the authorised development shall commence until a

written scheme for the investigation consistent with the submitted AOWSI [APP-146] is submitted to and approved by CCC. Any archaeological works or watching brief carried out under the scheme must be by a suitably qualified person or body approved by CCC. Requirement 13 was not altered during the course of the examination.

- 5.7.14 DAT and Cadw in their SoCG [REP1-083] state at paragraph 2.8.3:

"It is agreed by the parties that the mitigation described above is necessary and appropriate. Furthermore, it is agreed by the parties that the Outline Written Scheme of Investigation provides an effective means of securing all necessary mitigation."

Registered Landscape of Outstanding Historic Interest in Wales (RLOHIW)

- 5.7.15 The proposed development crosses the Towy Valley RLOHIW for approximately 2.5km (see Section 4.6 of this Recommendation Report). The RLOHIW comprises the only designated heritage asset which falls within the proposed development boundary. This Landscape of Outstanding Historic Interest in has been assessed in accordance with Assessment of the Significance of Impacts of Development on Historic Landscape (ASIDOHL2) published guidance and methodologies. The Applicant concludes that the effects are predicted to be of minor or negligible adverse significance.
- 5.7.16 CCC and NRW accept that the physical effects can be mitigated following construction. However, CCC/NRW was concerned regarding the indirect impacts the OHL i.e. Option A will have on the special character of the RLOHIW [REP3-027].
- 5.7.17 Cadw at paragraph 2.7.3 of their SoCG [REP1-083] agreed the Towy Valley Registered Historic Landscape would experience adverse impacts during the construction phase, as a result of the excavation of the underground cable route and HDD pits, and the construction of overhead line infrastructure and a compound. These impacts would be both physical and related to changes to its historic landscape character. This Registered Historic Landscape would also experience adverse impacts during the operational phase as a result of the presence of a section of overhead line. These impacts would result in a minor significance of effect on the Registered Historic Landscape.
- 5.7.18 CCC/NRW consider that the undergrounding section of the line i.e. Option B has a neutral impact on the RLOHIW. It is noted by the ExA that CCC/NRW believes that impacts upon hedgerows being removed during construction works will be mitigated by reinstatement hedge planting [REP1-025].
- 5.7.19 Notwithstanding this, CCC/NRW expressed concern that part of the proposed OHL i.e. Option A is within the RLOHIW. CCC and NRW believe the proposed development will have a negative impact on this national designation i.e. 'serious concerns' as described at paragraph 2.8.8 of EN-5. CCC/NRW believed that this could be mitigated by

undergrounding approximately 260m of the line between pole 84 – 86 i.e. Option B [REP3-027]. Undergrounding of the 260m of the line is assessed to have a negligible impact upon potential archaeological remains given the mitigation proposals secured in the recommended DCO via Requirement 13 (Appendix D of this Recommendation Report). This matter is considered in Sections 1.1, 2.2 and 4.6 of this Recommendation Report and the assessment of a negligible effect is supported by NRW and CCC.

Conclusion on Historic Environment

- 5.7.20 Policy on the historic environment within EN-1 has been followed by the Applicant.
- 5.7.21 The ExA agrees that the undergrounding of the line i.e. Option B would have a negligible impact upon potential archaeological remains given the mitigation proposals secured in the recommended DCO via Requirement 13 (Appendix D of this Recommendation Report). This Requirement was not altered during the course of the examination.
- 5.7.22 There would also be negative impacts upon the setting of a small number of listed buildings along the length of the route. The ExA agrees with the Applicant and CCC [REP1-025] that all of these are minor to negligible in terms of significance (i.e. not significant) (Paragraph 2.5.10 of [REP2-038]).
- 5.7.23 A negligible impact is also predicted by CCC and NRW in relation to the undergrounding of the line beneath the RLOHIW. However, CCC and NRW believe, where the OHL i.e. Option A is sited within this designation, negative impacts would occur.
- 5.7.24 The ExA recommends that the alternative of undergrounding Poles 84-86, i.e. Option B is included in the recommended DCO that is attached at Appendix D to this Recommendation Report for the reasons detailed in Sections 4.6 and 5.2 of this Recommendation Report.

5.8 TRAFFIC AND TRANSPORT

POLICY

- 5.8.1 Section 5.13 of EN-1 provides guidance on traffic and transport in relation to energy infrastructure. It advises that the transport of materials, goods and personnel to and from a proposed development during all phases of a development can have a range of impacts, including on the surrounding transport infrastructure, connecting transport networks, economic, social and environmental (noise and emissions in particular).
- 5.8.2 Paragraph 5.13.3 states that if a project is likely to have a significant transport implication, the Applicant's ES should include a Transport Assessment. Applicants should also consult with the relevant Highways Authority (as appropriate) on the assessment and mitigation. EN-1 paragraph 5.13.6 states that new energy infrastructure can give rise

to substantial impacts on the surrounding transport infrastructure and the decision maker should ensure that the Applicant has sought to mitigate these, including during the construction phase.

5.8.3 TAN 18 is the technical guidance which supplements the policy set out in PPW in relation to transport. CCC agrees (see paragraph 10.3.3 of [REP1-082]) that the Planning Statement [APP-119] demonstrates that the proposed development is in conformity with TAN 18.

5.8.4 CCC has confirmed the assessment is in compliance with its local policy SP9- Transportation [REP1-082].

ASSESSMENT OF EFFECTS

5.8.5 The ExA identified Transport and Traffic as a principal issue [PD-005]; primarily issues related to:

- construction traffic movement and routeing;
- the local and national road network; and
- impacts on PRow (dealt with in Sections 5.2 (LVIA) and 5.5 (land use) of this Recommendation Report).

5.8.6 Environmental impacts arising from traffic associated with the proposed development were assessed by the Applicant and reported within the ES at Chapter 16 [APP-071] for Option A and in section 8 of [CR-003] for Option B. This impact assessment is supported by a Transport Assessment [APP-132]. The road network that is most likely to be affected by the proposed development by being part of the proposed access routes or providing direct points of access includes: A40 (T), A48 (T), A484, A485, B4309, B4300, B4301, and B4306 Planning Statement [APP-129] and LIR [REP1-025].

5.8.7 The Applicant's assessment concludes that there would be no significant impacts arising from the construction/decommissioning phase of the proposed development for either Option A or B (with operational impacts scoped out by the Applicant in consultation with CCC). The proposed development would not generate traffic, other than low level maintenance and repair traffic, during its operational phase. The SoS's Scoping Opinion confirmed that, in the context of the EIA process, an assessment of construction traffic only is necessary [APP-116].

5.8.8 Through discussion and consultation with CCC and South Wales Trunk Road Agency [APP-044], the Applicant prepared ES Chapter 16 and supporting documents (Transport Assessment and CTMP) which together confirm that there would be no significant traffic and transport effects arising from the proposed development. The Applicant has produced a CTMP [APP-128 and APP-129], which sets out how the movement of vehicles would be managed across the network. The Applicant concluded no residual or cumulative significant impacts are predicted for either Option A or B.

5.8.9 CCC in their LIR [REP1-025] states at paragraph 11.20:

"The project's Negative impacts will occur during the construction phase as a result of increased traffic movements. These are considered minor and short term in duration, whilst existing accesses will primarily be used. Subject to mitigation being secured such as traffic management these impacts can be reduced and become Neutral. The creation of new agricultural accesses and the modification of existing openings are considered a Positive impact, in addition to the hard surfacing of areas adjacent to accesses to allow for vehicles to emerge in a forward gear."

- 5.8.10 The ES identified 31 locations (defined as individual links on the network over which the maximum traffic flow is predicted to occur). The three locations with the predicted highest traffic flows are 17, (Glangwili Bridge) 20 (Peniel) and 24 (Rhydargaeau) (ES Chp 16 paragraphs 16.9.13 to 16.9.31[APP-071]).
- 5.8.11 At peak, between 2 and 4 two-way HGVs per hour are predicted at Locations 17 and 20. Both locations are on the A485 At each of the three locations identified it is concluded that the highway network is capable of accommodating the type, number and frequency of vehicles proposed The Applicant's assessment does not identify any significant effects.
- 5.8.12 CCC in their SoCG [REP1-082] state at paragraph 8.2.5:

"In view of the construction vehicle numbers involved at the thirty one specified locations the parties agree that there is no requirement to undertake an assessment as per the Guidelines for the Environmental Assessment of Road Traffic (IEMA guidelines). This is because there is no potential for significant effects upon the local highway network to occur given the low number of vehicle movements predicted to be generated. Notwithstanding this conclusion mitigation, which is set out within the CTMP (Volume 8.7 APP-128) is agreed."
- 5.8.13 Jillina Gardner questioned the Applicant's assessment of construction traffic in her WR [REP1-006] and at the Environmental Matters ISH under agenda item 7.8. Jillina Gardner also questioned the cumulative effects assessment [REP3-043].
- 5.8.14 The Applicant, in response to the comments raised by Jillina Gardner and the issue of cumulative effects in-association with other proposed developments, particularly Brechfa Forest West Wind Farm, confirmed that it has assessed cumulative impacts within Chapter 19 of the ES and within the Transport Assessment referenced above [APP-074 and APP-132]. The scope of projects to be considered was agreed with the relevant highways authority and the South Wales Trunk Road Agency. The ES assessed a worst case of all cumulative developments constructing at the same time and concluded no significant impacts.
- 5.8.15 This has been agreed by CCC within its LIR which notes at paragraph 11.20 [REP1-025] that:

"...predicted adverse effects will be minor and of short duration and which subject to the CTMP can be considered neutral. Positive effects are also predicted as a result of four new 'agricultural' accesses and modifications to existing accesses"

- 5.8.16 CCC in their SoCG [REP1-082] state at paragraph 8.2.5:

"...there is no potential for significant effects upon the local highway network to occur given the low number of vehicle movements predicted to be generated."

- 5.8.17 CCC at paragraph 12.19 of its LIR [REP1-025] states:

"It is agreed that it is necessary to temporarily close and divert footpath 2/8/1 for a period of up to six months during construction (PRoW Management Strategy Appendix 1, Volume 8.7 Section 3.2 APP-130). The proposed route of the diversion is set out in figure 3.2 of the PROW Management Strategy and in the Access and Rights of Way Plan section B sheet 2 of 2. WPD are of the opinion that the DCO provides the powers to undertake this work. CCC agree with the proposals for this PROW closure and diversion."

- 5.8.18 The ExA examined the traffic and transport evidence as detailed above in the FWQ [PD-011] and at its Environmental Matters hearing under agenda item 7.8 [EV-020].

- 5.8.19 Requirement 18 of the recommended DCO (Appendix D of this Recommendation Report) secures a CTMP. The Applicant at the ExA and CCC's requests made a number of amendments to this Requirement during the course of examination. These are discussed further in Chapter 9 of this Recommendation Report. The ExA's view is that given CCC comment above, the ExA is confident the CTMP would mitigate any potential construction traffic alone or cumulative effects.

- 5.8.20 The Applicant responded to the ExA FWQ DCO31 [PD-011] with a proposal to amend Requirement 18 of the draft DCO Version B [REP3-048] to state:

"Prior to the commencement of development, the CTMP shall be submitted to and approved in writing by the relevant planning authority. The works shall be carried out in accordance with the approved CTMP."

- 5.8.21 More detail on the content of the CTMP was requested following discussions at the 10 December 2015 DCO ISH under Agenda item 7 of the DCO ISH [EV-025]. These details were provided in draft DCO Option A Version B [REP3-048] and were captured in draft DCO Option B in [CR-011].

- 5.8.22 Requirement 10- Public rights of way, of the recommended DCO (Appendix D of this Recommendation Report) secures that no stage of the authorised development is to commence, that would affect any right of way specified in the public right of way management strategy

[APP-130]for Option A and in [CR-019] for Option B until a written implementation plan and specification for the temporary diversion of a right of way has, after consultation with CCC, been submitted to and approved by the relevant planning authority in relation to that stage. Requirement 10 was not altered during the course of the examination.

Conclusion on Traffic and Transport

- 5.8.23 The ExA concludes that the proposed development, Option A or B raises no long term issues relating to traffic and transport because of the mitigation secured by Requirements 10 and 18 of the recommended DCO. The ExA agrees that the implications for all PRowWs are temporary and of minor adverse significance.
- 5.8.24 The ExA concludes that, subject to requirements set out within the recommended DCO Requirements 10 and 18 in Appendix D the proposed development meets EN-1 policy regarding traffic and transport in all respects.

5.9 LAND USE

POLICY

- 5.9.1 EN-1 section 5.10 provides policy and guidance on land use as well as agricultural land. The NPS states, at paragraph 5.10.5, that:
- "The ES should identify existing and proposed land uses near the project, any effects of replacing an existing development or use of the site with the proposed project or preventing a development or use on a neighbouring site from continuing. Applicants should also assess any effects of precluding a new development or use proposed in the development plan."*
- 5.9.2 In doing so it states in paragraph 5.10.6 that applicants should:
- "Use any up-to-date local authority assessment or, if there is none, provide an independent assessment to show whether the existing open space, sports and recreational buildings and land is surplus to requirements."*
- 5.9.3 Paragraph 5.10.7 of EN-1 advises that applicants should seek to minimise impacts on the best and most versatile (BMV) agricultural land (Grades 1, 2 and 3a Agricultural Land Classification (ALC)) and preferably use land in areas of poorer quality, unless this is inconsistent with sustainability considerations.
- 5.9.4 As the proposed connection serves SSA G, Brechfa 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.

- 5.9.5 The recommendation of Option B would allow the proposed development to achieve compliance the following CCC local policy: SP1- Sustainable Places and Spaces (see Section 19 of CCC's LIR [REP1-025]).

ASSESSMENT OF EFFECTS

- 5.9.6 Information on the land uses traversed by the proposed development is contained within chapter 8 of the Applicant's ES [APP-063] for Option A and in sections 4 and 12 of [CR-003] for Option B. The Applicant estimates the total land take within the Order limits to be 1.16km².

- 5.9.7 The proposed development would affect predominantly ALC Grade 4 agricultural land, although south of the River Towy/Afon Tywi there are patches of ALC Grade 3 land [APP-063]. Impacts on all land types are limited due to the small footprint of development. The Statement of Reasons [REP7-009] for Option A and [REP7-013] for Option B states at paragraph 4.4:

"The area within the proposed development's Order limits is approximately 1.16 square kilometres ("sq. km") principally extending from near Llandyfaelog, Carmarthenshire to Brechfa Forest West Wind Farm."

- 5.9.8 The Applicant argues that only a very small portion of the total land would be affected during construction and operation and this is not considered to be significant with regard to Best and Most Versatile (BMV) agricultural land. Similarly the viability of a farm business is unlikely to be significantly impacted by the proposed development given the small footprint of the development. As a result of the statutory consultation [APP-050] amendments to the initial design have been made to place poles closer to field boundaries where this is technically or environmentally appropriate and as a result, significant impacts are not predicted [APP-063, APP-082, REP1-030 and REP3-022].

- 5.9.9 It was noted by the ExA that there would be a temporary loss of land for construction, particularly the land take associated with the HDD and the proposed underground site compound. The land identified is not BMV agricultural land, whilst damage to agricultural operations from the potential loss of drilling fluids is considered unlikely with appropriate mitigation in place (the Pollution Prevention and Emergency Response Plan which is an appendix to the outline CEMP [REP4-026] secured via Requirement 21 in the recommended DCO (Appendix D of this Recommendation Report). Requirement 21 was the subject of a number of alterations during the course of the examination, which are discussed further in Chapter 9 of this Recommendation Report.

- 5.9.10 A number of IPs raised land use issues in relation to agricultural activity [RR-016, RR-025, REP2-013, REP2-017]. The ExA will address

it substantively in this section but it is also alluded to in Section 5.10 Socio Economics and Chapter 8 Compulsory Acquisition of this Recommendation Report in relation to CA matters and effects on tourism business.

- 5.9.11 The Applicant argues that once the proposed development is built the development does not, in most if not all circumstances, prevent the continued use of land for its current purposes (response to ExA FWQ CA04c [REP1-028]). The ExA is persuaded that the effect of the wooden poles and overhead lines has a very limited interference with the continued use of the land, because the majority of the land affected is agricultural. Farming practices are generally unhindered by the existence of the wooden electricity poles and lines and will remain in productive use.
- 5.9.12 The Applicant has provided a detailed assessment of the effect on land use which is set out in Chapter 8, Land Use, Agriculture and Forestry and Chapter 17, Socio Economics of the environmental statement for Option A [APP- 063 and APP-072] and Option B [CR-003]. The Applicant believes that private rights such as access and drainage are similarly considered to be unhindered by the presence of the lines. Responses to consultation have not identified any significant hindrances to the continued use of the land for current purposes. The ExA is conscious that the construction of the proposed development will prevent a limited area of land from being used but that interference is temporary and the land will be restored after construction. Further, to the extent that any land is affected by the interference the landowner will be compensated for their loss [APP-044 and REP1-028].
- 5.9.13 It was also noted by the ExA that works to cross rivers and roads would be predominantly underground using the HDD technique. The Applicant argued that this would ensure that existing land uses are not affected. Where HDD is not proposed, for example the A40, stringing of the line will be undertaken overnight with the agreement of the local highway authority (Requirement 18 of the recommended DCO (Appendix D of this Recommendation Report)). This will reduce the potential for disturbance to road users.
- 5.9.14 The potential to affect users of public rights of way has been assessed within ES Chapter 17 [APP-072] for Option A and in section 13 of [CR-003] for Option B and a public rights of way management plan is included as an appendix to the Construction Traffic Management Plan (CTMP) [APP-128] for Option A in [CR-019] for Option B. Analysis of the connection route and its construction access points [APP-130] has shown that there are in total 17 PRoW affected⁷² of which:
- One PRoW will require a temporary closure and diversion;

⁷² Schedule 7 of draft DCO Option A [REP8-015] and Option B [REP8-023]

- Fourteen will require temporary closures during the stringing of lines; and
- Eleven locations where a PRoW will be a shared access with a proposed construction access.

5.9.15 The ES concludes that with the application of standard mitigation measures and good site practices as set out in Table 8.4 and section 8.9 of the ES [APP-063], there would be no residual effects of any more than negligible significance during construction, operation and de-commissioning [APP-063]. These will be secured via Requirement 21 in the recommended DCO (Appendix D of this Recommendation Report).

5.9.16 CCC's SoCG [REP1-082] at paragraphs 9.2.11 and 9.3.5 states:

"9.2.11 The parties agree that the desktop characterisation, supplemented with site verification, has provided a robust baseline for informing the assessment of the potential effects on land in agricultural use, including forestry, as a result of the Brechfa Forest Connection."

9.3.5 The parties to this SOCG agree with the conclusions stated in the ES in respect of the identified impacts and the significance of the potential impacts."

5.9.17 CCC at paragraph 12.19 of its LIR [REP1-025] states:

"It is agreed that it is necessary to temporarily close and divert footpath 2/8/1 for a period of up to six months during construction (PRoW Management Strategy Appendix 1, Volume 8.7 Section 3.2 APP-130). The proposed route of the diversion is set out in figure 3.2 of the PROW Management Strategy and in the Access and Rights of Way Plan section B sheet 2 of 2. WPD are of the opinion that the DCO provides the powers to undertake this work. CCC agree with the proposals for this PROW closure and diversion."

5.9.18 CCC goes on to state at paragraph 14.6 of its LIR [REP1-025]:

"It is concluded that Negative impacts will occur during the construction phase on farming practices although these are considered minor and short lived. Soils will also be subject to minor Negative impacts although the significance is adjudged to be minor given the mitigation measures proposed. There will be a loss of productive plantation area during the lifetime of the connection project in the Brechfa Forest. During the operational stage there will be a Neutral impact upon farming practices as it is unlikely land will be taken out of productive use."

5.9.19 CCC considers that the majority of the alignment is acceptable in land use planning terms, however, due to the concerns referred to in section 8 of the LIR (Option A overhead line in Towry Valley SLA/RLOHIW) it is considered that the proposal i.e. Option A is not

‘appropriate’ in accordance with local policy. Option B would be in accordance with local policy [REP1-025].

- 5.9.20 Requirement 10- Public rights of way, of the recommended DCO (Appendix D of this Recommendation Report) secures that no stage of the authorised development is to commence, that would affect any right of way specified in the public right of way management strategy [APP-130] for Option A and in [CR-019] for Option B until a written implementation plan and specification for the temporary diversion of a right of way has, after consultation with CCC, been submitted to and approved by the relevant planning authority in relation to that stage. Requirement 10 was not altered during the course of the examination.
- 5.9.21 The ExA noted that the proposed development has no implications for green infrastructure, other than its temporary implications for PRoWs. No open space, sport or recreational land is crossed by the proposed development. Similarly there is no Green Belt within Carmarthenshire and the Local Development Plan does not designate Green Wedges (EN-1 paragraph 5.10.18).
- 5.9.22 The ES concludes that no significant cumulative effects are predicted for any of the land use, agricultural and forestry receptors identified in the assessment [APP-074] for Option A and in section 13 of [CR-003] for Option B. Potential impacts are limited to direct construction phase impacts⁷³.
- 5.9.23 At paragraph 9.3.9 of the CCC SoCG [REP1-082] it states:
- "The parties to this SOCG agree with the stated conclusions on the absence of any significant cumulative effects."*
- 5.9.24 The Applicant argues that cumulative effects are not anticipated to be of greater significance than those predicted for the proposed development in isolation. It is noted by the ExA that in this rural context, based on the Applicant's analysis, there are currently no reasonably foreseeable plans or projects that could combine to increase the significance of any cumulative effect, and as such cumulative effects in relation to land use, agriculture and forestry are assessed to be not significant.

ExA's conclusion on Land Use

- 5.9.25 The ExA agrees with the Applicant that the majority of land over which permanent rights are to be acquired would experience only minor interference with the use of the land. A significant proportion of the land over which permanent rights would be acquired is in agricultural use. The ExA believes the owners of such land would be able to continue to use the land for this purpose (subject to some restriction on certain activities such as deep ploughing) once construction is

⁷³ Construction and decommissioning are judged to have the same impacts for the purposes of the EIA

completed and it is likely that they would experience only limited interference over the lifetime of the development.

- 5.9.26 The ExA concludes that the land use issues have been addressed adequately and meet the requirements of EN-1 for construction and operation.
- 5.9.27 The ExA has had no reason to disagree with the CCC SoCG [REP1-082] that the conclusions stated in the ES in respect of the identified impacts and the significance of the potential impacts are accurate both alone and cumulatively for Options A and B. The ExA agrees that the implications for all PRowWs and farming practices are temporary and of minor adverse significance.

5.10 SOCIO-ECONOMIC EFFECTS

POLICY

- 5.10.1 EN-1 notes at Section 5.12 that, where the project is likely to have socio-economic impacts at local or regional level, the applicant should undertake an assessment of these impacts as part of the ES.
- 5.10.2 It should consider all relevant socio-economic impacts which may include: the additional local services, and improvements to infrastructure; effects on tourism; the impact of and cumulative effects, were a number of projects developed within the same timeframe. Applicants should describe the existing socio-economic conditions and how the proposed development's socio-economic impacts correlate with local planning policies.
- 5.10.3 EN-1 at section 5.12 states that the decision-maker should have regard to the potential socio-economic impacts identified by the Applicant and from any other sources that the decision-maker considers to be both relevant and important to its decision. It may conclude that limited weight is to be given to assertions of socio-economic impacts that are not supported by evidence (paragraph 5.12.7), in view of the need for energy infrastructure, and should consider any relevant positive provisions to mitigate impacts, for example through planning obligations.
- 5.10.4 Chapter 7 of PPW considers Economic Development. Paragraph 7.1.3 states that the planning system should support economic and employment growth alongside social and environmental consideration within the context of sustainable development. Part 7.4 relates to promoting the low carbon economy, business and technology clusters and social enterprises. It states that local planning authorities should support the shift towards a low carbon economy and be favourable for new on-site low carbon energy generation.
- 5.10.5 TAN13 addresses tourism and TAN23 addresses economic development. CCC agrees (see paragraph 10.3.3 of [REP1-082]) that the Planning Statement [APP-119] demonstrates that the proposed development is in conformity with TAN23.

THE APPLICANT'S ASSESSMENT

- 5.10.6 Socio-Economics, Recreation and Tourism issues are addressed in Chapter 17 of the ES, [APP-072] (namely access, recreation and tourism) for Option A and in section 12 of [CR-003] for Option B arising from the construction, and operation of the proposed development.
- 5.10.7 The scoping opinion issued by the SoS on 21 August 2014 [APP-116] agreed that the scope of the assessment would be limited to the main human socio-economic land uses in the area of the proposed development comprising agricultural land including managed forestry plantations. Other aspects of natural or human land use are covered in other chapters of the ES. The assessment of employment, land use and access during operation was scoped out and impacts resulting from the decommissioning of the proposed development were scoped out [APP-116].
- 5.10.8 The Socio-Economics, Recreation and Tourism assessment draws on information and conclusions presented in a number of other environmental assessments submitted as part of the ES⁷⁴:
- Chapter 8 - Land use agriculture and forestry [APP-063];
 - Chapter 9 - Landscape and visual [APP-064];
 - Chapter 11 - Historic environment [APP-066];
 - Chapter 14 - Noise and vibration [APP-069]; and
 - Chapter 16 Transport and access [APP-071].
- 5.10.9 The Applicant and CCC concluded at paragraph 3.2.9 of the SoCG [REP1-082] that:

"...the parties agree that the survey methodology employed has enabled a robust socio-economic, recreation and tourism baseline to be established for the proposed Brechfa Forest Connection."

ANALYSIS OF EFFECTS AND REPRESENTATIONS

- 5.10.10 The ExA identified economic and social impacts initially as one of the principal issues to be examined in relation to this application. The Rule 6 letter [PD-005] stated that these included issues related to Economic and Social impacts, including issues related to:
- the impact on agricultural activities (dealt with in section 5.5);
 - the impact on tourism and local recreational users; and
 - The adequacy of the baseline assessment methodologies and any proposed mitigation measures to avoid, reduce or compensate for adverse impacts⁷⁵.

⁷⁴ This also applies to Option B in [CR-003]

⁷⁵ These issues are also addressed in the Land Use section 5.5 of this Report

5.10.11 The ExA examined this through:

- Consideration of the application documents and, in particular, Chapter 17 on 'Socio-Economics' in the ES [APP-072] for Option A and section 12 of [CR-003] for Option B;
- Consideration of the LIR [REP1-025];
- Consideration of RRs and WRs;
- Consideration of the CCC SoCG [REP1-082];
- Questions asked at Environmental matters hearing, Agenda Item 7.6 [REP3-045] and
- The ExA's SWQ to IPs, EIA2-07, EIA2-10 and EIA2-11[PD-019] and responses [REP4-003 and REP4-050].

5.10.12 CCC in its LIR [REP1-025] concluded at paragraph 15.5:

"The proposed development will have a Negative impact upon the landscape and visual amenity of the area thus diminishing the experience of public access users and visitors. This impact however is unlikely to significantly harm the County's tourism sector in terms of reduced visitor numbers to the area or have a tangible impact on the income generation associated with tourism within the county. The diversion of an existing PRow during construction works has been adjudged as having a Neutral effect. Job creation and construction contract opportunities during the construction phase represent a Positive impact."

5.10.13 Job creation and construction contract opportunities during the construction phase while it is a positive effect will be temporary and not be significant.

5.10.14 The Applicant and CCC concluded at paragraph 3.4.3 of the SoCG [REP1-082] that:

"The parties agree that the assessment and the prediction of the consequence of impact to socio-economics, recreation and tourism during construction and operation phases is appropriate and are agreed on the conclusions for the significance of consequence with the exception of one national cycle path (NCR47) and PRows 28/20/1 and 28/20/2. CCC is of the opinion that the section of the OHL between Poles 84 and 86 will erode the experience of users of these routes when in proximity to the OHL."

5.10.15 The Applicant addressed cumulative effects in relation to the interaction effects and in-combination effects with identified consented and proposed developments [APP-072 and APP-074]. The Applicant and CCC concluded on cumulative effects at paragraph 2.2.14 of the SoCG [REP1-082] that:

"Chapter 19 of the ES, section 19.5 [APP-074] summarises the assessment of cumulative effects undertaken for each of the environmental topic areas contained at Chapters 8-18 of the ES and concludes there are no significant cumulative effects identified that could lead to a greater significance of effect than already identified in

the topic-specific chapters. In addition it reports that there are no inter-related effects identified that could interact to lead to a greater significance of effect than already identified in the topic-specific chapters. The parties agree with the conclusions reached with the exception of the effects arising from the OHL (Poles 84-86) on which the parties disagree.'

- 5.10.16 A number of IPs queried the Applicant's conclusions on socio-economic effects in their WR [REP1-005, REP1-006, REP1-008, REP1-011, REP1-016 to REP1-018 and REP1-022]. The Applicant's response can be viewed at [REP2-031 and REP3-043].
- 5.10.17 The Applicant, following questioning by the ExA at the ISH on the 8 December 2015 under agenda item 7.6 [REP3-043] provided three examples of similar proposed developments where the socio-economic effects were of minimal significance [REP3-043]:

(i) Ayrshire before and after the event study (2006)

"A before and after construction survey was conducted on the Ayrshire tourism economy to assess the potential impact on the Scotland to Northern Ireland Interconnector (a 275kv O/H line, a project involving small pylons). The pre-construction appraisal of the project concluded that business impact was unlikely to be greater than 10%. The post construction research demonstrated that the actual impact was negligible, with less than 2% of businesses expressing concern as to the resulting negative impact on tourism and visitor business during the planning, construction, and post-construction of the line. The remainder of the research comes from a review of Environmental Statements relating to similar scales projects:

Reference:

Beaully-Denny Report Volume 5: Chapter 4 Tourism, Recreation and Economic Impact

APL 10/6/9 Scotland - Northern Ireland Interconnector, Precognition of David Keddie, Roger Tym & Partners, Economic Impact on Tourism, (November 1994)

APL 10/6/10 Scotland – Northern Ireland Interconnector Ex Post Tourism Impact Assessment – Roger Tym & Partners for SSE (November 2006)

<http://www.gov.scot/Resource/Doc/917/0088569.pdf>

(ii) Mid Wales Connection (Powys) Five Wind Farms and OHL (2009)

"The Mid Wales Connection project involved 54km of 400kV OHL connecting proposed wind farms in Powys to the national electricity network in Shropshire. Up to 80% of the connection was to be built using wood pole lines approximately 14m in height.

However when a tourism survey was undertaken by Jacobs in 2014 for the same project, it found that 88% replied that "the presence of these (OHL) would not affect the spend they would undertake within the area".

Reference: Tourism Survey – Mid Wales Connection, August to September, Jacobs 2014

<https://shropshire.gov.uk/committeeservices/documents/s7084/MidWalesSurveypresentationOct%202014.pdf>

(iii) North Wales Wind Farms Connection Project (2015)

"The main component of this Proposed Development is a new 17 kilometre 132,000 volt (132kV) OHL. The OHL would comprise conductors supported by double wood poles. The wood poles will range between 11m and 16.6m in length.

The vast majority (67%) considered that it would have no impact and a further 13% indicated they would expect it to have a low or minimal impact on business performance. Reasons cited include OHL won't be seen from their business, too far away from their business to affect them directly and people may not like overhead lines but will not put them off coming to the area.

Reference:

The North Wales Wind Farms Connection Project (2015), Environmental Impact statement, Chapter 11 Socio Economic and Tourism Technical Appendices, Peter Brett Associates, March 2015.
<http://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN020014/2.%20Post-Submission/Application%20Documents/Environmental%20Statement/6.23%20ES%20Chapter%2011%20-%20Socio-Economic%20and%20Tourism%20Technical%20Appendices%2011.1.pdf>

- 5.10.18 The Applicant argued that the above evidence added weight to its assessment that there would be no significant effects (positive or adverse) upon Socio-Economics, Recreation and Tourism arising from the construction or operation of Brechfa Forest Connection [REP3-043]. Grwp Blaengwen [REP3-006] questioned the relevance of these three examples but failed to provide any evidence on why they were not relevant.
- 5.10.19 BALM tourism cluster group stated there has been a lack of assessment on the impact of development on tourism and community led projects to support sustainable development linked to cultural heritage of the area. They also claim there has been a lack of mitigation for the above. BALM note that this is a policy area which CCC identifies as not being complied with [RR-026 and REP1-011].
- 5.10.20 The Applicant responded [REP3-043] that Chapter 17 of the Environmental Statement [APP-072] addresses socio-economic,

recreation and tourism aspects, whilst impacts to the historic environment and cultural heritage are addressed in Chapter 11 of the ES [APP-066]. These chapters accord with the scope of work, and level of assessment agreed as part of the scoping phase of the assessment (refer to CCC's response to scoping dated 11 August 2014 and Table 17.2 in the Socio-economic, Recreation and Tourism Chapter 17 of the ES [APP-072]).

5.10.21 The ExA in its second round of written questions EIA2-07, EIA2-10 and EIA2-011 [PD-019] requested that IPs point to any published evidence where such social and economic impacts, which they had described in their representations in writing, had occurred where similar linear infrastructure, i.e. wooden poles, had been installed. The evidence requested [PD-019] was only provided by Jillina Gardiner to the ExA [REP4-050 to REP4-052]. This evidence was primarily discussing the impact of social networking sites on hospitality and tourism industries 'Impact of Social Networking Sites on Hospitality and Tourism Industries' [REP4-053]. The relevance of this evidence to the proposed development was not clearly established to the ExA.

5.10.22 The ExA in its SWQ EIA2-11 [PD-019] to BALM and CCC asked:

'In your representation Brechfa Forest and Llanllwni Mountain Cluster Group [REP3-025] you state:

Carmarthenshire County Council tourism department reports that the current value to the local economy of Brechfa Forest as a tourist attraction is £18 million per year.

Does CCC concur with the above assessment? '

5.10.23 CCC responded to say:

'The Council is not aware of any published or publicly available report it has produced which makes reference to the current value to the local economy of Brechfa Forest as a tourist attraction.'

5.10.24 BALM did not respond to the question.

5.10.25 The ExA can therefore only give limited weight to assertions of socio-economic effects that are not supported by relevant evidence in accordance with paragraph 5.12.7 of EN-1.

CONCLUSION ON SOCIO-ECONOMIC EFFECTS

5.10.26 Given the evidence presented, the ExA concludes that the Applicant has had adequate regard to the socio-economic effects of the proposed development alone and cumulatively for Options A and B and has provided persuasive evidence to support its assessment of the effects.

5.10.27 The evidence of potential harm to socio-economic activities brought about by the proposed development has been presented by IPs but it

lacked context and relevance. Having regard to the advice in paragraph 5.12.7 of EN-1, that limited weight is to be given to assertions of socio-economic impacts that are not supported by more relevant evidence, particularly in view of the need for energy infrastructure. The ExA agrees with CCC that any residual adverse effects on tourism would be minor and acceptable.

- 5.10.28 The ExA concludes that the proposal has adequately addressed the requirements of EN-1 and Options A and B would not have significant deleterious effects socially or economically.

5.11 COMMON LAW NUISANCE ,STATUTORY NUISANCE AND OTHER POTENTIAL NUISANCE

POLICY

- 5.11.1 Paragraph 4.14.2 of EN-1 states that it is very important that, at the application stage of an energy NSIP, possible sources of nuisance under section 79(1) of the TCPA 1990 Act and how they may be mitigated or limited are considered by the decision maker so that appropriate requirements can be included in any subsequent order granting development consent.
- 5.11.2 During construction, operation and decommissioning of energy infrastructure, EN-1 states at 5.6.7 that there will be a potential release of a range of emissions such as odour, dust, steam, smoke, artificial light and infestations of insects, which could have a detrimental impact on amenity or cause a common law nuisance under Part III of the Environmental Protection Act 1990.

Applicant's Assessment

- 5.11.3 For the proposed development, odour, light, smoke, steam and insect infestation were all scoped out of the environmental assessment with the agreement of consultees [APP-116]. As a consequence, these have not been assessed, although the DCO includes a requirement for directional lighting as a form of ecological mitigation (Requirement 17 of the draft recommended DCO in Appendix D of this Recommendation Report). The statement of statutory nuisance [APP-052] confirms that nuisance as defined by the Environmental Protection Act 1990 would not apply. Requirement 17 was not altered in the course of the examination.
- 5.11.4 The Applicant has undertaken an assessment of the potential for impacts upon air quality. This assessment is reported within chapter 15 of the ES [APP-070] for Option A and in section 7 of [CR-003] for Option B and it considers the potential for impacts during the construction and decommissioning phases only (the SoS Scoping Opinion [APP-116] confirmed that operational effects could be scoped out).
- 5.11.5 The assessment includes a construction dust assessment and concludes overall that with recommended mitigation measures in place

the construction and decommissioning impacts would not be significant. Mitigation measures are, however, identified as a precautionary assumption and these include the preparation of a CEMP containing a Dust Management Plan (Requirement 21 (1) (d)) of the recommended DCO (Appendix D of this Recommendation Report). Requirement 21 was the subject of a number of alterations during the course of the examination, which have been discussed previously in this Chapter 5.

5.11.6 The Applicant has provided environmental protection information in the form of a Statement of Statutory Nuisance [APP-052]. It concludes that no nuisance would occur.

5.11.7 CCC state in their LIR [REP1-025] at paragraphs 10.12 and 10.13:

"The approach taken to determine the impacts in the ES are appropriate and in accordance with relevant legislation and guidance. The Council agrees with the conclusions that have been reached and confirm that the proposed mitigation measures, if implemented when required, for the construction phase of the development should be adequate to minimise impacts in the localities of interest. Dust impact from construction is not totally avoidable therefore minor Negative impacts could occur.

...Finally in terms of air quality, dust impact is likely to occur during the construction phase resulting in a Negative impact, however, this can be minimised by effective mitigation as detailed in a dust management plan."

5.11.8 The ExA examined the above evidence on nuisance at its Environmental Matters ISH under agenda item 7.9 [REP3-043]. No evidence was submitted to the Examination by any other IPs challenging the Applicant's and CCC's overall assessment conclusions on the effects of dust and other potential nuisance.

Conclusion on Dust and other potential nuisance⁷⁶

5.11.9 The ExA is satisfied that the potential dust and other nuisance have been considered adequately and appropriately by the Applicant for Options A and B, and that the recommended DCO in Appendix D contains the necessary Requirements to mitigate nuisance:

- Requirement 20 Construction hours - noise nuisance;
- Requirement 21 CEMP - dust; and
- Requirement 17 - lighting.

5.11.10 Under these Requirements, CCC and NRW would approve all mitigation and control plans before construction commences⁷⁷.

⁷⁶ Noise & Vibration is dealt with at Section 5.15 of this Report

- 5.11.11 The defence of statutory authority for nuisance under s158 of PA2008 would be available to the Applicant, subject to Article 17 in the draft recommended DCO, which provides a defence for noise nuisance as a consequence of construction or maintenance of the development.
- 5.11.12 The ExA believes nuisance issues have been assessed adequately for Options A and B and that the mechanisms for the management of potential impacts are robust and sufficient and meet the requirements of EN-1.

5.12 CIVIL AND MILITARY AVIATION AND DEFENCE INTERESTS POLICY

- 5.12.1 EN-1 at Section 5.4 provides guidance to the decision-maker on civil and military aviation and defence interests. It advises that the decision-maker should be satisfied that the proposal has been designed to minimise adverse impacts on the operation and safety of aerodromes and that reasonable mitigation is implemented.

APPLICANT'S ASSESSMENT OF EFFECTS

- 5.12.2 The Applicant consulted with the Ministry of Defence (MoD) and the Civil Aviation Authority (CAA) at both non-statutory and statutory pre-application consultation stages. No objections or comments of significance were received [APP-044]. The Applicant consulted with the MoD at all stages of pre-application consultation. The following responses were received (Response to ExA's SWQ DCO2-16 [REP4-027]):
- stage 1: letter received 06 August 2013 stating that it had no safeguarding concerns; and
 - stage 3: email with letter attachment from Ministry of Defence, Defence Infrastructure Organisation (DIO) stating that it had no safeguarding objections.
- 5.12.3 The following responses were received from the CAA (Response to ExA's SWQ DCO2-16 [REP4-027]):
- email received 30 September 2013 stated that the CAA believed it had no specific comments to make with regard to corridor selection but that it would appreciate further consultation as the project development continued. There was no further correspondence.

⁷⁷ NRW to be explicitly consulted on Requirement 21

- 5.12.4 Given that the maximum height of the infrastructure proposed in relation the connection is 19m⁷⁸, no evidence was presented by IPs that it would affect aviation interests.
- 5.12.5 The Planning Statement [APP-119] made reference to mitigation in respect of the Wales Air Ambulance, whose landing site is located in Section B, within a field bounded by the A485 to the north and Afon Gwilli to the west [APP-137]. Section B contains the underground section of the proposed development. The underground cable runs along the southern and eastern boundary of the field containing the landing site so as to prevent obstruction to helicopter operations during construction. The mitigation referred to in the Planning Statement is therefore embedded within the design of the scheme for which consent is sought [REP4-027].
- 5.12.6 In the opinion of the Applicant, there is no need to secure this mitigation other than through the approval of the appropriate plan (15/WPD/018 Rev A sheet 2 of 2, Schedule 2 Part 10 Works plans [REP8-023]). The ExA agrees with the Applicant as the plans in question will need to be certified under Article 33 of the recommended DCO.

Conclusion on Military Aviation and Defence interests

- 5.12.7 The ExA considers that civil and military aviation interests have been adequately assessed and meet the requirements of EN-1.
- 5.12.8 On the basis of the evidence gathered, the ExA considers that the proposed development would have no impact on aviation or defence interests.

5.13 CLIMATE CHANGE MITIGATION AND ADAPTATION

POLICY

- 5.13.1 EN-1 sets out how the Government is preparing for the impacts of climate change via a statutory climate change adaption programme which has included a UK Climate Change Risk Assessment and the use of 'Adaptation Report Power' to require public bodies and statutory undertakers to set out the risks to their work from a changing climate and what they are doing to manage these risks.
- 5.13.2 Section 4.8 of EN-1 sets out how Applicants and the IPC (now the SoS) should take the effects of climate change into account when developing and consenting infrastructure. It notes the importance of ensuring that new infrastructure is sufficiently resilient against the possible impacts of climate change in order that it can satisfy the future energy needs of the nation.

⁷⁸ Average height of poles 13.14m

- 5.13.3 EN-1 recognises that new energy infrastructure will typically be a long-term investment and will be operational over many decades in the face of a changing climate. It requires, consequently, that applicants consider the impacts of climate change when planning the location, design, build, operation and where appropriate decommissioning of new energy infrastructure. The NPS states that the ES supporting the application should set out how the proposal will take account of the projected impacts of climate change, accepting that this is not currently a requirement of the EIA Directive.
- 5.13.4 The NPS also advises at paragraph 4.8.8 that the decision-maker should be satisfied that there are no features of the design of new energy infrastructure critical to its operation which may be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK climate projections.
- 5.13.5 EN-5 provides detailed advice particular to the consideration of applications for electricity networks infrastructure. Paragraph 2.4.1 advises that the Applicant should, in particular, set out to what extent the proposed development is expected to be vulnerable, for example in locations potentially subject to coastal flooding, and as appropriate how it would be resilient to:
- effects of wind and storms on overhead lines; and
 - earth movement or subsidence caused by flooding or drought (for underground cables).
- 5.13.6 EN-1 provides guidance on the issue of coastal change. The proposed development does not extend to the coast and as such the guidance contained within this section of EN-1 is not considered to be relevant to the consideration of the proposed development.
- 5.13.7 The Applicant has factored into its assessment the requirements of PPW's chapter 4. CCC believes the Applicant is in compliance with local policy SP2 - Climate Change (see paragraph 19.3 of its LIR [REP1-025].)

ASSESSMENT OF EFFECTS

- 5.13.8 The approach chosen by the Applicant was to assess the effects upon the infrastructure resulting from a changing future baseline with climate change within each topic chapter of the ES. The extent to which location, design, build, operation and decommissioning of the connection is resilient to future climate change is set out within:
- "The Climate Change Resilience Report" [APP-085]⁷⁹;
 - paragraph 7.2.8 of ES Chapter 7 [APP-062];
 - paragraph 13.5.70 of ES Chapter 13 [APP-068]); and

⁷⁹ Option B is encompassed by this report

- paragraph 15.10.4 of ES Chapter 15 Air Quality [APP-070] which states:

"...no significant climate change effects are anticipated as a result of the development due to the limited potential for the release of greenhouse gases."

- 5.13.9 The cumulative climate change effects are assessed in Chapter 19 [APP-074], paragraph 19.5.24 for Option A and section 13 of [CR-003] for Option B and it concludes that no significant effects are anticipated.
- 5.13.10 The Hydrology and Flood Risk chapter [APP-068] of the ES, at Section 13.5.70 for Option A and section 5 of [CR-003] for Option B informs the scope of the future baseline for the assessment of construction phase impacts. As the duration of construction works is short (9 months, compared to long-term climatic changes), the ES and the FCA [APP-051] conclude that climate change effects will not be an issue over this timescale.
- 5.13.11 In relation to climate change effects during the operational phase, the Applicant concluded it did not present a significant risk, since any increase in river flows within the operational phase would be minimal and would not impact on the proposed development, nor would the proposed development impact on the dynamics of a flood event (irrespective of climate change) and nor would the proposed development result in increased flood risk elsewhere.
- 5.13.12 Section 13.8.5 [APP-051] addresses climate change risk during the decommissioning of the proposed development and concludes that the level of flood risk is unlikely to significantly change due to the short duration of works involved in pole removal.
- 5.13.13 NRW in its SoCG [REP2-036] states at paragraphs 4.1.23-24 that:
- "The parties agree that the description of the climate change effects on the hydrology, drainage and flood risk assessments is accurate."*
- NRW has confirmed to PINS in their relevant representations (RR-021) that it 'agree(s) with conclusions of the FCA which state that the development will have a negligible impact upon flood risk."*
- 5.13.14 CCC states at paragraph 19.3 of their LIR [REP1-025] that:
- "The purpose of the proposed development is to transport electricity generated by the Brechfa Forest West wind farm. Therefore it is considered that the proposed development compiles with the broad intent of Policy SP2 which supports proposals which 'respond to, are resilient to, adapt to and minimise for the causes and impacts of climate change...'. Criterion d) requires developments to minimise the risk of flooding including the incorporation of measures such as SUDs and flood resilient design. It is noted from the applicant's submission documents that mitigation measures are proposed which seek to be*

resilient to flooding and would not exacerbate flooding. In terms of meeting criteria c) the Council will be pursuing details through the DCO that minimise movements associated with the project workforce."

- 5.13.15 A number of IPs raised climate change in terms of the resilience of the OHL to extreme weather events and the lifetime costing of necessary repairs [REP3-005 and REP3-007]. This is addressed in the CA Chapter 8 of this Recommendation Report.
- 5.13.16 The Applicant is a regulated business and operates under a licence granted by the Office of Gas and Electricity Markets (Ofgem). A condition of the licence is that the company must maintain an efficient, coordinated and economical system of electricity distribution (Appendices 2 and 4 of [APP-122]). The Climate Change Act (2008) gave Government the power to direct certain public bodies to report on their climate risks and adaptation plans. The Applicant received a direction to report issued by the Department for Environment, Food and Rural Affairs (Defra) in March 2010. The Applicant has produced a report which identifies common climate change impacts on electricity distribution and transmission network operators and proposes mechanisms for monitoring and actions to respond to these probable climate change impacts⁸⁰ [REP4-030].
- 5.13.17 The extent to which location, design, build, operation and de-commissioning of the proposed development is resilient to future climate change is also set out within "The Climate Change Resilience Report" [APP-085] and in the ES chapters. Table 1 of the "Lifetime Costs Report" details total annual costs for inspection & maintenance, faults and tree cutting [APP-124]. No evidence was presented by IP during the course of the Examination which contradicted the Applicant's findings.

Conclusion on climate change mitigation and adaptation

- 5.13.18 All topic chapters within the ES included an assessment of the potential effects of climate change on the results of the general assessment, taking into account the possible change to future baselines. The ExA is satisfied that the ES climate change assessment for Option A and Option B addendum undertaken by the Applicant is in accordance with the requirements of section 4.8 of EN-1.
- 5.13.19 Given the evidence presented, the ExA consider that climate change mitigation and adaptation issues have been adequately assessed by the Applicant and meets the requirements of EN-1 and EN-5.

⁸⁰ This covers Option A and B

5.14 NOISE AND VIBRATION

POLICY

- 5.14.1 EN-1 states in section 5.11 that noise can have a wide range of impacts on the quality of human life, health and the enjoyment of the places which are tranquil and have a high landscape quality. In relation to noise, it states that the government aims to promote good health and good quality of life through the effective management of noise. EN-1 highlights that similar consideration applies to vibrations, which in addition can damage buildings.
- 5.14.2 EN-5, section 2.9, provides specific guidance in relation to noise associated with electricity network infrastructure. It states that all high voltage transmission lines have the potential to generate noise under certain conditions, such as rainfall and in prolonged dry spells. It also states that audible noise effects can also arise from substations and overhead line fittings.
- 5.14.3 Paragraph 2.9.8 and 2.9.9 of EN-5 states that while standard methods of assessment are fine for dry conditions, an alternative one is required for the rain during operation.
- 5.14.4 TAN11 is the technical guidance which supplements the policy set out in PPW in relation to development and noise. CCC agrees (see paragraph 10.3.3 of [REP1-082]) that the Planning Statement [APP-119] demonstrates that the proposed development is in conformity with TAN11.

NOISE AND VIBRATION ASSESSMENT

- 5.14.5 The scope of the noise assessment reported within the noise and vibration chapter of the ES [APP-069] for Option A and section 6 of [CR-003] for Option B are based upon recommendations contained within the Scoping Opinion [APP-116] and further discussions with relevant consultees (in this case the Environmental Health Department at CCC) [APP-044]. In discussion with CCC, after receipt of the Scoping Opinion [APP-116] it was agreed to scope out consideration of operational impacts⁸¹. This is because the proposed development would operate at a voltage which is significantly lower (and with smaller diameter lines) than the overhead lines that would be potentially assessed using the National Grid methodology referenced in EN-5 paragraph 2.9.9⁸². It is also because of the distance between the closest residential receptors and the proposed infrastructure, which would be a minimum of approximately 80m. The potential for impacts during the operational phase is considered to be negligible.

⁸¹ At 14.3.3 of the ES Chapter 14 [APP-071], Traffic flows and their impact on noise were scoped out as flows associated with construction are predicted as minimal, which was agreed with PINS [APP-116].

⁸² Technical Report No. TR(T)94, 1993. A Method for Assessing the Community Response to overhead Line Noise, National Grid Technology & Science Laboratories.

- 5.14.6 This resulted in the scoping out of the potential for most impacts arising from the generation of noise with the result that the ES reports solely on the potential for noise impacts resulting from the construction of the proposed undergrounding across the River Towy/Afon Tywi (paragraph 4.2.3 of [REP1-082]).
- 5.14.7 The undergrounding of the proposed development would generate two potentially noisy activities:
- open cut trenching; and
 - directional drilling.
- 5.14.8 ES Chapter 14 [APP-069] for Option A and section 6 of [CR-003] for Option B reports upon the assessment undertaken into both activities (alone and cumulatively) and the conclusions reached that breaches of recognised thresholds would occur at three residential properties for Option A. The Applicant states that such a breach would be temporary and would not exceed the noise insulation trigger level of ten or more days within a fifteen day period. This commitment will be secured via Requirement 21- CEMP, in the recommended DCO (Appendix D of this Recommendation Report). The Applicant concluded that the resulting impact would not be significant. These same properties have the potential to be impacted by vibration.
- 5.14.9 The ES recommends mitigation to reduce the potential for impacts; this will be secured via Requirement 21 in the recommended DCO (Appendix D of this Recommendation Report). These mitigation measures and a number of noise control measures are identified and are included within the outline CEMP at Section 5.8 [REP4-026].
- 5.14.10 CCC states in its SoCG [REP1-082] at paragraphs 4.2.6 to 4.2.8:
- "4.2.6 The noise associated with open cut trenching and HDD has been predicted at each of the closest identified noise sensitive receptors. Exceedances of the daytime threshold value are predicted at three residential receptors near to proposed trenching works, but such exceedances would be temporary as the undergrounding passes these locations for a short period of time. The resulting effect would therefore not be significant.*
- 4.2.7 It is anticipated that removal of the underground and overhead lines would be of a similar level of noise to the construction phase; with the exception that HDD works would not be required. Therefore the effect of noise from decommissioning works is considered to be not significant.*
- 4.2.8 All parties agree with the conclusion on the significance of construction and decommissioning works."*
- 5.14.11 At paragraph 9.3.9 of the CCC SoCG [REP1-082] it states:
- "The parties to this SOCG agree with the stated conclusions on the absence of any significant cumulative effects."*

- 5.14.12 The ExA examined the above evidence at the Environmental Matters ISH under agenda item 7.9, (see section 5.10 of [REP3-043]). No evidence was submitted to the Examination challenging the Applicant's or CCC's overall assessment conclusions on noise and vibration.

Conclusion on Noise and Vibration

- 5.14.13 Given the evidence presented, and the mitigation secured in the recommended DCO, the ExA concludes that noise and vibration issues have been addressed adequately for Option A and B and meet the requirements specified in 5.11 of EN-1 and 2.9 of EN-5.
- 5.14.14 CCC agrees that the proposed development is in conformity with TAN 11.

5.15 AIR QUALITY AND EMISSIONS

POLICY

- 5.15.1 Paragraph 5.2.1 of EN-1 states that infrastructure development can have adverse effects on air quality. It highlights that the construction, operation and decommissioning phases can involve emissions to the air which can have impacts on health, protected species and habitats or the wider countryside.
- 5.15.2 Paragraphs 5.2.6 and 5.2.7 of EN-1 requires the applicant to take an assessment on air quality, where the project is likely to have adverse impacts.

ASSESSMENT OF EFFECTS

- 5.15.3 Air Quality is assessed within Chapter 15 of the Applicant's ES [APP-070] for Option A and section 7 of [CR-003] for Option B. Air quality impacts during the operational phase were scoped out (paragraph 3.2.3 of [APP-116]). The ES concluded that the construction and decommissioning⁸³ phase emissions on human and ecological receptors alone and cumulatively are considered likely to be temporary and not significant for all receptors with the application of effective mitigation. As previously concluded in Section 5.3, construction and decommissioning are assessed to give rise to identical effects. The ES also concluded that traffic impacts during construction are considered to be not significant and the assessment of such impacts upon air quality was scoped out with agreement of CCC following the formal process of EIA scoping (paragraph 4.1.3 of [REP1-082]).
- 5.15.4 CCC in its LIR [REP1-025] states at paragraphs 10.12 and 10.13:

⁸³ The ExA agrees with the Applicant that construction and decommissioning have similar effects

"10.12 The approach taken to determine the impacts in the ES are appropriate and in accordance with relevant legislation and guidance. The Council agrees with the conclusions that have been reached and confirm that the proposed mitigation measures, if implemented when required, for the construction phase of the development should be adequate to minimise impacts in the localities of interest. Dust impact from construction is not totally avoidable therefore minor Negative impacts could occur.

....Finally in terms of air quality, dust impact is likely to occur during the construction phase resulting in a Negative impact, however, this can be minimised by effective mitigation as detailed in a dust management plan."

5.15.5 At paragraph 9.3.9 of the CCC SoCG [REP1-082] it states:

"The parties to this SOCG agree with the stated conclusions on the absence of any significant cumulative effects."

5.15.6 An outline CEMP [REP4-026] has been produced, which details the proposed mitigation measures of the proposed development with regard to air quality (including a dust management plan and community liaison, paragraph 4.3.1 of [REP1-082]). The CEMP would be secured as part of the DCO (Requirement 21 of the recommended DCO (Appendix D of this Recommendation Report)).

5.15.7 The ExA explored air quality issues relating to dust emissions, under agenda item 7.9 of the Environmental Matters ISH at section 5.10 of [REP3-043]. No evidence was submitted to the Examination challenging the Applicant's and CCC's overall assessment conclusions on air quality.

Conclusions on Air Quality

5.15.8 The ExA finds that the effects on air quality during construction, and decommissioning for Option A and B have been properly assessed and that all reasonable steps have been taken or will be taken to minimise their impact in accordance with EN-1. Mitigation measures are secured as part of the DCO (Requirement 21 of the recommended DCO, Appendix D of this Recommendation Report).

5.16 OTHER MATTERS

SAFETY

5.16.1 EN-1 at paragraph 4.11.1 states that the Health and Safety Executive (HSE) is responsible for enforcing a range of occupational health and safety legislation, which is relevant to the construction, operation and decommissioning of energy infrastructure. It states that applicants should consult them on matters related to safety. The Applicant consulted the HSE at both the non-statutory and statutory stages of consultation, no responses were received [APP-044].

- 5.16.2 Overhead lines need to be designed, constructed and operated to meet the requirements set out in the Electricity Safety, Quality and Continuity Regulations 2002 [APP-122]. They also need to meet the Electricity Supply Industry's own standards which govern the minimum clearances to be provided between conductors, roads, trees and other features (Appendix 3 of [APP-122]). The ExA has no reason to believe that the Applicant has not followed all relevant standards and guidance in the design process such that it considers it to be a safe and resilient design, and no representation were received during the course of the Examination to indicate otherwise. Indeed the proper operation of parallel regulations is assumed e.g. Electricity Safety, Quality and Continuity Regulations (ESQCR) 2002, administered by HSE

ExA conclusion on safety

- 5.16.3 The ExA has no reason to believe that the Applicant has not followed all relevant standards and guidance in the design process such that it considers it to be a safe and resilient design, and no representation were received during the course of the Examination to indicate otherwise.

5.17 POLLUTION CONTROL AND OTHER ENVIRONMENTAL REGULATORY REGIMES

POLICY

- 5.17.1 Paragraph 4.10.2 of EN-1 states that whilst the planning and pollution control systems are different, they do complement each other. The planning system controls development and the use of land, in the best interest of the public, but also plays a key role in protecting and improving the natural environment, public health and safety and amenity, which could be achieved by attaching conditions. Pollution control is concerned with preventing pollution through the use of measures to prohibit or limit the release of substances to the environment to the lowest practicable level.
- 5.17.2 Paragraph 4.10.3 of EN1 states that, the decision maker:
- "...should focus on whether the development itself is an acceptable use of the land and on the impacts of land use, rather than the control of processes, emissions or discharges themselves."*
- 5.17.3 It should assume that the relevant pollution control regimes will be properly applied and enforced by the relevant regulator, therefore only complementing but not duplicating.
- 5.17.4 Paragraph 4.10.7 of EN-1 goes on to state that the decision-maker should be satisfied that development consent can be granted taking full account of environmental impacts. Close cooperation with the relevant body, e.g. NRW or CCC, and the relevant pollution control authority should be undertaken to ensure that it is satisfied that potential release can be adequately regulated under pollution control

framework and the effects of the existing sources of pollution in and around the site are not such that cumulative effects of pollution when the proposed development are added would make development unacceptable.

ASSESSMENT OF EFFECTS

- 5.17.5 The ES in Chapter 10 (Ecology) [APP-065], Chapter 12 (Geology, Hydrogeology and Ground Conditions) [APP-067], Chapter 13 (Hydrology and Flood Risk) [APP-068], Chapter 14 (Noise and Vibration) [APP-069] and Chapter 15 (Air Quality) [APP-070] assesses the impact of emissions, amongst others. The Applicant concludes that there should be no instances where pollution would occur, subject to mitigation, most notably in the form of Requirement 21 of the recommended DCO (Appendix D of this Recommendation Report) through the provision of a CEMP (an outline CEMP was provided as [REP4-026]).
- 5.17.6 The Applicant has produced a document listing the other consents and licences (including Protected Species- see section 5.4 of this Recommendation Report) that the Applicant intends to obtain to allow the construction, operation and maintenance of the proposed development, or may need to obtain dependent on particular circumstances [REP3-054].
- 5.17.7 The Applicant's response [REP4-027] to the ExA SWQ, CA2-05 [PD-019] explains that all of the existing assets detailed in [REP1-064] ⁸⁴ would be undergrounded with the exception of the 11kV poles 58-6403-10 to 58-6403-11 88/953 between Poles 17-18 (i.e. 1.92km in total). These works do not form part of the DCO application. The undergrounding of the 11kV cables, as set out within [REP1-064] and shown on [REP1-065] the Applicant believes is permitted development. Schedule 2, Part 17, Class G(a) of the Town and Country Planning (General Permitted Developments) Order 1995 (which applies in Wales) permits development by statutory undertakers for the generation, transmission or supply of electricity for the purposes of their undertaking consisting of: -
- "...the installation or replacement in, on, over or under land of an electric line and the construction of shafts and tunnels and the installation or replacement of feeder or service pillars or transforming or switching stations or chambers reasonably necessary in connection with an electric line."*
- 5.17.8 The right applies to the installation of an electric line except an overhead line that requires consent pursuant to Section 37(1) Electricity Act 1989. The connection between the existing overhead line and the permitted underground line is also permitted development, as it is exempt from the need for a s37 consent by way

⁸⁴ Updated in [REP5-030] Existing Assets Table

of the Overhead Lines (Exemption) (England and Wales) Regulations 2009. Regulation 3(1) (a) provides exemption for:

*"(a) the installation or keeping installed of an electric line which –
i. connects an electric line installed below ground with apparatus mounted on a pole or structure;"*

5.17.9 CCC did not disagree with the Applicant's assessment [EV-022].

Conclusion on pollution control and other environmental regulatory regimes

5.17.10 The ExA concludes that there is no evidence presented which would indicate that the granting of any necessary licence under other regulatory regimes would be withheld and controls would operate, and that therefore, based on EN-1 paragraph 4.10.8, the SoS as decision-maker should have no reason to withhold development consent on these grounds.

5.18 SECURITY CONSIDERATIONS

5.18.1 EN-1 4.15 identifies possible issues of national security relating to energy infrastructure. No representations were made in regard to national security considerations. The ExA does not believe there to be any national security issues associated with this proposed development.

5.19 WASTE MANAGEMENT

POLICY

5.19.1 Section 5.14 of EN-1 refers to waste and requires that Applicants prepare a Site Waste Management Plan to include information on how waste generated from the proposed development will be managed and disposed. It should be satisfied that waste will be properly managed, both on-site and off-site, by waste infrastructure available and not have an impact on existing capacity and also that adequate steps have been taken to minimise the volume of waste arising and sent to disposal.

5.19.2 TAN 21 on waste gives advice on planning framework in Wales, strategic planning for waste and waste planning assessments.

APPLICANT'S ASSESSMENT

5.19.3 The Applicant operates within the Site Waste Management Plans Regulation 2008 [APP-119]. The Applicant has produced a Waste Management Plan which is presented as an appendix to the CEMP [REP4-026].

5.19.4 CCC in its SoCG [REP1-082] states at paragraph 11.1.19 that:

"The mitigation described in full within chapter 12, section 12.5 (Volume 6.2, APP- 067), of the ES will be secured in the CEMP (Volume 8.6, APP-127) (a waste management plan, a pollution prevention and emergency response plan (PPERP) and a water management plan are all annexes of the submitted CEMP (Volume 8.6)), which are the subject of a Requirement of the DCO. A draft of these documents was submitted and discussed with consultees prior to the application submission with comments incorporated where appropriate. The parties agree that the mitigation outlined is appropriate although CCC requires further details to be included within the CEMP prior to its final approval and agree that they will work together to produce a final CEMP which will be subject to the approval of the relevant planning authority in line with an amended Requirement of the draft DCO."

- 5.19.5 Requirement 21 (1)(a) of the recommended DCO (Appendix D of this Recommendation Report) requires a Waste Management Plan to be approved by CCC in consultation with NRW prior to the commencement of construction. No evidence was submitted to the Examination challenging the Applicant's and CCC's overall assessment conclusions on waste management.

CONCLUSION ON WASTE MANAGEMENT

- 5.19.6 Given the evidence presented, and mitigation secured in the recommended DCO (Appendix D of this Recommendation Report), the ExA considers that the issue of waste management has been addressed adequately and meets the requirements of EN-1.

5.20 SUMMARY ON NEED AND IMPACT OF THE PROPOSED DEVELOPMENT

- 5.20.1 The ExA would summarise that whilst there are impacts of the scheme in terms of landscape and visual impact, the recommended DCO (Appendix D) contains sufficient measures to mitigate those impacts. Chapter 7 provides the complete conclusions on need and impact.

6 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS

6.1 INTRODUCTION

POLICY AND LEGISLATIVE BACKGROUND

- 6.1.1 This chapter of the report sets out the analysis, findings and conclusions relevant to Habitats Regulations Assessment (HRA) and will assist the SoS as the competent authority in performing her duties under the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as amended) ('the Habitats Directive'), as transposed in the UK through The Conservation of Habitats and Species Regulations 2010 (as amended) ('the Habitats Regulations'). The evidence presented during the Examination concerning likely significant effects (LSE) on European Sites⁸⁵ potentially affected by the proposed development both alone and in-combination with other plans or projects is assessed. The ExA has been mindful throughout the examination of the need to ensure that the SoS has such information as may reasonably be required to carry out her duties as the competent authority. Consent for the proposed development may only be granted if, having assessed the potential adverse effects the proposed development could have on European sites, the competent authority considers it passes the relevant tests in the Habitats Regulations.
- 6.1.2 The SoS for Energy and Climate Change is the competent authority for the purposes of the Habitats Directive and Habitats Regulations for energy applications submitted under PA2008.
- 6.1.3 Regulation 61 of the Habitats Regulations states that if a proposed development is likely to have a significant effect on a European Site (either alone or in-combination with other plans and projects) and is not directly connected with or necessary to the management of the European site; then the competent authority must undertake an appropriate assessment of the implications for that site in view of its conservation objectives. Consent for the proposed development can only be granted if, having assessed the effects the project would have on European sites, the competent authority's appropriate assessment concludes that the integrity of European sites would not be adversely affected, subject to Regulation 62 (considerations of overriding public interest).
- 6.1.4 Planning Inspectorate Advice Note 10 (republished January 2016⁸⁶) summarises the four stage process to be followed to ensure sufficient

⁸⁵ The term European Sites in this context includes Special Areas of Conservation (SACs), Sites of Community Importance (SCIs), candidate SACs (cSACs), possible SACs (pSACs), Special Protection Areas (SPAs), potential SPAs (pSPAs), and Ramsar sites. For a full description of the designations to which the Habitats Regulations apply, and/or are applied as a matter of Government policy, see PINS Advice Note 10

⁸⁶ <http://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/06/Advice-note-10v4.pdf>

information is available to support the competent authority in satisfying the Habitats Regulations. The four stages are:

- Stage 1: screening;
- Stage 2: appropriate assessment;
- Stage 3: assessment of alternatives; and
- Stage 4: consideration of IROPI (imperative reasons of overriding public interest).

6.1.5 The screening stage is carried out to determine whether significant effects alone or in combination with other plans and projects are likely to occur. If likely significant effects (LSE) can be excluded on the basis of objective evidence, and if the competent authority agrees this is the case, then no further action is required and the project can be consented. If LSE cannot be excluded, the competent authority must undertake an appropriate assessment of the implications of the project for the European site(s) in light of the site's conservation objectives.

6.1.6 As well as deciding whether or not appropriate assessment is necessary, the competent authority must also decide if the information provided by the applicant is sufficient to exclude an adverse effect upon the integrity of the European site. If this cannot be demonstrated, then the applicant's assessment needs to move to stages 3 and 4 of the HRA process as listed above.

THE APPLICANT'S ASSESSMENT

6.1.7 The Applicant submitted a report with their DCO application to inform a HRA under Regulation 5(2)(g) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended), with their DCO application, the 'Habitat Regulations Assessment (HRA) No Significant Effects Report (NSER)' ('the HRA report') [APP-053]. The applicant confirmed in response to Question HA01 of the ExA's first written questions [PD-011] that the proposed development is not connected with or necessary to the management for nature conservation of any of the European sites considered within the HRA [REP1-028].

6.1.8 In response to the ExA's questions and representations made by Interested Parties (IPs) during the Examination, the Applicant provided an updated HRA report ('the updated HRA report') [REP3-037]. The updated HRA report considered the same European sites as the HRA report submitted with the application [APP-053], but included reference to the use of a temporary bridge across a tributary of the Afon Gwili and includes additional projects in the in-combination assessment.

6.1.9 Figure 2 (otter survey results) to the HRA report [APP-053] was noted to be missing from the application documents and following a request

from the ExA in the first written questions [PD-011], the Applicant provided the missing figure [REP1-079]. In addition, an addendum to the updated HRA report ('the HRA addendum') [REP5-037] was provided by the Applicant to identify where the mitigation relied on in the updated HRA report had been secured in the latest draft DCO [REP5-023 and REP5-024].

- 6.1.10 The Applicant submitted a change request on 24 February 2016 for an alternative to the proposed development, known as 'Option B' [CR-001 to CR-026]. The change request was accepted into the examination on 1 March 2016 [PD-038] and was accompanied by a HRA report entitled 'HRA NSER Screening of Alternative Undergrounding Option in the Towy Valley' ('Option B HRA report') [CR-010]. Option B would result in the electricity line being placed underground in the Towy Valley between poles 84 and 86, as opposed to forming part of the overhead line. HRA implications for Option B are discussed at the end of this chapter where they differ from the original proposed development (referred to as 'Option A').

THE REPORT ON THE IMPLICATIONS FOR EUROPEAN SITES

- 6.1.11 A Report on the Implications for European Sites (RIES) was prepared during the examination with support from the Planning Inspectorate's Environmental Services Team. The purpose of the RIES [PD-035] was to compile, document and signpost information provided in the DCO application, and the information submitted throughout the examination by both the Applicant and IPs.
- 6.1.12 The RIES [PD-035] was published on the Planning Inspectorate's National Infrastructure planning webpage and circulated to IPs, including to the relevant statutory nature conservation body (SNCB), Natural Resources Wales (NRW), on 25 February 2016. Consultation on the RIES was undertaken between 25 February and 17 March 2016.
- 6.1.13 As the Option B change request was accepted into the examination after the RIES was issued, HRA matters in respect to Option B are only considered within this chapter of the recommendation report. The Applicant consulted on Option B prior to its submission to the Examination; this included consultation with NRW on HRA matters [CR-021]. NRW and other IPs were also provided with an opportunity to comment on Option B following the ExA's procedural decision issued on 1 March 2016 [PD-038].
- 6.1.14 Comments on the RIES were received from the Applicant and IPs listed below. The RIES was not updated upon receipt of the consultation responses.
- **Applicant** [REP6-032]: confirmed that the documentation referenced within the RIES was comprehensive and reflected the information provided in the DCO application and the examination period in respect to the HRA;

- **Carmarthenshire County Council (CCC)** [REP6-036]: confirmed that they had no comments to make on the RIES; and **NRW** [REP6-001]: confirmed that they agreed with the content and conclusions of the RIES and that significant effects on European sites as a result of the proposed development either alone or in-combination with other plans or projects as a result of the proposed development can be excluded.

6.1.15 The assessment of likely significant effects either alone or in combination for the original proposed development Option A is discussed at paragraphs 6.3.1 to 6.3.8. The assessment of likely significant effects either alone or in combination for Option B is discussed at paragraphs 6.3.31 to 6.3.36. The overall conclusion for Options A and B is provided in section 6.4. Option B was submitted after the RIES was published and contains a separate report on LSE [CR-010].

6.2 PROJECT LOCATION IN RELATION TO RELEVANT EUROPEAN SITES

6.2.1 The Applicant identified two European sites for inclusion within the assessment based on their proximity and hydrological linkages to the proposed development [APP-053 and REP3-037]:

- Afon Twyi/River Towy Special Area of Conservation (SAC); and
- Bae Caerfyrddin ac Aberoedd/Carmarthen Bay and Estuaries SAC.

6.2.2 Correspondence from NRW dated 26 May 2015, provided in Annex A of the HRA report, confirmed that it is only these two European sites which need to be considered in the HRA [APP-053]. CCC also confirmed at paragraph 6.3.1 of their Statement of Common Ground (SoCG) with the Applicant [REP1-082] that these are the only European sites which need to be considered in the HRA.

6.2.3 The Applicant's HRA report [APP-053] and updated HRA report [REP3-037] identified the qualifying features of both European sites considered in the screening assessment for the HRA. NRW confirmed in their response to Question HA1-02 of the ExA's first written questions [PD-011] that the Applicant has considered all of the relevant qualifying features for the European sites screened into their HRA [REP1-019].

6.2.4 The Applicant has not identified any potential impacts on European sites in other European Economic Area States (see also Section 3 of this Recommendation Report).

6.2.5 Taking into account the information provided in the HRA report [APP-053] and updated HRA report [REP3-037], and the information provided by the Applicant and NRW during the examination period [REP1-019], the ExA considers that all relevant European sites and their qualifying features have been included in the Applicant's assessment and considered during the examination for Option A.

6.3 ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS RESULTING FROM THE PROJECT ALONE AND IN-COMBINATION

- 6.3.1 The Applicant concluded that likely significant effects on both the Afon Twyi/River Towy SAC and the Bae Caerfyrddin ac Aberoedd/ Carmarthen Bay and Estuaries SAC as a result of the proposed development both alone and in-combination with other plans and projects can be excluded [APP-053 and REP3-037].
- 6.3.2 The Applicant's conclusion has not been disputed by any IP, including NRW, during any stage of the examination. NRW have repeatedly confirmed during the course of the examination that they agree with the Applicant's conclusion that significant effects on both the Afon Twyi/River Towy SAC and the Bae Caerfyrddin ac Aberoedd/ Carmarthen Bay and Estuaries SAC as a result of the proposed development both alone and in-combination with other plans and projects can be excluded [REP1-019, REP2-036, REP3-009, REP4-004, and REP5-004].
- 6.3.3 CCC provided confirmation that they considered NRW to be the most appropriate body to provide comments on the Applicant's HRA [REP4-014].
- 6.3.4 The Applicant has concluded that likely significant effects on European sites as a result of the proposed development, both alone and in-combination with other plans and projects, can be excluded. Therefore, the Applicant has not undertaken an assessment of the potential effects on the integrity of the European sites. NRW also agree with the Applicant's conclusion of no likely significant effects. The Applicant has, however, provided within their HRA report and updated HRA report the conservation objectives for the two European sites screened into the assessment, should the Secretary of State (SoS) consider it necessary to undertake an appropriate assessment [Annex D and E of APP-053 and REP3-037].

IN-COMBINATION ASSESSMENT

- 6.3.5 The Applicant considered the potential in-combination effects in Section 1.4 of the HRA report [APP-053]. The projects/plans included within the in-combination assessment are listed in paragraph 1.4.2 of the HRA report [APP-053].
- 6.3.6 Two additional projects were identified by CCC within their SoCG with the Applicant [REP1-082]. The updated HRA report [REP3-037] provided a revised in-combination assessment which included these two projects, in addition to those previously considered in the HRA report [APP-053].
- 6.3.7 NRW confirmed in response to Question HA1-13 of the ExA's first written questions that they were satisfied that all relevant plans and projects had been included by the Applicant in the in-combination assessment [REP1-019]. Following receipt of the updated HRA report [REP3-037], amended to include consideration of the two additional

projects, NRW confirmed at Deadline 3 and 4 [REP3-009 and REP4-004] that they are in agreement with the conclusion reached in the Applicant's updated HRA report, which states that there would be no likely significant effects on the two European sites alone or in-combination with other projects or plans.

- 6.3.8 The ExA is satisfied that the Applicant has included all relevant plans/projects in the in-combination assessment in their updated HRA report [REP3-037], and considers there is sufficient information in the documents to allow the SoS to consider the potential likely significant effects of the proposed development on European sites in-combination with other plans and projects.

CONSERVATION OBJECTIVES

- 6.3.9 The Applicant has not identified likely significant effects on European sites and therefore, did not progress to assessing adverse effects on the integrity of European sites. However, the ExA is mindful not to pre-empt the approach that may be taken by the SoS in considering if an appropriate assessment is required. The Applicant provided the conservation objectives for the Afon Tywi/River Towy SAC and Bae Caerfyrddin ac Aberoedd/ Carmarthen Bay and Estuaries SAC in their HRA reports [APP-053 and REP3-037]. Should the SoS consider that an appropriate assessment is required this will enable an assessment of the implications of the proposed development on European sites and their qualifying features in view of their conservation objectives.

MATTERS CONSIDERED IN THE EXAMINATION

- 6.3.10 The ExA asked in its first round thirteen questions on HRA matters [PD-011] and seven questions in its second round [PD-019]. He also addressed these matters at the ISH under agenda item 8.1 [EV-018]. The ExA considered the following matters during the course of the examination in respect of the Habitats Regulations:

Temporary Bridge

- 6.3.11 Requirement 18⁸⁷ of the draft DCO submitted by the Applicant as part of the DCO application [APP-039] indicated that a temporary bridge would be required as part of the development. The temporary bridge was not identified in the Schedule of Works in the draft DCO [APP-039] or in ES Chapter 2 (Project Description) [APP-057]. A project description was not provided in the HRA report [APP-053] and therefore, it was therefore unclear to the ExA whether a temporary bridge was proposed as part of the development and whether the construction and operation of this bridge would have an effect on any European sites.

⁸⁷ Now Requirement 19 in the recommended DCO

- 6.3.12 The ExA first brought this to the Applicant's attention in the first written questions [HA1-04, PD-011]. In response, the Applicant provided an assessment of the temporary bridge within the updated HRA report [REP3-037]. Further clarification regarding the location of the temporary bridge, the Applicant's assessment, and the proposed mitigation measures associated with the bridge was sought through the ExA's second written questions [HA2-01 to HA2-03, PD-019]. The Applicant provided additional information on the assessment of the temporary bridge in their response to the ExA's second written questions [REP4-027] to confirm that the bridge had been assessed, and also to confirm the mitigation measures required to mitigate potential effects associated with the temporary bridge. A plan showing the location of the temporary bridge was provided by the Applicant [REP4-029]. This plan was updated at Deadline 5 [REP5 -032].
- 6.3.13 In respect of the mitigation measures, the Applicant states that the pollution prevention measures detailed in the updated HRA report [REP3-037] and the outline Construction Environmental Management Plan (CEMP) [REP4-026] would manage the risk of pollution into the tributary that flows to the Afon Tywi/River Towy SAC and therefore, there would be no likely significant effects on any European sites as a result of the construction and operation of a temporary bridge [REP3-037 and REP4-027], and also that the approach to detailed construction would be agreed in advance with NRW [REP4-027]). The applicant further confirmed at Deadline 5 that the need to agree the detailed bridge design and the associated mitigation measures in the CEMP are secured by Requirements 19 (Temporary Bridge) and 21 (CEMP) of the draft DCO Version E [at that time, REP5-023 and REP5-024] which also ensures that CCC are to approve the detailed Work Plans based on Schedule 2, Part 10 of 15/WPD/18.
- 6.3.14 NRW confirmed their agreement with the conclusions of the Applicant's updated HRA report in their response to Question HA2-03 of the ExA's second written questions [REP4-004]. In addition, NRW confirmed in response to Question HA2-03 of the ExA's second written questions that the mitigation measures described in the updated HRA report [REP3-037] would satisfactorily mitigate potential effects associated with the temporary bridge and that no further mitigation measures were required [REP4-004].
- 6.3.15 Based on the information provided by the Applicant in their updated HRA report [REP3-037] and later submissions [REP4-027, REP-029, and REP5-032], and the response provided by NRW [REP4-004], the ExA is satisfied that the SoS has all of the information required to consider the potential effects on European sites as a result of the temporary bridge. The mitigation measures described above are included as Requirements 19 (Temporary Bridge) and 21 (CEMP) of the ExA's recommended DCO. The ExA has no reason to disagree with the Applicant and NRW's conclusion of no likely significant effects on the two European sites as a result of the temporary bridge, and is of the view that likely significant effects can be excluded with the mitigation proposed.

Mitigation Measures

6.3.16 A description of the mitigation measures that the applicant has relied on to reach the conclusion that significant effects on European sites as a result of the proposed development, both alone and in-combination with other plans and projects can be excluded, has been provided in the HRA report [APP-053] and the updated HRA report [REP3-037]. The Applicant's addendum to the updated HRA report [REP5-037] also confirmed how each mitigation measure had been secured in the latest draft DCO available at that time [REP5-023 and REP5-024]. During the course of the examination the ExA sought clarification from the Applicant that the following mitigation measures has been satisfactorily secured in the draft DCO, such that they could be relied upon for the HRA:

- Frac-out Contingency Plan - Requirement 24 of recommended DCO;
- Timings to avoid fish migration - Requirement 8 of recommended DCO;
- Pre-construction surveys for otters - Requirement 29 of recommended DCO; and
- Water Management Plan - Requirement 21 of recommended DCO.

6.3.17 The RIES describes in paragraphs 3.7 to 3.20 the additional information provided by the Applicant during the course of the examination in respect of the above mitigation measures, together with representations received from NRW and CCC on these matters [PD-035].

Frac-out contingency plan

6.3.18 An outline Frac-out Contingency Plan was provided by the Applicant at D1 [REP1-076]. The preparation and implementation of the final Frac-out Contingency Plan is secured by Requirement 24 of the recommended DCO. NRW confirmed that whilst they welcome the outline Frac-out Contingency Plan provided by the applicant and the commitment to developing a detailed plan at a later stage, they consider this measure is 'additional mitigation' and is not integral to the HRA [REP1-019]. CCC commented in their Local Impact Report (LIR) [REP1-025] that providing the avoidance and mitigation measures, including proposed pollution and control measures and monitoring as detailed in the CEMP and the production of a Frac-Out Contingency Plan, are secured via a written requirement 24 in the DCO, the Council are in agreement with the assessment on Afon Tywi/River Towy SAC [REP1-025].

6.3.19 The ExA is satisfied that the Frac-out Contingency Plan and the measures proposed within this plan are sufficiently secured such that likely significant effects on the two European sites can be excluded.

Timings to avoid effects on fish migration

- 6.3.20 The Applicant's updated HRA report [REP3-037] identifies the necessary timing restrictions associated with the Horizontal Directional Drilling (HDD) under the Afon Tywi/River Towy SAC. The restrictions on the HDD works are secured by Requirement 8 of the recommended DCO. NRW confirmed during the examination they are content with the timing restrictions proposed by the Applicant [REP1-019].
- 6.3.21 The ExA is satisfied that the timing restrictions for works associated with the HDD under the Afon Tywi/River Towy SAC are sufficiently secured such that likely significant effects on the two European sites can be excluded.

Pre-construction surveys for otters

- 6.3.22 The RIES paragraphs 3.11 to 3.17 details the examination in respect of pre-construction surveys for otters. Pre-construction otter surveys are secured by Requirement 29 of the recommended DCO to ensure that such surveys are undertaken by the Applicant prior to the commencement of development in the following locations:
- Work No 1: Nant Morlais woodland; and
 - Work No 2.
- 6.3.23 The Requirement states that development shall not commence within these areas until either the absence of otters is confirmed or the mitigation proposed is agreed by the relevant planning authority in consultation with NRW and implemented.
- 6.3.24 NRW confirmed that they are satisfied with the applicant's proposed approach to the mitigation of impacts on otters [REP1-019, REP3-043, and REP4-004].
- 6.3.25 The ExA is satisfied that Requirement 29 sufficiently secures pre-construction surveys to identify any constraints associated with otters prior to the commencement of development. The ExA concurs with the Applicant and NRW that likely significant effects on the otter qualifying feature of the two European sites can be excluded with the mitigation applied.

Water Management Plan

- 6.3.26 The updated HRA report [REP3-037] describes the mitigation measures that the Applicant would adopt to prevent adverse effects on water quality which may affect the European sites. These mitigation measures would be delivered through the CEMP, as secured by Requirement 21 of the recommended DCO. The measures are also identified in the Applicant's HRA addendum [REP5-037]. A Water Management Plan was included in Annex 3 to the outline CEMP [REP8-015 and REP8-016] and is a plan to be certified by the SoS (Article 33 of the recommended DCO).

- 6.3.27 The ExA asked the Applicant in the second written questions [PD-019] what actions would be taken to protect European sites, should the water sampling indicate a decline in water quality, and whether measures would be agreed with NRW and CCC. The Applicant described the actions that would be taken in their response to the questions [REP4-027] and confirmed that the mitigation measures would accord with an established Applicant's Pollution Prevention Policy. A copy of this policy was provided by the Applicant at Deadline 4 [REP4-034].
- 6.3.28 NRW confirmed that should the water sampling identify a decline in water quality, they would liaise with the applicant to agree any remedial measures required [REP4-004]. NRW also confirmed that they agree with the conclusion of the Applicant's HRA that there would be no likely significant effect on the two European sites, alone or in-combination with other projects or plans [REP-004 and REP6-001].
- 6.3.29 The ExA is satisfied that the CEMP and Water Management Plan, and the measures proposed within it to protect water quality, as secured through Requirement 21 of the recommended DCO, together with the stipulation within the Requirement for it to be submitted to and approved in writing with the relevant planning authority in consultation with NRW, are sufficiently secured such that likely significant effects on the two European sites can be excluded.

Conclusion

- 6.3.30 Based on the information provided by the Applicant and IPs in respect of the proposed mitigation and the means of securing mitigation to protect European sites through the recommended DCO, the ExA considers that likely significant effects on European sites as a result of the proposed development, both alone and in-combination with other plans and projects can be excluded.

OPTION B

- 6.3.31 As described in paragraph 6.1.10 of this chapter, the proposed development includes as an alternative Option B, which would result in the electricity line being placed underground in the Towy Valley between poles 84 and 86, as opposed to forming part of the overhead line. The Applicant provided an HRA screening assessment for Option B in the 'Option B HRA report' [CR-010].
- 6.3.32 The Afon Tywi/River Towy SAC is the only European site screened into the Option B HRA report [CR-010]. The Option B HRA report concludes that the proposed additional undergrounding works for Option B are not hydrologically linked to the Afon Tywi/River Towy SAC and therefore, likely significant effects on any qualifying features of the SAC as a result of this change to the proposed development, either alone or in-combination with other plans and projects, can be screened out.

- 6.3.33 NRW provided confirmation of their agreement that the Option B would not be hydrologically linked to the Afon Tywi/River Towy SAC and therefore, any impacts associated with this alternative can be screened out of the assessment in correspondence provided to the examination at Deadline 5 [REP5-004]. A copy of their agreement was also included with the Option B HRA report as Appendix 1 [CR-010]. No other IP provided comments on the Applicant's Option B HRA report [CR-010] during the course of the examination.
- 6.3.34 The Bae Caerfyrddin ac Aberoedd/Carmarthen Bay and Estuaries SAC was screened into Applicant's HRA report [APP-053] and updated HRA report [REP3-037] due to its hydrological connectivity with the Afon Tywi /River Towy SAC. Although it has not been included in the Option B HRA report, the Applicant has been able to conclude in agreement with NRW that the additional undergrounding associated with Option B would not be hydrologically linked to the Afon Tywi/River Towy SAC and the ExA saw no reason to include any further European sites in the Option B HRA report. The updated HRA report [REP3-037] provides the assessment for the proposed development, excluding the section of additional undergrounding for Option B; therefore, the updated HRA report and Option B HRA report should be considered together when considering the potential likely significant effects of Option B.
- 6.3.35 NRW did not provide a response on HRA matters following the issue of the Option B alternative by the Applicant to the examination. However as noted above, NRW had already made a representation at Deadline 5 referring to the applicant's HRA screening associated with the undergrounding between poles 84 and 86, which they had received for review [REP5-004]. NRW's agreement with the Option B HRA report was also appended to the report [CR-010]. NRW state in these responses that they are satisfied with the level of work undertaken by the Applicant to screen for potential likely significant effects associated with the undergrounding option, and also confirmed that they are satisfied that there would be no likely significant effect on the Afon Twyi/River Towy SAC as a result of this alternative either alone or in-combination with other plans or projects [REP5-004].
- 6.3.36 The ExA is satisfied, on the basis of the information provided by the Applicant during the course of the examination and on considering the representations made by NRW, that Option B would not result in likely significant effects on the Afon Twyi/River Towy SAC and Bae Caerfyrddin ac Aberoedd/ Carmarthen Bay and Estuaries SAC, either alone or in-combination with other plans or projects, should a DCO be granted by the SoS for this option.

6.4 CONCLUSION

- 6.4.1 The ExA considers that sufficient information has been provided by the Applicant in their HRA reports and during the course of the examination, combined with the views expressed by NRW and CCC, to allow the SoS to conclude that likely significant effects on the Afon

Twyi/River Towy SAC and the Bae Caerfyrddin ac Aberoedd/
Carmarthen Bay and Estuaries SAC during the construction, operation
and decommissioning of the original proposed development i.e. Option
A can be excluded, having regard to the mitigation and monitoring
measures secured in the recommended DCO. This conclusion is
considered equally applicable to Option B (the alternative option),
should the SoS determine that a DCO be granted for Option B.

7 THE EXA'S CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

7.1 THE PLANNING BALANCE

- 7.1.1 In this Chapter of the report the ExA considers all the evidence, arguments and conclusions in the foregoing Chapters in order to assess the planning basis for its overall recommendation on this application. It should be made clear at the outset that the evaluations and conclusions set out here address the application as made (Option A) and the application as sought to be amended (Option B). Clear descriptions of the distinction between these options can be found at (Sections 1.4, 2.2. 4.6 and 5.2). There is no difference between the conclusions reached for Option A and for Option B in respect of most of the evaluation set out below. Where there are differences between the options for evaluation purposes, these are expressly identified in the text.
- 7.1.1 In doing so, the ExA draws on Chapter 2, section 2.2 which summarises the ExA's findings and conclusions on the questions of the integral nature of undergrounded sections. Chapter 3 of the report which sets out the legal and policy context for the ExA's Examination of the application and on Chapter 4 which summarises the ExA's findings and conclusions on the question of the treatment of alternatives.
- 7.1.2 The ExA then takes the headings used in Chapter 5 to summarise the ExA's conclusions on the potential impact of the proposed development on specific aspects of the local environment e.g. landscape and visual impact, socio-economics and landtake. The ExA then summarises its findings in relation to Habitats Regulations set out in Chapter 6 of this Recommendation Report.
- 7.1.3 In determining the application in accordance with s104 and subsections (4) to (8) of the PA2008 (as amended), the SoS must have regard to any relevant NPS, LIRs, prescribed matters and other matters considered to be relevant to the decision. Subsections (4) to (8) PA2008 include where:
- Such a determination would lead to the UK being in breach of its international or European obligations;
 - Such a determination would lead 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; and
 - Any condition prescribed for deciding an application otherwise than in accordance with a NPS is met.
- 7.1.4 The ExA's overall conclusion on the case for development consent for the project is based on an assessment of these matters.

- 7.1.5 In looking at the legal and policy context the ExA has considered in each section of this Recommendation Report the accordance with the relevant national policies contained in the National Policy Statements (NPS) EN-1: Overarching National Policy Statement for Energy and EN-5: National Policy Statement for Electricity Networks.
- 7.1.6 The ExA has had clear regard to relevant national primary and secondary legislation including the Equality Act 2010 and the Human Rights Act 1998 and, where relevant, European legislation and Directives.
- 7.1.7 The ExA has had regard to the duties set out in Regulations 3 (historic heritage) and 7(biodiversity) of The Infrastructure Planning (Decisions) Regulations 2010. Matters regarding historic heritage (including listed buildings) and biodiversity are discussed in Sections 5.7 and 5.3 respectively in this Recommendation Report and are concluded on below. The ExA concludes that whilst there are some impacts of the proposed development in terms of visual and the effect on the local natural environment, the recommended DCO contains sufficient measures to mitigate those impacts.
- 7.1.8 PPW8 sets out the land use planning policies of the Welsh Government. The Welsh Government has produced a series of Technical Advice Notes (TANs) which provide detailed planning advice on a different subject. These Technical Advice Notes should be taken into account by local planning authorities when they are preparing development plans. They should be read along with the Planning Policy Wales document which sets out land use planning policies.
- 7.1.9 The ExA's starting point for the consideration of local policy has been the Local Impact Report (LIR) produced by Carmarthenshire County Council (CCC) [REP1-025]. These drew the ExA's attention to specific policies in the local plans of this local authority and the ExA sets out in section 3.9 of this Recommendation Report, the relevance of these policies according to the local plan. The ExA has had regard to the issues identified in the LIR in reaching its recommendation.
- 7.1.10 First, the ExA concludes that there is an established need for this project both in terms of national energy policy and in terms of the fact that the Applicant is required to connect a new source of electricity generated by renewable energy i.e. Brechfa Forest West Wind Farm (the need for which has been defined in NPS EN-1) to the network operated by the Applicant to allow efficient distribution to electricity end users. 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 Strategic search Areas (SSAs). The proposed development serves SSA G Brechfa Forest.
- 7.1.11 Second, using the Applicant's Habitat Regulations Assessments – No Significant Effects Reports (NSERs) for Option A [REP3-037] and Option B [CR-010] as a starting point the ExA has drawn on the

submissions from Natural Resources Wales [REP3-039 and REP6-001] (agenda item 8.1 [EV-018]) to conclude that there is no reasonable scientific doubt that the proposed Brechfa Forest Connection proposed development will cause any likely significant effects on any European site, either alone or in-combination with other plans and projects.

- 7.1.12 The ExA also concludes that Option B does not conflict with the local policy framework contained in the Carmarthenshire Local Development Plan (LDP) (December, 2014) as confirmed by CCC [REP6-036]. The ExA is supported in this conclusion by CCC as expressed through their LIR. For those policies where non-compliance is identified, the consistent issue on each occasion is the Applicant's proposal to erect poles 84-86 i.e. Option A within the Towy Valley Special Landscape Area (SLA) and Registered Landscape of Outstanding Historical Interest in Wales (RLOHIW)⁸⁸ (Section 19 of [REP1-025]). Option A remains in conflict with the eight policies detailed at paragraph 22.1 of the LIR.

ExA's conclusion on the integral nature of Work No.2 undergrounding of Option A 3.3 km and Option B 3.56km of cabling

- 7.1.13 The ExA believes that Schedule 1, Works No.2, Option A 3.3km and Option B 3.56 km of underground cable is considered to form an integral part of the NSIP development applied for because of the reasons outlined in section 2.2 of this Recommendation Report.

ExA's conclusion on the consideration of alternatives

- 7.1.14 The ExA considers that the Applicant has addressed the case in relation to:

- alternative technology options;
- alternative route options;

and the four alternatives to the Applicant's final alignment which were raised by IPs at the OFHs [EV-004 to EV-008] and ISH [EV-018 to EV-022] namely:

- undergrounding of the whole 28.6 km;
- using the existing Altwallis overhead line;
- utilising trunking adjacent to A485; and
- the alternative of a 260m southern extension to the underground section of electricity line.

⁸⁸ See Section 4.6 of this report

ExA's conclusion on policy

- 7.1.15 The ExA is content that the Applicant has met the tests in the NPS and has provided compelling evidence to support Options A and B. The ExA is content that all the tests in relevant policy and legal requirements have been met. The ExA considers that the examination clearly shows Options A and B meet the requirements of EN-1, EN-5 and PPW.
- 7.1.16 Both Options A and B are acceptable in policy terms but only Option B clearly complies with Local Policy and the ExA has given this compliance greater weight because Option A not comply with:
- SP1 - Sustainable Places and Spaces (see Sections 4.4 and 5.2 of this Recommendation Report);
 - SP13 - Protection and Enhancement of the Built and Historic Environment (see Section 5.7 of this Recommendation Report);
 - SP14 - Protection and Enhancement of the Natural Environment (see Section 5.3 of this Recommendation Report);
 - SP17 - Infrastructure;
 - GP1 - Sustainability and High Quality Design(see Section 5.1 of this Recommendation Report);
 - EQ1 - Protection of Buildings, Landscapes and Features of Historic Importance (see Section 5.7 of this Recommendation Report);
 - EQ5 - Corridors , Networks and Features of Distinctiveness (see Section 5.2 and 5.7 of this Recommendation Report); and
 - EQ6 - Special Landscape Areas Chapter (see Section 5.2 of this Recommendation Report).
- 7.1.17 This in turn provides the basis on which this Recommendation Report has recommended Option B, which is provided for in the recommended DCO. The changes to the recommended DCO that would be needed if the SoS was to prefer Option A (based on [REP8-015]) are detailed at paragraph 9.7.9 of this Recommendation Report.
- 7.1.18 The ExA now summarise its conclusions under each of the 19 headings used in my consideration of the potential effects of the proposed project.

7.2 THE GENERIC IMPACTS OF THE PROPOSED DEVELOPMENT

ExA's conclusion on landscape and visual effects

- 7.2.1 Landscape and visual matters were raised as matters of concern by many IPs. The ExA has examined these matters, together with the ExA's own concerns, and where relevant, linked them to related matters of good design.
- 7.2.2 The ExA considers the s106 funding for:
- the laying (and fencing) of hedgerows;
 - the planting of trees and woodland creation; and
 - the planting of new hedgerows/hedgerow plants.

gives CCC the ability to decide on the most deserving enhancement and is fit for purpose.

- 7.2.3 The ExA is content that the approach to the use of Holford Rules, consideration of alternatives and cumulative effects was proportionate and is satisfied that the Applicant's route optioneering assessments for Options A and B meet the tests set out in EN-5.
- 7.2.4 The ExA agrees with the Applicant that the proposed development's construction and decommissioning would have a minor visual impact because of the small scale and temporary nature of the activities.
- 7.2.5 The ExA does not believe the development would cause any overbearing effects on residential visual amenity at any properties or that will become widely regarded as an unsatisfactory place in which to live.
- 7.2.6 The ExA is content that none of the pLCAs would be defined or dominated by wirescape and agrees with CCC that no significant cumulative landscape or visual effects would arise.
- 7.2.7 The ExA recommends that the alternative of undergrounding Poles 84-86 i.e. Option B, is included in the recommended DCO that is attached at Appendix D to this Recommendation Report (see Section 4.6). This recommendation of Option B would allow the proposed development to achieve compliance the following CCC local policies:
- SP1; SP13; SP14; SP17; GP1; EQ1; EQ5; and EQ6 (see Section 19 of CCC's LIR [REP1-025]).
- 7.2.8 The ExA is satisfied the requirements of EN-1, EN-5, PPW and the relevant local polices have been met for Option A⁸⁹ and Option B and sees no reason on landscape and visual grounds for the Secretary of State (SoS) not to consent the Order.

ExA's conclusion on socio-economic effects

- 7.2.9 Given the evidence presented, the ExA concludes that the Applicant has had adequate regard to the socio-economic effects of the proposed development alone and cumulatively for Options A and B and has provided persuasive evidence to support its assessment of the effects.
- 7.2.10 The evidence of potential harm to socio-economic activities brought about by the proposed development has been presented by IPs but it lacked context and relevance. Having regard to the advice in paragraph 5.12.7 of EN-1, the ExA concludes that limited weight is to be given to assertions of socio-economic impacts that are not supported by more relevant evidence, particularly in view of the need

⁸⁹ Option A would be in conflict with 8 local policies

for energy infrastructure. The ExA agrees with CCC that any residual adverse effects on tourism would be minor and acceptable. CCC agrees that the proposed development is in conformity with TAN 23.

- 7.2.11 The ExA concludes that the proposal has adequately addressed the EN-1 and EN-5 and Options A and B would not have significant deleterious effects socially or economically.

ExA's conclusions on biodiversity

- 7.2.12 Given the evidence presented, the ExA is satisfied that the Applicant's assessments and mitigation measures proposed for Options A and B, have given due and proportionate regard to the provisions in EN-1 and EN-5 and with the duties set out in Regulation 7 of The Infrastructure Planning (Decisions) Regulations 2010. with regard to nationally designated sites, regional and local sites, protected habitats and other species.
- 7.2.13 CCC agrees that the proposed development is in conformity with TAN 5 - Biodiversity.
- 7.2.14 There is the potential for adverse impacts on Lowland Mixed Deciduous Woodland and Wet Woodland (Section 42 habitats), badger and dormouse, however, CCC accepted these will be at a site scale in relation to woodland and dormouse, whilst disturbance during the construction phase could temporarily, but not significantly impact upon badger habitat. The ExA agrees with CCC that impacts will not be significant.
- 7.2.15 Potential adverse impacts have been identified in respect of mature trees and birds. However, the ExA believes the mitigation proposals put forward will reduce the residual impacts to a negligible level.
- 7.2.16 Neutral impacts have been assessed upon the bog at Rhydargaeuau, pingo complex at Alltwalis because of the Applicants careful micro-siting of poles. Further neutral impacts have been identified which can be assessed as positive when the mitigation proposed by the Applicant is implemented successfully i.e. foraging and commuting bats.
- 7.2.17 The ExA is satisfied that NRW, CCC and IPs' concerns regarding effects on biodiversity for Options A and B have been dealt with adequately [REP2-036 and REP1-082] by the Applicant via the recommended DCO through Requirements 5, 15, 16, 17, 21, 28, 29 and through a s106 Agreement.

ExA's conclusion on land use

- 7.2.18 The ExA agrees with the Applicant that the majority of land over which permanent rights are to be acquired would experience only minor interference with the use of the land. A significant proportion of the land over which permanent rights would be acquired is in agricultural use. The ExA believes the owners of such land would be able to

continue to use the land for this purpose (subject to some restriction on certain activities such as deep ploughing) once construction is completed and it is likely that they would experience only limited interference over the lifetime of the development.

- 7.2.19 The ExA concludes that the land use issues have been addressed adequately and meet the requirements of EN-1 for construction and operation.
- 7.2.20 The ExA has had no reason to disagree with the CCC's Statement of Common Ground (SoCG) [REP1-082] that the conclusions stated in the ES in respect of the identified impacts and the significance of the potential impacts are accurate both alone and cumulatively for Options A and B. The ExA agrees that the implications for all PRoWs and farming practices are temporary and of minor adverse significance.

ExA's conclusion on water quality and resources

- 7.2.21 The ExA is satisfied there has been no persuasive evidence provided that spring well water sources would be tainted by the leakage of creosote chemicals or have its flow disrupted from the wooden poles.
- 7.2.22 The three nearest poles to the relevant IPs water supplies will have concrete sleeves to encase the base of the poles. Precautionary mitigation measures have been put in place in line with Mr Hatherhall's report commissioned by Mrs Rentmore [REP6-008]. The ExA is satisfied there has been no persuasive evidence provided by IPs that spring well water sources would be tainted by the leakage of creosote chemicals or would have its flow disrupted from the wooden poles. However the mitigation proposed by the Applicant clearly addresses the possibility of any potential harm which could arise.
- 7.2.23 The SoS can be satisfied that the proposed development would comply with the Water Framework Directive (WFD) and would not result in a failure to meet WFD objectives. They would not lead to a deterioration in any element of the water body classification or introduce impediments to the water body attaining Good Ecological Status or Good Ecological Potential or permanent exclusion/compromise to other water bodies in those WFD catchments.
- 7.2.24 The ExA considers that the water quality and resource issues have been addressed adequately for Options A and B and meets the requirements of EN-1 based on the secured mitigation measures in the recommended DCO (Appendix D of this Recommendation Report).

ExA's conclusion on flood risk

- 7.2.25 NRW have not raised any concerns with the Applicant's assessment of flood risk in the SoCG and NRW agree with the conclusions of the Flood consequence Assessment (FCA) [REP2-036]. CCC agrees that the proposed development is in conformity with TAN 15 – Development and Flood Risk.

- 7.2.26 The ExA considers that the examination of flood risks for Options A and B has been addressed adequately, takes full account of the additional risk from climate change (see section 5.13 of this Recommendation Report) and meets the requirements of EN-1.

ExA's conclusion on health

- 7.2.27 The ExA considers that the examination of health risks [APP-073 and APP-114] has been addressed adequately and that the requirements of EN-1 are met. Based on the implementation of the proposed mitigation in the CEMP [REP4-026] which is secured by Requirement 21 in the recommended DCO (Appendix D of this Recommendation Report), for the construction, operation and decommissioning of the Project, the ExA considers there is no evidence that suggests that the proposed development will result in adverse public health impacts.

ExA's conclusion on historic environment

- 7.2.28 Policy on the historic environment within EN-1 has been followed by the Applicant and with regard to the duties set out in Regulation 3 of The Infrastructure Planning (Decisions) Regulations 2010.
- 7.2.29 There is potential for disturbance to unknown archaeological remains especially along the underground section of the route. Given the potential of this impact the Applicant has included a draft written scheme of investigation (WSI) in the application documents which details a suitably qualified person being present during works and dealing with archaeological remains if found during the construction phase [APP-133]. Dyfed Archaeological Trust (DAT) have raised no objection to the proposed development and are satisfied with the mitigation methodology proposed in the draft WSI. The ExA agrees with DAT these impacts will be negligible in terms of significance.
- 7.2.30 Within 1km of the works boundary there are 19 listed buildings, of which one is Grade II*, the rest being Grade II. There is also one Grade II* Registered Historic Park and Garden (Bishop's Palace), one scheduled monument (Y Gaer Defended Enclosure) and one Conservation Area (The Parade). The Applicant's submitted heritage assessment [APP-122] indicates there will be some minor adverse impacts on the setting of a small number of assets within the study area. The ExA agrees with CCC [REP1-025] these will be minor to negligible impacts in terms of significance (Paragraph 2.5.10 of [REP2-038]).
- 7.2.31 The ExA agrees that the undergrounding of the line i.e. Option B would have a negligible impact upon potential archaeological remains given the mitigation proposals secured in the recommended DCO via Requirement 13 (Appendix D of this Recommendation Report). This Requirement was not altered during the course of the examination.
- 7.2.32 In relation to the undergrounding of the line beneath the RLOHIW, CCC and NRW both provided clear opinions that where the overhead line in Option A was proposed to be sited within this designation,

negative impacts which could be classed as “serious concerns” (major adverse significant impacts as defined in EN 5 at paragraph 2.8.8) would occur on the SLA landscape character and the setting of the RLOHIW. The ExA agrees with this CCC/NRW assessment. It flows from this assessment that the ExA considers that it is necessary to underground the line in this location, as proposed in Option B. The further extent of undergrounding provided by Option B would be sufficient to mitigate the negative impacts and it is on this basis that I recommend the SoS should prefer Option B over Option A.

- 7.2.33 Option B is included in the recommended DCO that is attached at Appendix D to this Recommendation Report for the reasons detailed above in Sections 4.6 and 5.2 of this Recommendation Report.

ExA’s conclusion on traffic and transport

- 7.2.34 The ExA concludes that the proposed development, Option A or B raises no long term issues relating to traffic and transport because of the mitigation secured by Requirements 10 and 18 of the recommended DCO. The ExA agrees that the implications for all PRoWs are temporary and of minor adverse significance.
- 7.2.35 CCC agrees that the proposed development is in conformity with TAN 18. The ExA concludes that, subject to requirements set out within the recommended DCO Requirements 10 and 18 in Appendix D the proposed development meets EN-1 policy regarding traffic and transport in all respects.

ExA’s conclusion on dust and other potential nuisance⁹⁰

- 7.2.36 The ExA is satisfied that the potential dust and other nuisance have been considered adequately and appropriately by the Applicant for Options A and B, and that the recommended DCO in Appendix D contains the necessary Requirements to mitigate nuisance:
- Requirement 20 Construction hours - noise nuisance;
 - Requirement 21 CEMP - dust; and
 - Requirement 17 - lighting.
- 7.2.37 Under these Requirements, CCC and NRW would approve all mitigation and control plans before construction commences⁹¹.
- 7.2.38 The defence of statutory authority for nuisance under s.158 of PA2008 would be available to the Applicant, subject to Article 17 in the recommended DCO, which provides a defence for noise nuisance as a consequence of construction or maintenance of the development.

⁹⁰ Noise & Vibration is dealt with at Section 5.15 of this Report

⁹¹ NRW to be explicitly consulted on Requirement 21

- 7.2.39 The ExA believes nuisance issues have been assessed adequately for Options A and B and that the mechanisms for the management of potential impacts are robust and sufficient and meet the requirements of EN-1.

ExA's conclusion on military aviation and defence interests

- 7.2.40 The ExA considers that civil and military aviation interests have been adequately assessed and meet the requirements of EN-1.
- 7.2.41 On the basis of the evidence gathered, the ExA considers that the proposed development would have no impact on aviation or defence interests.

ExA's conclusion on climate change mitigation and adaptation

- 7.2.42 All topic chapters within the ES included an assessment of the potential effects of climate change on the results of the general assessment, taking into account the possible change to future baselines. The ExA is satisfied that the ES climate change assessment undertaken by the Applicant is in accordance with the requirements of section 4.8 of EN-1. CCC believes the Applicant is in compliance with local policy SP2 - Climate Change for Option A and B.
- 7.2.43 Given the evidence presented, the ExA consider that climate change mitigation and adaptation issues have been adequately assessed by the Applicant for Options A and B and meet the requirements of EN-1 and EN-5.

ExA's conclusion on noise and vibration

- 7.2.44 CCC agrees that the proposed development is in conformity with TAN11 - Noise.
- 7.2.45 Given the evidence presented, and the mitigation secured in the recommended DCO, the ExA concludes that noise and vibration issues have been addressed adequately and meet the requirements specified in 5.11 of EN-1 and 2.9 of EN-5 for Options A and B through the mitigation secured in the recommended DCO.

ExA's conclusions on air quality

- 7.2.46 The ExA finds that the effects on air quality during construction, and decommissioning have been properly assessed and that all reasonable steps have been taken or will be taken to minimise their impact in accordance with EN-1 for Options A and B. Mitigation measures are secured as part of the DCO (Requirement 21 of the recommended DCO (Appendix D of this Recommendation Report)).

ExA's conclusions on safety

- 7.2.47 Overhead lines need to be designed, constructed and operated to meet the requirements set out in the Electricity Safety, Quality and

Continuity Regulations 2002 [APP-122]. They also need to meet the Electricity Supply Industry's own standards which govern the minimum clearances to be provided between conductors, roads, trees and other features (Appendix 3 of [APP-122]). The ExA has no reason to believe that the Applicant has not followed all relevant standards and guidance in the design process such that it considers it to be a safe and resilient design.

ExA's conclusion on pollution control and other environmental regulatory regimes

- 7.2.48 The ExA concludes that there is no evidence presented which would indicate that the granting of any necessary licence under other regulatory regimes would be withheld and controls would operate, and that therefore, based on EN-1 paragraph 4.10.8, the SoS as decision-maker should have no reason to withhold development consent on these grounds.

ExA's conclusion on security considerations

- 7.2.49 EN-1 paragraph 4.15 identifies possible issues of national security relating to energy infrastructure. No representations were made in regard to national security considerations. The ExA has not identified any national security issues associated with this proposed development.

ExA's conclusion on waste management

- 7.2.50 Given the evidence presented, and mitigation secured in the recommended DCO (Appendix D of this Recommendation Report), the ExA considers that the issue of waste management has been addressed adequately and meets the requirements of EN-1.

7.3 HABITAT REGULATIONS ASSESSMENT MATTERS

- 7.3.1 The ExA considers the SoS can rely on the matrices as set out in the RIES [PD-035], and the subsequent submissions, which confirm no adverse effects on integrity on European Sites.
- 7.3.2 The ExA considers that sufficient information has been provided by the Applicant in their HRA reports and during the course of the examination, combined with the views expressed by NRW and CCC, to allow the SoS to conclude that likely significant effects on the Afon Twyi/River Towy SAC and the Bae Caerfyrddin ac Aberoedd/ Carmarthen Bay and Estuaries SAC during the construction, operation and decommissioning of the original proposed development i.e. Option A can be excluded, having regard to the mitigation and monitoring measures secured in the recommended DCO. This conclusion is considered equally applicable to Option B (the alternative option), should the SoS determine that a DCO be granted for Option B.

7.4 MATTERS WEIGHING SIGNIFICANTLY IN FAVOUR

- 7.4.1 The ExA considers that the clear need for the proposed development is a significant factor in its favour.
- 7.4.2 Its impact on the environment, on the landscape will be minimised through the careful routeing of the proposed development with route alignments chosen to avoid passing over or close to residential properties, settlements and the rare and sensitive features along the route.
- 7.4.3 It is relevant here that the ExA has concluded that the project will not result in any likely significant effects on any European site.
- 7.4.4 The route has been chosen to avoid, as far as possible, built up areas and, to a lesser extent, individual dwellings. This reduces potential visual and noise impacts during the construction period.
- 7.4.5 Additionally, whilst potentially significant adverse issues were raised during the Examination process, the Applicant has sought to address these and to take actions to obviate or reduce them, through careful micro-siting of poles within the Order limits.
- 7.4.6 The ExA has noted that Option B would allow the proposed development to achieve compliance the following CCC local policies:
- SP1; SP13; SP14; SP17; GP1; EQ1; EQ5; and EQ6 (see Section 19 of CCC's LIR [REP1-025]).

7.5 MATTERS WEIGHING SIGNIFICANTLY AGAINST

- 7.5.1 Whilst a very wide range of issues were identified and examined, as can be seen from the preceding Chapters of this Recommendation Report, the ExA considers that only one of these presented potentially significant adverse implications for granting of consent for the project.
- 7.5.2 Landscape and visual impacts were raised as matters of concern by many IPs. The ExA examined this in detail in its written questions and in hearings during the Examination. The ExA's reasoning and conclusions on this are set out in paragraphs 5.2.109 to 5.2.116, in this Recommendation Report but, in summary, the ExA concludes that:
- It is content that the approach to the use of Holford Rules, consideration of alternatives and cumulative effects was proportionate and is satisfied that the Applicant's route optioneering assessments meet the tests set out in EN-5;
 - It does not believe any overbearing effects on residential visual amenity would result from the proposed development or that any properties will become widely regarded as an unsatisfactory place in which to live; and

- It is content that none of the character areas would be defined or dominated by wirescape and agrees with CCC that no significant cumulative landscape or visual effects would arise.

7.5.3 However, Option A, the original application is in non-compliance because of adverse effects on landscape character and historic setting of the SLA and RLOHIW respectively in the Southern slopes of the Towy Valley, with the following CCC local policies:

- SP1; SP13; SP14; SP17; GP1; EQ1; EQ5; and EQ6 (see Section 19 of CCC's LIR [REP1-025]).

7.6 THE BALANCE OF ISSUES

7.6.1 The preceding two sections of this Chapter show both that the matters weighing significantly in favour clearly outweigh the matters weighing significantly against and that, through the Examination process, potentially adverse factors were addressed and either removed or reduced in their importance. Thus the balance in favour of the proposed development was improved during the Examination for both Option A and B.

7.6.2 The ExA is satisfied the requirements of EN-1, EN-5, Planning Policy Wales have been met for both Options A and B. However, Option B clearly complies with Local Policy and the ExA has given this compliance weight.

7.6.3 Therefore the ExA recommends that the alternative of undergrounding Poles 84-86 i.e. Option B, is included in the recommended DCO that is attached at Appendix D to this Recommendation Report.

7.7 OVERALL CONCLUSION

7.7.1 Both Option A and B are acceptable in planning terms and both could be granted consent but only Option B clearly complies with Local Policy as detailed in paragraph 7.1.17 of this Recommendation Report. The adverse effects on landscape character and historic setting of the SLA and RLOHIW respectively in the Southern slopes of the Towy Valley are clearly mitigated by Option B, and the ExA has given this compliance greater weight.

7.7.2 Having had regard to all the above factors, the ExA concludes that the proposed Brechfa Forest Connection should be permitted and the ExA recommends that the SoS should make the Order in the form attached. The changes to the recommended DCO that would be needed if the SoS was to prefer Option A, based on [REP8-015] are detailed at paragraph 9.7.9 of this Recommendation Report.

8 COMPULSORY ACQUISITION AND RELATED MATTERS

8.1 INTRODUCTION

8.1.1 This chapter of the report deals with the request of powers for:

- The Compulsory Acquisition (CA) of new rights and restrictions over land; and
- Temporary possession rights.

8.1.2 It is arranged into the following sub-sections:

- The Request for CA Powers;
 - The Purposes for which the rights and restrictions are required;
- Specific Group of Affected Persons (APs) and Types of Land;
- The Legislative and Guidance Context;
- How the ExA examined the Case for Compulsory Acquisition;
 - The Applicant's General Case for Acquisition of rights and restrictions for development;
 - Alternatives;
 - Adequacy of Funding;
 - The Human Rights Act;
 - Equality Act;
 - Objectors case;
 - The ExA's summary of Applicant's response and the ExA's conclusions;
 - Temporary Possession Powers;
 - Conclusions in regard to Affected Parties who made representations
 - Conclusions in regard to land in unknown ownership; and
- The ExA's recommendation in regards to the granting of Compulsory Acquisition and Temporary Possession powers.

8.2 THE REQUEST FOR COMPULSORY ACQUISITION POWERS

8.2.1 The Applicant is seeking CA powers to secure certain rights and impose restrictions within the Order Land to facilitate the proposed development (Statement of Reasons Option A [REP7-009] and Option B [REP7-013]).

8.2.2 The Development Consent Order (DCO) would grant powers to construct, use and maintain a 28.6 kilometre (km) 132kV electricity distribution connection between the chosen point of the connection at the existing steel pylon (reference EE42) near Llandyfaelog, and Brechfa Forest West Wind Farm, comprising the installation of a 132kV

overhead line and installation of 132kV underground cables (Figure 1.1 [APP-076⁹²]).

8.2.3 The works would be undertaken by the Applicant or any person to whom the Applicant may transfer the benefit of the Order and the provisions of the Order have effect for the benefit of the Applicant as set out in Article 6 of the recommended DCO (Appendix D of this Recommendation Report). The Order includes powers for:

- the construction of two sections of 132kV overhead electric line;
- the construction of an integral section of 132kV underground cables including horizontal directional drilling ("HDD") and the terminal connections to the overhead sections; and
- development that is integral to the construction of the lines and cables including access roads, highway works, creation and use of temporary construction compounds, the provision of welfare units and monitoring.

8.2.4 Option A, the original application, was accompanied by a:

- Statement of Reasons (SoR) [APP-041];
- Funding Statement [APP-042]⁹³;
- Book of Reference (BoR) in five parts for each Section A-C of the Order land [APP-043]⁹⁴;
- Land Affected Plans and Land Plans [APP-010 to APP-013];
- Crown Land Plans [APP-026 to APP-028]⁹⁵; and
- Access and Rights of Way Plans [APP-014 to APP-017]⁹⁶.

8.2.5 The Applicant made changes to the CA documentation during the course of the examination. Details of the superseded plans, and the latest versions of the plans can be found in the Applicant's Guide to the Application Option A and B [REP8-037]:

- BoR [APP-043, APP-141, REP2-028 REP5-026, REP6-017 and REP8-019]. The changes are documented in [REP4-045, REP5-028, REP6-019⁹⁷ and REP8-033];
- SoR Option A [APP-041, APP-139 and REP7-009]. The changes are documented in [APP-140 and REP7-010] and Option B [CR-014 and REP7-013]; with changes documented in [CR-015 and REP7-014]and
- Land Plans Option A⁹⁸ [APP-010 to APP-012, APP-026 to APP-028, APP-136 to APP-138 and REP5-020 to REP5-022].

⁹² All documents with reference affix APP and REP1 to REP6 are Option A

⁹³ This Funding Statement covers Option A and B

⁹⁴ The BoR is the same for Option A and B

⁹⁵ Options A and B are the same

⁹⁶ Options A and B are the same

⁹⁷ BG & YE Shaw returned an unknown owner slip following further diligence exercise to claim right of way to have the benefit of an unspecified right of way for plot C163

⁹⁸ Options A and B are the same

- 8.2.6 The only difference between Options A and B in CA matters is the SoR, i.e. Option A [REP7-009] and Option B [REP7-013] (see paragraph 5.6).
- 8.2.7 The Order limits establish the extent of the land affected by the proposed development. The typical width of the Order limits along the overhead line sections of the route corridor is 25 metres [APP-136] [APP-138]. The Applicant will not need to compulsorily acquire rights over the full extent of the land that falls within the Order limits because they allow for deviation of the proposed line. The Applicant will, once constructed, only require permanent rights to access and maintain the transmission lines over a corridor with a width of approximately 15m. The Applicant is seeking temporary rights over a wider area within the Order limits to provide a degree of flexibility as to the final alignment of the works (deviation).
- 8.2.8 A full description of the extent of the land required by the Applicant in order to carry out construction of the proposed development and later, for access and maintenance, is set out within the Applicant's Environmental Statement (ES), Project Description, Chapter 2 for Option A [APP-057] and Chapter 2 for Option B [CR-003]
- 8.2.9 The typical width of the Order limits along the underground cable section of the route corridor is 16m. Proposed temporary rights to enable construction within the corridor width are shown on the land plans for Option A⁹⁹ and B [APP-010 to APP-012] [APP-026 to APP-028, APP-136 to APP-138 and REP5-020 to REP5-022]. The Applicant is seeking temporary rights over a wider area than is needed for the permanent rights within the Order limits to provide a degree of flexibility as to the final alignment of the works.
- 8.2.10 For underground cables, the Applicant is only seeking to compulsorily acquire permanent rights to access and maintain the development over a corridor with a width of approximately 1.5m for the cables installed plus a 5 metre maintenance access corridor. A full description of the extent of land required by the Applicant in order to carry out construction of the proposed development and later, access and maintenance, is set out within the ES, Project Description, Chapter 2 of the Applicant's ES Option A [APP-057] and Option B [CR-003].
- 8.2.11 Articles 20 and 21 of the Applicant's Option A DCO [REP8-015] and for Option B [REP8-023], are relied upon for the acquisition of rights and restrictions, by the creation of new ones, and for the overriding of existing rights or restrictions respectively (the articles are numbered 19 and 20 as in the recommended DCO).
- 8.2.12 Articles 28 (Temporary use of land by the undertaker) and Article 29 (Temporary use of land for maintaining the authorised development) of the draft DCO Option A [REP8-015] and Option B [REP8-023] (the

⁹⁹ Land plans same for Option A and B

articles are numbered 27 and 28 as in the recommended DCO) seek to authorise temporary possession of land (which is not a CA power) for the purpose, among other things, of providing a working width and construction site on plots detailed in the land plans for Options A and B [REP5-020 to REP5-022] respectively. Article 28 would authorise the Applicant both to enter on and take temporary possession of the land but also to construct temporary or permanent works (subject to conditions including reinstating and compensating). Article 28 (1)(b) allows for removal of any electric line, electrical plant, structures, apparatus and vegetation from that land. Article 29 would authorise the Applicant to enter on and take temporary possession of the land, to construct temporary works for the purpose of gaining access to maintain the authorised development.

8.2.13 The land over which CA powers are sought are edged black with five colour codes. Class 1 (Green- construction, operation) and Class 2 (Blue -access) indicate both permanent rights and temporary powers. This is because the recommended DCO (Appendix D of this Recommendation Report) provides powers for the Applicant to enter onto land and construct the proposed development in advance of exercising permanent rights over these land areas. The wholly temporary rights are Class 3 (Purple - construction) Class 4 (Brown - mitigation) and Class 5 (Red - compound welfare area) which indicate the temporary class rights set out in the Book of Reference [REP8-019]¹⁰⁰. The temporary rights in Class 1 and Class 2 are subordinate to the permanent rights and as such are not shown as separate colour codes.

8.2.14 The Applicant is not seeking formal rights of acquisition or new rights over the highways but is relying on Articles 9, 10, 11, 12, 13, and 27 of the draft recommended DCO in relation to street works to enter onto them and to lay and maintain apparatus in them, to construct means of access and to create temporary prohibitions and restrictions on the use of such streets to carry out such works.

8.2.15 In summary the powers sought are for:

- The CA of new rights and restrictions over land; and
- Temporary possession rights.

8.2.16 These powers are referred to collectively in this Chapter as the CA powers, save where the context requires otherwise.

8.3 THE PURPOSES FOR WHICH THE LAND RIGHTS AND RESTRICTIONS ARE REQUIRED

8.3.1 The Statement of Reasons Option A [REP7-009] and Option B [REP7-013] states that the Applicant's purpose in acquiring the land by CA is to secure the rights and restrictions required to construct, use and

¹⁰⁰ BoR did not change for Option B

maintain the proposed development. The nature of the proposed development, an overhead line and underground cable, is such that no land within the Order limits is proposed to be acquired outright.

8.3.2 The powers sought relate to the acquisition of rights and the imposition of restrictions and the temporary possession of land. The recommended DCO (Appendix D) sets out five classes under which rights may be acquired permanently or land possessed temporarily:

- (i) Class 1 (Green¹⁰¹ - construction, operation, permanent and temporary);
- (ii) Class 2 (Blue - access, permanent and temporary);
- (iii) Class 3 (Purple - construction, temporary);
- (iv) Class 4 (Brown - mitigation, temporary) and
- (v) Class 5 (Red - compound welfare area, temporary).

8.3.3 The Book of Reference dated April 2016 [REP8-019]¹⁰² and Land Plans plans Option A and B [REP5-020 to REP5-022] identifies six hundred and eleven plots in which the Applicant applies to acquire rights over land for the overhead line, underground cable and development that is integral to the construction of the lines and cables and Table 1 of the SoR Option A [REP7-009] and Option B [REP7-013] details as follows:

Class of Rights	Description	Number of Plots
1	Permanent Easement	256
2	Permanent Access	315
3	Temporary Construction	21
4	Temporary Mitigation	15
5	Compound/Welfare Areas	4

8.3.4 The purposes for which the land subject to temporary use is required are set out in Table 7 of the Option A [REP7-009] and Option B [REP7-013] SoR. This is described according to the numbered works set out in the Schedule 1 to the Order and the plot numbers shown on the Land Plans [REP5-020 to REP5-022] and in the Book of Reference [REP8-019].

¹⁰¹ Colour coding in Land Plans [REP5-020 to REP5-022]

¹⁰² Option A and B

CROWN LAND

8.3.5 On the 6 July 2015 in its Procedural Decision [PD-004] the ExA drew the Applicant's attention to the need to:

- obtain Crown authority consent from the Welsh Ministers if the Welsh Ministers are the "appropriate Crown authority" for the purposes of s135 of the PA2008, in addition to the bodies mentioned in Chapter 10 of the original application Statement of Reasons Option A [APP-041];
- the need to obtain Crown authority consent under s135(1) of the PA2008; and
- the need for all appropriate Crown authority consents to be available in good time before the close of the examination.

8.3.6 The SoR Option A [REP7-009] and Option B [REP7-013] confirms in Section 10 that the proposed development will also seek rights over Crown land. Land identified as Crown land is shown on the Crown Land Plans Option A and B [APP-026 to APP-028]. Part 4 of the Book of Reference [REP8-019]¹⁰³ identifies the plots within which the Crown has an interest. The Crown Land is divided into:

- Forest land (which is managed by Natural Resources Wales ("NRW") on behalf of the Welsh Government, with the ultimate landowner being the Crown i.e. the Welsh Ministers as the appropriate Crown authority) plots C216, C217¹⁰⁴, C218 to C227; and
- Riverbed of the River Towy (for which Cooke & Arkwright act as agent for the Crown Estate Commissioners, the appropriate Crown authority, with the ultimate landowner being the Crown) plot no. B6.

8.3.7 [REP8-032] provides the Applicants final update on Crown land for Options A and B. Paragraphs 8.6.5 to 8.6.12 details the Applicants case in regards to Crown Land and how it was examined by the ExA. Amendments were made to the DCO to protect Crown interests and this is reflected in Article 19 of the recommended DCO. The ExA conclusions on Crown Land are that the appropriate Crown authority has not provided the necessary consent for the purposes of s135(1) of PA2008. The SoS should note the details of the ExA's conclusions on this matter are provided at paragraphs 8.6.13 to 8.6.15.

¹⁰³ Option A and Option B

¹⁰⁴ Previously in unknown ownership but now claimed by the Crown

STATUTORY UNDERTAKERS' LAND AND OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

8.3.8 Section 10.3 of the Statement of Reasons Option A [REP7-009] Option B [REP7-013] identifies:

- Mainline Pipelines Limited and its successors in title and function;
- National Grid Gas Plc (NGG) and National Grid Electricity Transmission Plc (NGET). Part 2 of Schedule 9, provides protection for NGG and NGET, but also protects any licence holder within the meaning of Part 1 of the Electricity Act 1989; and a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- Dwr Cymru Cyfyngedig (Welsh Water);
- Wales & West Utilities Limited (WWU); and
- Operators of electronic communications code networks;

each as having interests in the land within the Order limits. These interests include telecommunications lines for BT and other operators of electronic communications code networks, water mains and associated apparatus in respect of Welsh Water, a gas pipeline of WWU, an oil pipeline in respect of Mainline Pipelines Ltd and electricity and gas pipelines in respect of NGET and NGG.

SPECIAL CATEGORY LAND

8.3.9 No special category land has been identified as affected by the proposed development. As such Part 5 of the Book of Reference is marked as "none" [REP8-019].

UNKNOWN OWNERSHIPS

8.3.10 The CA of some rights and imposition of restrictions are likely to be required in respect of areas of land in unknown ownership. At the OFH on the 30 November 2015 under agenda item 2 [EV-005] and at the CAH hearing on the 2 December 2015 under agenda item 5 [EV-019] unknown ownership was raised in oral evidence by Mr Birch [REP3-031] .

8.3.11 The Applicant pointed out there has been some positive response to the Applicant's adverts to identify owners of unknown land. Adverts were placed along the route and in local newspapers. These have been followed up with letters to adjacent landowners [REP4-031].

8.3.12 The Applicant explained the reason that there are so many unknown owners is that CCC do not have plans showing the exact boundaries of their highway. When the Applicant looked at the highway, the lines of the registered title and the road did not always match up, and therefore there was a gap. It was unclear as to whether this was highway or belonged to the adjoining owner.

- 8.3.13 CCC's Highway's Officer, Cliff Cleaton, confirmed the Applicant's analysis [EV-019], explaining that CCC take a conservative approach to the identification of highways. The Applicant considers that this has led to land adjacent to highways that might otherwise form part of the highway, not being identified as highway land. The approach taken by the Applicant to include this land as "unknown" has resulted in the ownership of numerous small parcels not being identified.
- 8.3.14 The Applicant stated that in West Wales much of the land is still unregistered. Land only becomes registered in West Wales once there has been a sale. Unless there has been a sale recently, it is unregistered and therefore harder to identify the owner. This statement was not disputed by any party at the OFH or CAH [EV-005 and EV-019].
- 8.3.15 At the ExA's request the Applicant agreed to provide a schedule of land owner engagement, and a note setting out the Due Diligence taken to identify land owner's to plots with no identified land owner [REP4-037]. The ExA has looked at the plots involved and believes the Applicant's due diligence to identify the interests [REP4-031] that might exist has been thorough and considered the case for the CA of these plots which is discussed in the final conclusions. The ExA is satisfied that the Applicant has made all reasonable efforts to establish the true ownership of all the land in question [REP6-030 and REP6-031].

OTHER MATTERS

- 8.3.16 The recommended DCO (Appendix D of this Recommendation Report) seeks to incorporate:
- the provisions of the Compulsory Purchase (General Vesting Declarations) Act 1981 (Article 26 in Applicant's draft DCO and 25 in recommended DCO Appendix D); and
 - the provisions of s.158 of the PA2008 relating to statutory authority and provisions to override easements and other rights (Article 21 in Applicant's draft DCO and 20 in recommended DCO Appendix D).

8.4 THE REQUIREMENTS OF THE PLANNING ACT 2008

- 8.4.1 CA powers can only be granted if the conditions set out in sections 122 and 123 of the Planning Act 2008 are met. Department of Communities and Local Government (DCLG) has issued guidance on CA procedures¹⁰⁵ (DCLG Guidance).
- 8.4.2 Section 122 (2) requires that the land must be either:

¹⁰⁵ Guidance related to procedures for compulsory acquisition DCLG September 2013

- (c) required for the development to which the development consent relates,
- (d) is required to facilitate or is incidental to the development.

8.4.3 As to (a), the DCLG Guidance states that, the land or rights to be taken or affected must be no more than is reasonably required, and as to (b) and the land or rights taken must be reasonably necessary for the purpose and be proportionate.¹⁰⁶

8.4.4 Section 122(3) requires that there must be a compelling case in the public interest, which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right. But this does not mean that the CA proposal can be considered in isolation from the wider consideration of the merits of the proposed development. There must be a need for the proposed development to be carried out and there must be consistency and coherency in the decision-making process.

8.4.5 Section 123 requires that one of three conditions is met by the proposal¹⁰⁷. The ExA is satisfied that the condition in s.123 (2) is met because the application for the DCO included a request for CA of the land to be authorised.

8.4.6 A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers:

- all reasonable alternatives to CA must be explored (discussed further in section 8.5);
- the Applicant must have a clear idea of how it intends to use the land;
- the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected (discussed further in sections 8.5 Applicant's case and objectors case and concluded on at paragraphs 8.5.53 and 8.5.118) ; and
- The Applicant must demonstrate 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 have been taken into account.

¹⁰⁶ Ibid Paragraph 11.

¹⁰⁷ (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.

8.5 HOW THE EXA EXAMINED THE CASE FOR COMPULSORY ACQUISITION

8.5.1 The ExA examined the case for CA through:

- Identifying CA as a principal issue in the Rule 6 letter [PD-005], including issues related to:
 - The need to establish a compelling case in the public interest;
 - Have all reasonable alternatives to CA been explored;
 - Financial arrangements - is adequate funding likely to be available to enable the Applicant to carry out the CA within the statutory period;
 - Whether the purposes stated for the acquisition are legitimate and sufficient to justify the inevitable interference with the human rights of those affected;
 - Accuracy of the book of reference;
 - Whether any Statutory Undertakers will suffer detriment that may be caused by the carrying on of the undertaking in question ;
 - The adequacy of any protective provisions set out in the draft DCO and
 - Crown land [PD-005];
- By asking specific questions on CA (questions CA01 – CA36) in the first written questions (FWQ) issued on 13 October 2015 [PD-011];
- By asking specific questions on CA (FWQ CA2- 01 – CA2-09) in the second written questions (SWQ) issued on 11 January 2016 [PD-019]
- By asking a specific question on Crown Land [PD-039]; and
- Holding three CA Hearings on 2 December 2015, 3 December 2015 [EV-011 to EV-016] and 10 February 2016 [EV-026 to EV-030].
-

THE APPLICANT'S GENERAL CASE FOR THE GRANT OF COMPULSORY ACQUISITION POWERS

8.5.2 The Applicant's general case for CA is provided in the Statement of Reasons Option A [REP7-009] Option B [REP7-013] together with the Funding Statement Option A and B [APP-042] and the revised BoR [REP8-019]¹⁰⁸. The Applicant states that CA powers are necessary so that the Applicant has the requisite powers to construct, use and maintain the proposed development which is a nationally significant infrastructure project for which there is a pressing national need.

8.5.3 The Applicant in response [REP1-028] to the ExA first round question CA04 (c) [PD-011] argued that they had had regard to the general

¹⁰⁸ Option A and B

considerations that justify seeking authorisation for CA that the SoS is required to follow. The Applicant states that this is set out in Section 122 of the Planning Act 2008 to the extent that the SoS is satisfied that:

- The land is required for the development to which the consent relates or is required to facilitate or is incidental to the development; and
- There is a compelling case in the public interest for the CA.

- 8.5.4 The Applicant's justification for seeking CA powers, in accordance with the provisions of PA2008, is to secure the rights and restrictions for the temporary use of land, the rights and other interests required to enable the Applicant to construct, use and maintain the proposed development within a reasonable commercial timeframe. The inclusion of powers of CA in the DCO is sought by the Applicant in order to ensure that this can be achieved. The Applicant argues that the rights and restrictions together with the land required for temporary use are no more than is required to facilitate the proposed development, its construction and future maintenance. The Applicant believes it needs the necessary powers, together with powers to suspend, override and extinguish rights and other interests in or over land, contained in Part 5 of the recommended DCO (Appendix D of this Recommendation Report).
- 8.5.5 The Applicant has set out in Schedule 1 to the draft DCO Option A [REP8-015] and Option B [REP8-023] the description of the proposed development to be undertaken within the land where power for new rights will be acquired. The Book of Reference [REP8-019], in Part 1 of BoR, shows the rights and the imposition of restrictions to be exercised over the land in connection with the carrying out of the proposed development as described. The Applicant believes this will allow for the necessary flexibility in the alignment by allowing for limited deviation along the route as set out in Article 5 and Requirements 3 & 5 (Schedule 3) of the draft DCO Option A [REP8-015] and Option B [REP8-023].
- 8.5.6 The ExA has seen considerable evidence that the proposed development has been the subject of an extensive consultation exercise by the Applicant [APP-044 to APP-050]. The Applicant argues it is in compliance with national and local policy¹⁰⁹ in respect of planning and electricity transmission. Negotiations with regard to the acquisition of and/or creation of easement rights and any other rights and interests required for the overhead line and underground cable are ongoing (the land affected by these negotiations are shown on the Land Plans Option A and B [REP5-020 to REP5-022] . The Land Owner Engagement Table [REP7-012] submitted by the Applicant sets out the negotiation status at the close of the examination.

¹⁰⁹ Poles 84-86 placement in the Towy Valley SLA and RLOIHW would place it in conflict with eight local policies[REP1-025]

8.5.7 The Applicant seeks CA powers to acquire rights in and impose restrictions on land under the Order from all relevant landowners, notwithstanding that voluntary agreements for the grant of rights may have been entered into, for the following reasons detailed in paragraph 7.25 of the SoR Option A [REP7-009] and Option B[REP7-013]:

- *"An option may be obtained by agreement prior to the Application or during the development consent order application process, rather than the substantive right itself. The compulsory powers therefore provide a fallback should the voluntary agreements fail and cover instances where the person with an interest in land is unwilling to grant the relevant right once the option has been exercised;*
- *Including all interests in the Order allows all required rights to be obtained in the same way and through one process, potentially by General Vesting Declaration ("GVD"). This is an effective way of compulsorily acquiring rights from multiple owners (Article 26);*
- *Compulsory acquisition by GVD is effective against all interests in the land, so avoiding the risk of a failure to disclose a relevant interest; the GVD is effective even against unknown interests and*
- *Compulsory powers are also more readily enforceable, so reducing additional risk, cost and delay."*

8.5.8 The Applicant argues also that there may also be unknown rights, restrictions, easements or servitudes affecting that land which also need to be overridden, removed and/or extinguished in order to facilitate the construction and operation of the proposed development without hindrance.

8.5.9 In the absence of powers of CA, the Applicant contended that the Order land may not be assembled, uncertainty will continue to prevail and the Applicant considers that its objectives and Government policy objectives would not be achieved (agenda item 7 [EV-014].

8.5.10 The Applicant considers that there is a compelling case in the public interest, in accordance with section 122(3) of the PA2008, for the inclusion in a DCO of powers of CA to enable the proposed development to be constructed, operated and maintained [REP7-009]. The Applicant believes it has had regard to the European Convention on Human Rights (ECHR) (the ExA examination relied on the Human Rights Act, 1998 see paragraphs 8.5.57 and 8.5.121) and the requirements of paragraphs 8 to 10 of DCLG Guidance and in particular the Applicant stated in its response [REP1-028] to the ExA first round question CA04 [PD-011] that:

"The acquisition of the land is in the public interest and in accordance with the law;

The Applicant believes that NPS (EN-1) and NPS (EN-5) provide the policy context and justification for the proposed development. The

connection supports the already consented Brechfa Forest West Wind Farm, itself a Nationally Significant Infrastructure Project consented by the Secretary of State pursuant to the Planning Act 2008. Section 9 of the Electricity Act 1989 sets out the Applicant's statutory duty to provide an electricity transmission system and Section 16 Electricity Act 2008 provides an obligation on the Applicant to provide an electricity connection to a generator. The Applicant has set out the detailed need for the project in Section 2 of the Statement of Reasons [APP-139].

The proposed acquisition is necessary and proportionate;

The Applicant argues it has sought to minimise the extent of compulsory acquisition. No land is being acquired, only rights in land to construct and use the electricity line together with such temporary and permanent rights that are needed to use and maintain the line. The Applicant's objective throughout route optioneering [APP-122] is to minimise the effect of the scheme on landowners in order to balance with all other considerations (environmental and economic). Any land that is affected by the interference the landowner is compensated for their loss."

- 8.5.11 No evidence has been submitted to the Examination explicitly questioning the overall need for the proposed development (see section 4.3 of this Recommendation Report).
- 8.5.12 The ExA has taken into account the overall need as one factor in assessing whether there is a compelling case in the public interest (s.122(3) of PA2008) to justify CA. The ExA concludes that the Applicant has demonstrated there is a need in the public interest for the provision of the proposed development. The ExA shall consider whether the public benefit that would be derived from the CA, would outweigh the private loss that would be suffered by those whose rights or interests over or in that land will be affected, and have regard to human rights considerations, in reaching his overall conclusions later on in this chapter at section 8.7.

ALTERNATIVES

Alternatives to the proposed development

- 8.5.13 Paragraph 8 of the DCLG Guidance states 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.'
- 8.5.14 Chapter 4 (paragraphs 4.6.1 to 4.6.80 of this Recommendation Report) has considered the overall issue of the consideration of alternatives for the proposed development. The ExA has concluded that it:

'...considers that the examination of alternatives has been addressed adequately and that the requirements of NPS EN-1, EN-5 and the EIA Regulations are met (paragraph 4.6.74).'

- 8.5.15 The ExA has considered this in terms of the route selection, the scale of the development proposed, the specific characteristics of the development and then in relation to the proposed CA of rights and restrictions in each plot of land (in the sections on those plots described in this Recommendation Report).
- 8.5.16 The process of route selection, from 2012 to 2015, was iterative, and the Applicant provided a process whereby individual requests for changes to the scheme were considered with consideration having been given to undergrounding in different locations [REP4-030, REP6-020 and REP7-012].

Alternatives to CA

- 8.5.17 Paragraph 25 of the DCLG Guidance states that applicants should seek to acquire land by negotiation wherever practicable, and that as a general rule, authority to acquire land compulsorily should only be sought if attempts to acquire by agreement fail. The Statement of Reasons Option A Version B [REP7-009] and Option B [REP7-013] states at paragraph 7.22 that:

"WPD will continue to seek to acquire all rights it needs by voluntary agreement, subject to the Order being made. WPD has undergone extensive consultation with all persons with an interest in the relevant land in order to try to avoid the need for compulsory acquisition."

- 8.5.18 Paragraph 25 of the DCLG Guidance goes on to confirm that for long, linear schemes, such as the proposed development:

"...it may not be practical 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."

- 8.5.19 Although negotiations for the purchase of rights and interests are on-going, the Applicant argues it is necessary for it to seek CA powers to secure such rights and interests and to ensure that any third party interests or encumbrances affecting such land, rights and interests are acquired or overridden pursuant to the DCO, thereby ensuring that the proposed development can be constructed, operated and maintained in accordance with the powers sought under the DCO Option A Version F [REP8-015] and Option B Version A [REP8-023].

- 8.5.20 The Statement of Reasons Option A [REP7-009] and Option B [REP7-013] makes full reference to the tests set out in legislation and in guidance for CA. In addition, the Applicant states at paragraph 7.51 that:

- *'All reasonable alternatives to compulsory acquisition have been explored.'*

- *The Strategic Optioneering Report explains that after careful consideration there was deemed to be no practicable alternative to the acquisition of rights in and use of third party land for the proposed development. Equally Chapter 3 of the Environmental Statement explains the multi stage consideration by WPD including alternatives, balancing environmental, economic and engineering issues with consultation responses. Whilst WPD is seeking to enter into voluntary easements with affected third parties, in every case, without compulsory acquisition powers it would not be possible to deliver the proposed development within the required timetables, if at all.'*

- 8.5.21 The Applicant argues that it has through an iterative route alignment assessment sought to reduce the area of land affected by the proposed development. The ExA is persuaded that this is evidenced by the Applicants route selection taking advantage of the existing EE ¹¹⁰ route limiting the section of new overhead line to a minimum (see section 8.5 of the Strategic Optioneering Report [APP-122]). Reinforcement of the existing network as an alternative to a new connection Option A [REP7-009] and Option B [REP7-013] has also been considered and discounted by the Applicant (see Section 4.6 of this Recommendation Report [APP-122]).
- 8.5.22 The Applicant argues that no reasonable alternative other than a new connection has been identified and the proposed connection is considered the best available option (see the Applicants response to ExA first round question CA01 [REP1-028]). The ExA believes that this position was unchallenged by any of the other evidence put before the Examination as detailed in Section 4.6 of this Recommendation Report.
- 8.5.23 The Applicant has explored the possibility of voluntary agreements with landowners to avoid the need for CA [REP7-012]. The Applicant argues it has undertaken extensive engagement with landowners which includes distributing a land rights pack to all landowners with details of easement payments at an early stage of route optioneering and before final route selection [APP-044]. The Applicant believes that only where voluntary negotiation is unsuccessful will the exercise of compulsory rights be required to deliver the proposed development, but without the grant of power to acquire such rights there is a risk that the proposed development could not be delivered.
- 8.5.24 The Applicant has sought wherever possible to rely on the alternative of temporary possession of land rather than permanent acquisition (see paragraph 7.21 of SoR Option A [REP7-009] and Option B [REP7-013]). This is to ensure that its approach to land acquisition and the exercise of compulsory powers in respect of each plot and each individual Affected Person is proportionate, and would not give rise to

¹¹⁰ EE Route, south of Carmarthen, at Llandyfaelog, is part of the Applicants existing network to Swansea North GSP

interference with private rights beyond what is necessary to deliver the proposed development.

Conclusions on alternatives to CA

- 8.5.25 The ExA believes that the Applicant has demonstrably sought to purchase interests by agreement and where possible to rely on temporary possession. The ExA has seen evidence of a range of contacts between parties involved in issues of CA and sees no reason to doubt that, overall this approach has been adopted [REP7-012 and REP6-023 to REP6-026].
- 8.5.26 The ExA concludes that overall all reasonable alternatives to CA (including modifications to the scheme) have been explored for both Option A and Option B.

AVAILABILITY AND ADEQUACY OF FUNDS

- 8.5.27 In considering the adequacy of funding, the ExA had regard to EN-1, in particular paragraph 4.19 and to the DCLG Guidance, in particular, paragraphs 9, 17 and 18.
- 8.5.28 The original application documents submitted on 29 May 2015 included a Funding Statement [APP-042]¹¹¹ and the adequacy, source and availability of the funding required for both acquiring the land rights and implementing the proposed development for which the land is required. This was addressed in the ExA's SWQ (OM2-01 [PD-019]) and in the 2 December 2015 CA hearing under agenda item 10 [EV-013].
- 8.5.29 The adequacy of funding i.e. in terms of provision for injurious affection, was raised by Iwan Davies of BJP (land agent) on behalf of 25 affected persons at the CAH hearings on the 2 and 3 December 2016 under agenda items 5 and 10 [EV-014 and EV-016]. The Applicant pointed to paragraph 4.1.6 of its Funding Statement [APP-042]¹¹²:

*"The total cost of payments for land acquisition, incentive payments, disturbance, **injurious affection**¹¹³ and related professional fees is estimated at £1.1million."*

The funding required for implementing the proposed development

- 8.5.30 The cost of the DCO element (see Section 4.6 of this Recommendation Report) of the scheme is estimated to be in the region of £18.5m pounds (eighteen and a half million pounds). This cost estimate includes construction costs, development costs since 2012, project

¹¹¹ Covers Option A and B

¹¹² Option A and B

¹¹³ ExA emphasis

management costs, financing costs, lifetime, and acquisition costs of rights (Appendix 3 WPD Response on OM2-01 regarding Project Costs [REP5-036]).

8.5.31 The Applicant in response [REP1-028] to the ExA first round question CA15 [PD-011] argues that the mechanism for payment to cover the consenting and construction of the connection (the "Connection Charge") is set out within a Connection Offer signed between the Applicant and RWE¹¹⁴ (which is Commercial and Confidential); the Connection Charge is based upon current market rates and design assumptions; and the Connection Charge is to be paid in a series of stages tied to the progression of the proposed development which are approximately:

- on consent being obtained;
- ordering of plant/material;
- commencement of construction;
- completion of construction; and
- energisation of the connection.

8.5.32 The RIIO¹¹⁵ model (Revenue=Incentives+ Innovation+ Outputs), detailed in Page 13 of the Annual Report and Financial Statements in [REP1-033] confirms that Ofgem has published formal confirmation of the Applicant's RIIO-ED1 price control arrangement which in the case of all four of the Applicant's Distribution Network Operators (DNO) has been fast tracked. Page 15 of the report notes the effect of this on regulatory risk. The Applicant believes RIIO-ED1 secures its financial risk profile however it does not provide direct funding for the development, which is by way of the Connection Charge.

Conclusion in relation to the funding required for implementing the proposed development

8.5.33 The ExA is sufficiently confident that the resource implications of the implementation of the proposed development have been met adequately based on the substantive information provided regarding the connection agreement with RWE and in the 2014 accounts of the Applicant (2014)[REP1-033].

The funding required for CA

8.5.34 Paragraph 9 of the DCLG Guidance states that the Applicant:

"The applicant must have a clear idea of how they intend to use the land which it is proposed to acquire. They should also be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available. Otherwise, it will be difficult to

¹¹⁴ Developer of Brechfa Forest West Wind Farm

¹¹⁵ RIIO is Ofgem's framework for setting price controls for network companies.

show conclusively that the compulsory acquisition of land meets the two conditions in section 12".

- 8.5.35 The Funding Statement [APP-042] contained an estimate of the amount of funding that would be required for CA. The estimated costs of acquisition of the necessary rights i.e. the green, blue, purple, brown, red land shown on the land plans [REP5-020 to REP5-022], together with the procurement of voluntary agreement for the temporary use of land as shown on the land plans, would be an estimated £1,100,000.
- 8.5.36 In the Applicant's response to the ExA FWQ CA-17 [PD-011], where the ExA asked whether an appropriate security (in a form acceptable to the LPA) has been put in place, the Applicant replied saying they did not consider that security was necessary [REP1-028]. The Applicant argued that CCC has not nor have any other IPs, requested a unilateral undertaking from the Applicant to guarantee that funding be securitised. Based on the Applicant's financial position and its agreement with RWE through the Connection Charge it does not propose to provide additional financial security for this proposed development [REP1-028].
- 8.5.37 The ExA pursued the question of what security was being proposed to ensure that the costs of acquisition of rights and the imposition of restrictions could be met in the event that the DCO application was approved e.g. parent company guarantee, at the 2 December 2015 CA hearing under agenda item 10 [EV-014].
- 8.5.38 The Applicant's response [REP3-042] was that its review of the amounts for compensation and acquisition cost estimates has not resulted in a change to the provision in the Connection Charge which RWE accepted when they entered into the agreement, and which the Applicant could call from them. As a result, the Applicant is clear that the requisite funds for acquisition and compensation will be available as a result of RWE's contractual commitment.
- 8.5.39 The Applicant argued that there is at least a reasonable prospect of the requisite funds being available for CA compensation, based on the Applicant's financial standing (see page 16 of the Annual Report and Financial Statements – [REP1-033]). The Applicant stated it maintains an Investment grade credit risk rating and has access to an uncommitted facility of up to £20 million which could be used for the purpose of meeting the compensation payment based on the RIIO provisions (see Agenda item 10 of [EV-014]).
- 8.5.40 The Applicant states that if, contrary to these submissions [REP3-042] and in the absence of any requirement from CCC, the SoS still believes that additional comfort is needed then a provision could be included in a planning obligation agreement (s106 of the Town and Country Planning Act 1990), to the effect that no work shall be commenced until the local planning authority is satisfied that sufficient funds are available to meet the compensation claims. The Applicant is agreeable

to a provision which could be included in the DCO to the effect that the development could not be commenced unless either a guarantee in respect of the Applicant's liabilities to pay the compensation or an alternative form of security for that purpose is in place. This approach was adopted in the Hirwaun Generating Station Order 2015 and the Rookery South (Resource Recovery Facility) Order 2011. However, the Applicant does not believe such a DCO provision is necessary. CCC did not believe such a provision was necessary when queried under agenda item 10 [EV-014].

ExA Conclusion on Funding for CA

- 8.5.41 Given the Applicant's substantive account of its company assets and the lack of a CCC request for security, it is considered on balance reasonable to rely on the:
- The Applicant's connection charge arrangement with RWE;
 - Annual Report and Financial Statements for year ended 31 March 2015 [REP1-033]; and
 - Applicant's credit risk rating as detailed in its 2015 annual accounts.
- 8.5.42 The ExA is content that there is a reasonable prospect of the requisite funds for acquisition, possession and compensation becoming available.

THE APPLICANT'S CASE ON HUMAN RIGHTS

- 8.5.43 Article 1 of the First Protocol to the European Convention on Human Rights (peaceful enjoyment of possessions) is qualified that no one should be deprived of their possessions save in the public interest and in accordance with the law. This was incorporated into domestic law by the Human Rights Act 1998.
- 8.5.44 Article 8 of the European Convention on Human Rights (respect for private and family life) is qualified in that there shall be no interference with the right save as may be in accordance with the law and necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, or the prevention of disorder or crime, for the protection of health or moral, or the protection of the rights and freedoms of others.
- 8.5.45 The Applicant has clearly demonstrated that no outright land ownership is being acquired and no dwellings are being acquired as part of the scheme and therefore the application of this Convention right is clearly limited to the interference caused by the CA rights, temporary possession and restrictions to place the electricity lines on land (which does not form part of a dwelling) and any construction activities.
- 8.5.46 The Applicant's case is set out in Section 7.6 of the SoR Option A [REP7-009] and Option B [REP7-013]. The Applicant in response [REP1-028] to the ExA FWQ CA04 (a) and (c) [PD-011] argues that

the effect of the overhead and underground electricity grid connections on affected persons has been considered as part of the ongoing engagement and consultation throughout the iterative route selection process as is evidenced in their strategic optioneering and ongoing landowner engagement [APP-122, REP7-012 and REP1-045].

- 8.5.47 It was noted by the ExA that the consultation process included five separate landowner specific engagement sessions and further individual meetings with landowners (paragraphs 6.2.11 & 7.5.6 of [APP-044]). Consultation included canvassing individually affected persons for specified changes to the alignment in an attempt to minimise the impact on individually affected persons, (see response to the ExAs FWQ CA01 Appendix 1 Change Requests which is a schedule of requested changes [REP1-030]). This has led to numerous amendments (111 in total) to the alignment to accommodate impacts on specific private interests. Overall assessment of individually affected persons has been undertaken as part of this process to ensure that where possible any loss or impact is minimised taking into account the best available option for the route as a whole [APP-122].
- 8.5.48 The ExA noted it has seen evidence that the Applicant has considered carefully the effect of land rights acquisition on each individual landowner and this is clearly evidenced in general in [REP7-012] and in particular in the case Mrs Reader and Mr Davies in [REP7-016] who are neighbouring landowners to each other.
- 8.5.49 The Applicant in response [REP1-028] to the ExA first round question CA04 (b) [PD-011] stated that:
- "The substantive reason behind the assertion that the scheme would have a relative limited interference with private rights is based on the fact that the once built the development does not, in most if not all circumstances, prevent the continued use of land for its current purposes. The effect of the wooden poles and overhead lines has a very limited interference with the continued use of the land. The majority of the land affected is agricultural. Farming practices are generally unhindered by the existence of the electricity poles and lines and will remain in productive use."*
- 8.5.50 The Applicants ES provides a detailed assessment of the effect on land use, and this is set out in Chapter 8, Land Use, Agriculture and Forestry and Chapter 17, Socio Economics of the environmental statement [APP- 063 and APP-072]. The Applicant believes that private rights such as access and drainage are similarly considered to be unhindered by the presence of the lines. Responses to consultation have not identified any significant hindrances to the continued use of the land for current purposes. The construction of the scheme will prevent a limited area of land from being used but that interference is temporary and the land will be restored after construction. Further, to the extent that any land is affected by the interference the landowner will be compensated for their loss [APP-044 and REP1-028].

- 8.5.51 The Applicant in its response to the ExA first round question CA04(a-c) [REP1-028] argues that there is no substantial difference between the weighing of potential infringement of human rights and the making of a compelling case in the public interest as required by s122(3) PA2008. The Applicant argues that if the tests in s122(3) are met, the requirements of the Human Rights Act 1998 will also be met, that is to say, the proposed infringement would therefore be for a legitimate purpose and it would be shown to be necessary as well as proportionate.
- 8.5.52 The Human Rights Act 1998 considerations have been addressed above and the ExA is satisfied that the temporary possession powers are needed both to facilitate implementation of the proposed development and to maintain it and that there are also adequate compensation provisions in place in articles 28 and 29 of the draft DCO (these are now Articles 27 and 28 in the ExA's recommended DCO of Appendix D).

ExA conclusion on the Applicants human rights case

- 8.5.53 The ExA believes that the level of landowner engagement is sufficient to demonstrate that it has been reasonable and is both for a legitimate purpose and that it is necessary and proportionate [REP7-012 and REP6-023 to REP6-026]. The ExA considers that by virtue of the Applicant's direct functional need for the rights and restrictions sought for its overhead line and underground cable (see Section 4.3 of this Recommendation Report), the tests set out in guidance relating to legitimacy, proportionality, reasonableness, and necessity are met. In reaching this conclusion, the ExA has had regard to the compensation to which those individuals would be entitled.

THE EQUALITY ACT 2010

- 8.5.54 At the CAH held on the 2 December 2015, under agenda item 9 [EV-014], the ExA asked the Applicant to consider whether there were any Equality Act duties relevant to the application, and if so, how these had been addressed. The Applicant responded that the duties under the Equality Act applied to the Applicant only insofar as it could be considered to be performing a public function. The Applicant believes it has treated every party in the same manner and therefore had not discriminated during the promotion of the Order. The scope of the Order was also not discriminatory and therefore also did not impinge on any of these provisions [REP3-045].
- 8.5.55 In forming its recommendation the ExA has also had due regard to the public sector equality duty (PSED) and the need to eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Equality Act 2010, and to advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it, in accordance with section 149 of the Equality Act 2010.

- 8.5.56 Protected characteristics are age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation. 'Relevant protected characteristics' are all of those characteristics with the exception of marriage and civil partnership. Whilst, due to the linear nature of the proposal, the ExA acknowledges that persons with relevant protected characteristics could be affected by the proposed development the ExA considers that the proposal would not result in discrimination, harassment or victimisation of persons within these groups, nor would it erode good relations between persons who share a relevant protected characteristic and those who do not share it.

THE OBJECTOR'S CASE

- 8.5.57 Objections to the CA proposals have been received from a number of APs. There were no objections received from persons who were not APs in relation to CA powers. Although the ExA shall specifically refer to objections raised by APs, he appreciates that this represents only a proportion of the 611 plots of land that would be affected. No specific objection has been raised in relation to any particular plot of land. The ExA has nevertheless considered potential other interests which might reasonably exist and applied the relevant tests to the whole of the land that would be subject to powers of CA (rights and restrictions only), or temporary possession, in reaching his overall conclusions.
- 8.5.58 The ExA has considered all the objections received. Many of the issues raised by objectors have also been considered in earlier parts of this Recommendation Report in Chapters 4 and 5 when considering the planning issues arising in relation to the DCO application. The objections are considered here in the context of the application for the grant of CA powers and for the grant of powers of temporary possession.
- 8.5.59 The ExA has examined them against the tests set out in s122 and s123 of PA2008, having regard to the DCLG CA guidance and with regard to the provisions of the Human Rights Act 1998. They are different from an objection to the application for powers of temporary possession under Articles 28 and 29 (now Articles 27 and 28 in recommended DCO Appendix D) of the draft recommended DCO or objections based on an ability to make a claim under section 10 of the Compulsory Purchase Act 1965 or Part I of the Land Compensation Act 1973 section 152(3) of PA2008. Similarly, the ExA had regard to the Human Rights Act in considering the application for the grant of powers of temporary possession and also the need and justification for such powers.
- 8.5.60 The details of the objections raised are set out in the relevant representations and representations in writing (Deadlines 1-8 Appendix B) for those parties. It was noted that the Applicant has demonstrably sought to engage directly with all APs (62 in total at end of the examination). The Applicant removed Mrs Woods from the BoR at D5 Option A and B [REP5-031]) The Applicant has demonstrably

sought to reach voluntary agreements in each case [REP7-012]. During the Examination, the Applicant provided information relating to the progress on negotiations with Affected Persons. At Deadline 7, the Applicant provided an updated Landowner Engagement Table [REP7-012].

- 8.5.61 Below the ExA summarises the case for APs (other than Statutory Undertakers and electronic communications code network operators), where representations were made by those objectors in writing or orally at the OFHs [EV-004 to EV-008] and CAHs [EV-011 to EV-016 and EV-026 to EV-030]. This is followed by the ExA's summary of the Applicant's response to those objections and then the ExA's conclusion on each issue. The ExA after concluding on Human Rights and temporary possession matters, the ExA then concludes in section 8.6 on all the objections received from APs.

Mr E Jones - A267,A269,A272,A273,A274, 275, A276, A277, A278, A283, A284, B3, B5

- 8.5.62 Mr Jones is a landowner and caravan park owner at Pant Farm LLangunnor. His concern was the effect of pole 86 on the views from their property [REP4-001]. In his representation in writing [REP6-010] Mr Jones supported Option B and the undergrounding of poles 84-86.

Mr G A Dufty - plots C188, C189

- 8.5.63 Mr Dufty in his representations in writing [REP2-006 and REP3-017] made it clear he has never had any objections to the lines being installed underground but has a continuing and ongoing objection to the line being constructed over head. He had objections also to:

- Applicants consultation process;
- He would prefer undergrounding of the route; and
- He does not agree with the format of Heads of Terms (HoTs) proposed by the Applicant for private agreements with landowners.

Mrs Susana Rentmore - plots C202, C203, C204 and C210

- 8.5.64 Mrs Rentmore in her RR [RR-016] and representations in writing [REP2-016, REP3-030, REP4-011and REP5-051] and at the CAH on the 2 December 2015 under agenda item five [EV-013], detailed her objections to the Applicant having the right for CA and raised a number of objections relating to:

- She would like to see the payment of land agent's fees in advance;
- Impact of poles on water supply [REP6-008 and REP7-019];
- The results of a hydrology study she had commissioned [REP6-008];
- Disruption of agricultural activities;
- Devaluation of property;
- The need for water quality analysis of her water supply; and

- Approach of the Applicant's agent's in negotiations.

Iwan Jones on behalf of BJP clients (25 Affected Persons including 9 APs who also made their own cases at CAH)¹¹⁶ plots A3, A4, A5, A8, A37- A42, A46, A52, A55- A57, A59, A63, A64, A66, A71, A72, A94, A95, A99, A102, A118, A120, A113, A115- A117, A121, A123- 125, A122, A126, A127, A132, A133, A134, A137- A149, A151, A153-A155, A157, A28, A211, A214, A215, A217, A221, A223-A226, A229, A230, A242, A243, A244, A246, A250, A252, A254, A257, A260, A261, A264, A270, A271, A266, C3, C4, C5, C6, C54- C56, C58, C60, C61, C63, C64-C68, C70, C71, C76, C77, C79, C80, C141, C142, C144-C148, C150- C158, C160, C208, C209, C211- C215

- 8.5.65 Mr Iwan Jones on behalf of BJP made twenty two representations (Appendix B) in writing on behalf of 25 APs whose names are all detailed in the Applicants landowner engagement table [REP7-012]. At the OFH on 30 November 2015 under agenda item two [EV-005] and CAH on the 2 December 2015 under agenda item five [EV-013], Mr Jones raised concerns that the Applicant's negotiation process has been superficial, and no more than a tick box exercise, with the Applicant refusing to answer questions, for example on injurious affection or other matters in the HoTs. Mr Jones claimed infrastructure has been altered (single poles replaced with H poles), and this has not been disclosed. Mr Jones noted that the Applicant has not been sensitive citing an elderly, disabled man who lives alone with cancer being asked to sign a HoT with no legal representation on his part. He asserted that this may be an infringement of his Human Rights.
- 8.5.66 Mr Jones asserted that the Applicant sees this process as using the PA2008 to run roughshod over land owners. Mr Jones noted that there were specific concerns about stage 3 consultation involving significant change to the Brechfa line connection. Mr Jones requested the Applicant provide him with a document setting out the changes before and after stage 3 consultation¹¹⁷.
- 8.5.67 Mr Jones believes that BJP have acted reasonably. They have engaged in the process, and written to the Applicant, who, he says, has not reciprocated that engagement [CR-024].
- 8.5.68 On the second day of hearings on 3 December 2016 under agenda item 5 [EV-013] and on the 10 February 2016 under agenda item 5 [EV-028], Mr Jones made additional comments, regarding communications with the Applicant and provision for injurious affection payments.

¹¹⁶ Plots where Mr Jones (BJP) acted as land agent are also detailed in [REP7-012]

¹¹⁷ See Applicants response (Appendix 1) [REP1-028] to the ExA first round question CA01[PD-011] and to the ExA second round question DLV2-04[PD-019][REP4-027]

Mrs Pauline Medland - Plot C205¹¹⁸

8.5.69 Mrs Medland made a number of representations in writing [REP3-013, REP4-012, REP-056 and REP5-010 and REP5-011]. At the CAH on the 2 December 2015 under agenda item five [EV-013] and on 10 February 2016 under agenda item 5 [EV-028], Mrs Medland raised similar concerns to Mrs Rentmore with regard to:

- Her water supply. She was concerned whether she will be able to access her water-supply during construction. She had concerns there could be issues in ensuring a reliable supply;
- Engagement from the Applicant has been poor, particularly regarding her concerns over her Private Water Supply (PWS);
- Mrs Medland was concerned as to where the poles would be stored. If they are close to poles 170 to 171 it would be better to place them elsewhere, as they would have a strong smell;
- Mrs Medland was initially told that it was unlikely that access through her property was necessary. The Applicant noted that access to pole 169 was necessary. It was as alternative access, and only Land Rovers with trailers would use it [REP7-012];
- No undertaking that any repairs to roadway and yard would be paid for by the Applicant should damage be caused;
- The HoTs were inappropriate. They required rights over the entire property, but she believed the Applicant should only have rights over the roadway passing through the yard;
- She felt there is no reason for planning restrictions, so long as access is left clear and unblocked; and
- She argued the rights should not last longer than the life span of the proposed development.

Mrs Diana Reader - Plots C167, C168

8.5.70 Mrs Reader made sixteen representations in writing to the examination (Appendix B). At the CAH on the 2 December 2015 under agenda item five [EV-013] and on the 10 February 2016 under agenda item 5 [EV-028], Mrs Reader noted her objection to the Applicant having the right to CA and raised a number of objections relating to:

- Objection to the CA of her land;
- Lack of engagement following the close of stage 3 consultation;
- Alternatives not properly considered;
- Spread of infectious diseases e.g. TB; and
- Change of certain poles to H poles following consultation.

8.5.71 Mrs Reader was given the opportunity to question the Applicant on the 10 February 2016 at the CAH under agenda item 11 [EV-030].

¹¹⁸ No poles on her land, nearest pole is 169 on Mrs Rentmore's land

Mr and Mrs Woods - Plot A245

- 8.5.72 At the CAH on the 2 December 2015 under agenda item 5 [EV-013], Mrs Woods requested modifications which would avoid the need for the line to run over their land.
- 8.5.73 The Applicant removed Mrs Woods from the BoR¹¹⁹ at Deadline 5 [REP5-031].

Mr Miles and Mrs Karen Miles - Plots C121, C122, C123, C125, C127, C130, C131, C132, C133, C134, C135 and C136

- 8.5.74 Mr and Mrs Miles made the following representations in writing to the examination [REP2-017, REP3-002, REP3-019, REP4-010 and REP5-017]. At the CAH on the 2 and 3 December 2015 under agenda item five [EV-011 to EV-016] and 10 February 2016 under agenda item five [EV-026 to EV-030] Mrs Miles requested details of undergrounding of the existing 11KV line running through her property.
- 8.5.75 Mr and Mrs Miles are concerned that the height of the poles is intrusive and would be overbearing on the amenity of their residence. The line also runs through all of the Miles' fields and could create a "wirescape".
- 8.5.76 Mrs Miles requested an answer as to how the line route has changed following the decision in May 2014 not to proceed with the Bryn Llewellyn development. Were there any other options explored¹²⁰?
- 8.5.77 Mrs Miles requested clarification of pole numbering. Poles 138-144 are on the Miles' land. Some documents, however, list pole 145. The Applicant has moved other poles, so the full configuration is now unclear.
- 8.5.78 Mrs Miles would also like the applicant to consider the Human Rights Act, the Equality Act 2010 and the Well-being of Future Generations (Wales) Act 2015¹²¹ (see Section 3.4 of this Recommendation Report). Mrs Miles was given the opportunity to question the Applicant on the 10 February 2016 at the CAH under agenda item eleven [EV-030].

Mrs and Mr Leslie Birch¹²² - C187, C190

- 8.5.79 Mr and Mrs Birch made the following representations in writing to the examination [REP2-013, REP3-004, REP3-031, REP3-032, REP4-020 and REP5-018]. At the OFHs under agenda item two [EV-004 to EV-08] and the CAH on the 2 December 2015 under agenda item five

¹¹⁹ Option A and B

¹²⁰ See section 4.6 of this report

¹²¹ DCLG 2013 Guidance on Compulsory Acquisition does not currently refer to this Act

¹²² There are no poles on Mr Birch's land. The nearest is pole 160 approximately 150m from their residence (On Mr G A Dufty's land)

[EV-013] and 10 February 2016 [EV-028] Mr Birch noted the following issues:

- CA of a person's land should not be permitted;
- CA should not be allowed if there is a viable alternative;
- There is a responsibility to mitigate the effects of the proposed development on land owners;
- The Applicant has not helped landowners to engage with the proposed development. The information provided by the Applicant is very difficult to follow for landowners. The plans produced by the Applicant are not consistent. The boundaries on the plans of Mr and Mrs Birch's property are not correct, even on the HoTs. The plans are not to scale;
- Mr Birch has attempted to work out the area over which rights will be taken on his land. He noted that it equalled 450 m². This will have a significant impact on his farming business as it incorporates the area used by his alpacas to shield themselves from the prevailing wind, and there is no other area on the land for this. Mr Birch believes this is about 3.4 times larger than the area for a single pole with stays requires;
- The Applicant has not told Mr and Mrs Birch the purpose of acquiring rights over their land;
- He would like to see the undergrounding of the whole route; and
- There is no reference to the impact on humans, for instance health impacts through lack of sleep or stress.

Bryan and Avril Davies - Plots C161, C162, C164, C165

8.5.80 Bryan and Avril Davies made twelve representations in writing to the examination (Appendix B). At the CAH on the 2 December 2015 under agenda item five [EV-013] and 10 February 2016 [EV-028] Mr Davies noted the following issues:

- Overbearing nature of poles on their residential amenity;
- Effects on their water supply;
- Easements are a "legal hold on their land";
- Micrositing of poles [REP7-016] and
- Their own "photomontage" [REP4-008].

Mr Davies was given the opportunity to question the Applicant on the 10 February 2016 at the CAH under agenda item 11 [EV-030].

Dawn Reed - Plots C52, C53, C54

8.5.81 Dawn Reed on behalf of her family made nine representations in writing to the examination. At the CAH on the 2 December 2015 under agenda item 5 [EV-013] and 10 February 2016 [EV-028] Mrs Reed noted the following issues:

- Not signing HoTs documents. It is incomplete and there is confusion over the pole numbers. There is confusion from the applicant as to whether pole 116 or 117 is on the Reed's land. The plans do not show any stay positions;

- In the HoTs, there is no easement payment listed;
- The proposed access route passes their bee-hives. Therefore another route should be taken. Liability to cover the risk of injury/death from bee stings should be in the HoTs; and
- The Applicant has not responded to correspondence with Mrs Reed, including her response to unknown owners due diligence.

Dawn Reed was given the opportunity to question the Applicant on the 10 February 2016 at the CAH [EV-030].

Mr Bryan Kilkelly and Mrs Kilkelly - Plots C208, C209, C211, C212, C213, C214, C215

8.5.82 Mr and Mrs Kilkelly made a RR [RR-025] and nine representations in writing to the examination (Appendix B). At the CAH on the 3 December 2015 under agenda item five [EV-013] and 10 February 2016 [EV-028] Mr and Mrs Kilkelly noted the following issues:

- At a meeting with the Applicant's Land Agent they accepted that the concerns regarding HoTs were reasonable and they would report back to the Applicant. Since then, there has been no response to the visit. There has been a lack of meaningful dialogue with the Applicant;
- The easement strip is all they need to carry out the work. There is no need to have legal rights over the whole farm. 6 years is too long. 2 years should be more than enough time;
- Easements are a "legal hold" on their land;
- Noise from conductors on poles;
- Impacts on their holiday accommodation business;
- Impacts on water supply;
- Infectious disease spread;
- Compaction of soil will have an impact on yields, silage harvesting; and
- The whole line should be undergrounded to prevent an overbearing intrusion on their amenity.

THE EXA'S SUMMARY OF THE APPLICANT'S RESPONSE TO ISSUES RAISED BY AFFECTED PERSONS AND ITS CONCLUSIONS

8.5.83 The ExA has arranged the Applicant's response to the issues raised by APs into themes and details the Applicant's response to them and the ExA's conclusions in this section of this Recommendation Report:

- Engagement - CA issue;
- Heads of Terms (HoTs) and Injurious affection - CA issue;
- The extent of easement and "legal hold";
- Pole locations;
- Water supply;

- Undergrounding¹²³;
- Mr Davies "photomontage" [REP3-042][REP5-033] [EV-011 to EV-016 and EV-026 to EV-030];
- Noise;
- Tourism;
- Agricultural activity disruption - CA issue;
- Overbearing impact of poles on residential amenity;
- Human rights - CA issue; and
- Infectious diseases spread.

8.5.84 Five of the thirteen issues raised by APs are directly CA issues. In relation to objections raised by individual APs, they are as follows:

- Engagement (see paragraphs 8.5.84-90 for their examination and ExA's conclusion)- raised by Mr Dufty, Mrs Rentmore, Iwan Jones, Mrs Medland, Mrs Reader, Mrs and Mr Miles, Mr and Mrs Birch, Mr and Mrs Davies, Dawn Reed, Mr and Mrs Kilkelly;
- HoTs (see paragraphs 8.5.91-94 for their examination and ExA's conclusion)-raised by Mr Dufty, Iwan Jones, Mrs Medland, Mr and Mrs Birch, Dawn Reed, Mr and Mrs Kilkelly;
- Easements (see paragraphs 8.5.97-100 for their examination and ExA's conclusion) raised by Mrs Rentmore, Iwan Jones, Mr and Mrs Kilkelly
- agricultural activity interference, (see paragraphs 8.5.113-115 for their examination and ExA's conclusion)- raised by Mrs Rentmore, Iwan Jones, Mr and Mrs Kilkelly and
- human rights, (see paragraphs 8.5.118-119 for their examination and ExA's conclusion)- raised by Iwan Jones, Mrs Miles.

Engagement

8.5.85 The Applicant has provided considerable details of all of its engagement with all parties [REP6-023 to REP6-026 and REP7-012]. Most landowners have employed a professionally qualified agent and much recent correspondence has been with landowners' agents.

8.5.86 The ExA notes there is significant correspondence between the Applicant and BJP the land agent acting on behalf of 25 APs [CR-025, REP6-023 to REP6-026 and REP7-017]. In particular numerous requests for BJP to identify site by site what the issues are with the HoTs, to which the Applicant believes there have been non-specific responses. The Applicant has provided a table setting out the correspondence between BJP and the Applicant [REP5-031] and in Appendix 2 of [REP5-035].

8.5.87 With regard to Mrs Reader, the Applicant believes it has identified all correspondence with Mrs Reader and her agent and they have set out the rationale for the decision which the Applicant took to place the overhead line in the alignment submitted [REP5-031]. The latest

¹²³ Undergrounding of the Applicants existing 11Kv infrastructure does not form part of the DCO application.

assessment of the proposed route through her land is contained in [REP7-016].

- 8.5.88 The Applicant argues that there is a distinction between pre-application consultation and post application-consultation HoTs. Pre-application consultation shapes the proposed development. Post-application alterations are only to be made exceptionally where they could not possibly have been made beforehand. HoTs are distinct from post-application consultation.
- 8.5.89 CCC has stated that consultation had been adequate [AoC-002]. Where issues had been raised by these bodies, the Applicant believes they have dealt with them. Further, the Applicant does not agree that it is as difficult as some APs believe it is to follow the plans as claimed by Mr Birch, however they have committed to attempt and deal with all his points raised in his representations in writing.
- 8.5.90 The Applicant clarified that the access over Mrs Medland's property is for maintenance and inspection only, not for construction. This is shown in the CEMP [REP4-026].

ExA conclusion on Engagement

- 8.5.91 The Applicant has demonstrably sought to purchase interests by agreement. The ExA has seen evidence of a considerable range of contacts between parties involved in issues of CA and sees no reason to doubt that, in general, this approach has been adopted in the Applicant's engagement with APs [REP7-012 and REP6-023 to REP6-026].
- 8.5.92 The ExA based on the evidence he has seen, believes the Applicant has consistently and genuinely sought to engage with all APs. Therefore CA is the last resort as no agreement has been reached in the remaining cases.

Heads of Terms and Injurious affection

- 8.5.93 The Applicant has pointed out that injurious affection is referred to in the Guide to payments for landowners, forming part of the Landowner Pack (paragraph 8.6.6 [APP-044]). The Applicant contends that such packs were available from Stage 2 of the pre-application consultation process. Reference to injurious affection is to be found at paragraph 13 of the Key Terms Sheet accompanying the Heads of Terms (Appendix 6 of [REP5-035]). Heads of Terms are issued to Land Agents upon receipt of confirmed meeting dates and times or provided at an arranged meeting. Heads of Terms were issued to BJP during a meeting held on 22 September 2015. This evidence has not been refuted by any of the APs.

ExA conclusion on HoTs and injurious affection

- 8.5.94 The ExA has seen evidence of amendments made to HoTs [REP8-031] by the Applicant at the request of APs and sees no reason to doubt

that, in general, this approach has been adopted in the Applicants engagement on HoTs with APs [REP7-012 and REP6-023 to REP6-026].

- 8.5.95 Injurious affection has been adequately and reasonably addressed by the Applicant in their engagement with APs. The Applicant has stated at paragraph 4.1.6 of [APP-042]:

*'The total cost of payments for land acquisition, incentive payments, disturbance, **injurious affection**¹²⁴ and related professional fees is estimated at £1.1million.'*

- 8.5.96 The ExA is content that there is a reasonable provision for injurious affection (see paragraph 8.5.29 of this Recommendation Report).

Easement

- 8.5.97 The Applicant believes that the suggestion that the easement is a "legal hold" over the entirety of the demise¹²⁵ is not correct. The HoTs, the Applicant argues, seek to agree by negotiation an area of land which might be needed by the Applicant. If the Applicant is only able to gain access to land via CA then this constrains, by reference to the extent of land over which rights are to be compulsorily acquired, its ability to deviate from the route shown on the certified plans.

- 8.5.98 The Applicant argues that the easement does not operate in any way as a hold over land e.g. a farmhouse, would not fall under the control of the Applicant. All the easement seeks to achieve is to require parties who are going to make changes to working or farming activities within the area of the easement to notify the Applicant, so that the Applicant can ensure that clearances to its infrastructure are maintained for safety and operational purposes. If individual land holders have a bespoke reason to alter the extent of the easement, the Applicant should be notified and agreement reached (discussed under agenda item 7 [EV-012-to EV-016]).

- 8.5.99 The ExA does not agree with the Applicant. An easement is a right over land and does have implications for the land owner. Whilst the applicant is not acquiring all the land (such as freehold) they are seeking to acquire or create rights and restrictions, hence to interfere with the peaceful enjoyment etc of APs.

ExA conclusion on easements

- 8.5.100 The ExA agrees with the APs that the easement does operate as an interference with rights over land in that it constrains parties who are going to make changes to working or farming practices within the area of the easement. They are required to notify and reach agreement

¹²⁴ ExA emphasis

¹²⁵ The convey or grant by will or lease

with the Applicant prior to executing them. However, the ExA believes such easements (which are CA powers to create rights) may be necessary and justifiable to ensure that the Applicant can maintain clearances to their infrastructure for safety and operational purposes.

Pole locations

- 8.5.101 The concern arose as a result of the change in pole numbering which came about between statutory consultation and submission in May 2015. Poles changed in type and number following consultation as a result of change requests received from landowners [REP4-030].
- 8.5.102 The Applicant argues that since May 2015 when the application was submitted, there is simply no room for confusion. The Applicant has pointed out the SoS accepted the application for examination after careful consideration [PD-002]. The Applicant argues that it has determined that each of the pole numbers is correct, each of the configurations was correct. If anyone was unsure, they should have asked their representative who would have gone onto the National Infrastructure website at anytime in the pre-application process and provided the correct answer.

ExA conclusion on pole locations

- 8.5.103 The ExA believes there is no confusion regarding pole locations because Requirement 3, Table 1 of the draft DCO has been consistent on locations since May 2015 [APP-039] as shown in Option A Version F [REP8-015] and Option B Version A [REP8-023]. The ExA is content that pole location and numbering is consistent for Options A and B.

Water supply

- 8.5.104 A number of IPs asserted that their spring well water sources would be tainted by the leakage of creosote chemicals from the wooden poles and that flow could be interrupted by the placement of the poles in the ground [RR-016, REP2-001, REP2-016, REP3-013, REP3-021, REP3-030, REP3-033 and REP8-045¹²⁶].
- 8.5.105 The Applicant considers it to be a remote possibility for a wooden pole sunk to a maximum depth of 2.7m, to affect either the quality or quantity of supply. Mitigation is however proposed and this is summarised in Section 5.5 of this Recommendation Report and addresses this issue in detail. Requirements 3, 7, 8, 12, 21, 26 and 27 of the recommended DCO (Appendix D of this Recommendation Report) puts in place mechanisms to manage effects on water quality and resources during design, construction and operation. These Requirements are discussed in detail in section 9.5.

¹²⁶ A late submission from Jenny Hare which the ExA accepted

ExA conclusion on water supply

- 8.5.106 The three nearest poles to the IPs water supplies will have concrete sleeves to encase the base of the poles. Precautionary mitigation measures have been put in place in line with Mr Hatherhalls report. The ExA is satisfied there has been no persuasive evidence provided by APs that spring well water sources would be tainted by the leakage of creosote chemicals or would have its flow disrupted from the wooden poles (section 5.5 of this Recommendation Report). However the mitigation proposed by the Applicant clearly addresses the possibility of any potential harm which could arise.

Undergrounding¹²⁷

- 8.5.107 Section 4.6 of this Recommendation Report deals with the ExA's assessment of the Applicant's approach to the possible alternative of total undergrounding of the OHL and IPs and APs arguments in favour. The APs arguments for undergrounding were that it would:

- Lessen agricultural activity interference;
- Remove tourism effects;
- reduce wirescape; and
- prevent overbearing effects on residential amenity

ExA conclusion on undergrounding the whole route

- 8.5.108 The additional cost of placing the overhead line underground, compared to the overhead route proposed, is calculated by the Applicant as more than £23 million [APP-124]. The ExA agrees that, in these circumstances, further undergrounding would not be justified. In line with NPS EN-1 paragraph 4.4.3 and NPS EN-5 paragraph 2.8.8-2.8.9. The ExA believes undergrounding of the whole route can be excluded because the proponents of that alternative failed to provide the evidence for its suitability in terms of **"serious concerns" the NPS EN-5 test** on landscape issues and the associated additional costs would not be proportionate (see section 4.6 of this Recommendation Report). In terms of it resulting in a lesser interference with existing rights the ExA believes this would be an alternative interference as access to and protection of the underground section would still be necessary.

Mr Bryan Davies' (owner of plots C161-162 and C164-165) Photomontage

- 8.5.109 The Applicant argued that the photomontage provided by Mr Davies [REP4-051] is inaccurate and the Applicant has provided their own wireline as Appendix 3 in [REP5-035].

¹²⁷ Undergrounding of the Applicants existing 11Kv infrastructure does not form part of the DCO application.

ExA conclusion on Mr Davies photomontage

- 8.5.110 The ExA undertook an accompanied site inspection [EV-009 and EV-010] on the 1 December 2015 to Bryan and Avril Davies' property. Poles 153-154 are on their property. Approximate Distance to Closest Pole in metres is 100m to pole 153. Mr Davies photomontage clearly shows it to be much closer.
- 8.5.111 The ExA is satisfied that the level of interference presented [REP4-051] does not actually tally with the ExA's site inspection to the property [EV-009]. The ExA concluded in section 5.2 that no overbearing effects would result from the location of poles on Mr Davies' land.

Noise

- 8.5.112 Section 5.15 of this Recommendation Report addressed noise and given the evidence presented, the ExA concludes that noise issues have been addressed adequately and would not result in an increased interference with rights.

Tourism

- 8.5.113 Section 5.3 of this Recommendation Report addressed the evidence of potential harm to socio-economic activities brought about by the proposed development. The ExA considers that any residual harmful effects on tourism would not result in an increased interference with rights.

Effects on agricultural activities

- 8.5.114 The Applicant argues that once the proposed development is built the development does not, in most if not all circumstances, prevent the continued use of land for its current purposes (response to ExA FWQ CA04c [REP1-028]). The ExA is persuaded that the effect of the wooden poles and overhead lines has a very limited interference with the continued use of the land, because the majority of the land affected is agricultural. Farming practices are generally unhindered by the existence of the wooden electricity poles and lines and will remain in productive use.
- 8.5.115 The Applicant has provided a detailed assessment of the effect on land use which is set out in Chapter 8, Land Use, Agriculture and Forestry and Chapter 17, Socio Economics of the environmental statement for Option A [APP- 063 and APP-072] and Option B [CR-003]. The Applicant believes that private rights such as access and drainage are similarly considered to be unhindered by the presence of the lines. Responses to consultation have not identified any significant hindrances to the continued use of the land for current purposes. The ExA is conscious that the construction of the proposed development will prevent a limited area of land from being used but that interference is temporary and the land will be restored after construction. Further, to the extent that any land is affected by the

interference the landowner will be compensated for their loss [APP-044 and REP1-028].

ExA conclusion on effects on agricultural activity

- 8.5.116 The ExA concludes that the majority of land over which permanent rights are to be acquired or created would experience only minor interference with the use of the land. A significant proportion of the land over which permanent rights would be affected is in agricultural use. The ExA believes the owners of such land would be able to continue to use the land for this purpose (subject to some restriction on certain activities such as deep ploughing) once construction is completed and it is likely that they would experience only limited interference over the lifetime of the development.

Overbearing effect of poles on residential amenity

- 8.5.117 A number of parties raised the potential of an overbearing effect of poles on their residential amenity.
- 8.5.118 The ExA does not believe any overbearing effects on residential visual amenity at any properties will result in them becoming widely regarded as an unsatisfactory place in which to live because of the reasons detailed in Section 5.2 of this Recommendation Report.

Human Rights

- 8.5.119 Paragraphs 8.5.41-8.5.50 of this Recommendation Report deals with the ExA's assessment of the Applicant's approach to Human Rights. The ExA believes that by virtue of the Applicant's direct functional need for the land for its overhead line and underground cable (see Section 4.3 of this Recommendation Report), the ExA considers that the tests set out in guidance relating to legitimacy, proportionality, reasonableness, and necessity are met.
- 8.5.120 The ExA shall consider whether the public benefits that would be derived from the CA would outweigh the private loss that would be suffered by those whose rights over that land, are to be acquired, and have regard to human rights considerations (see paragraph 8.5.124 to 8.5.127), in reaching his overall conclusions later on in this chapter at section 8.7.

Infectious disease spread

- 8.5.121 Mrs Reader [REP5-008] raised the potential for the Applicants construction activities to spread bovine tuberculosis. The Applicant has addressed this matter adequately in the ES [APP-063] at Table 8.4 and paragraphs 8.6.1 and 8.6.8 and paragraph 5.1.10 of the CEMP [REP4-026].

ExA conclusion on infectious disease spread

- 8.5.122 The ExA believes that with the application of the relevant embedded mitigation measures specified in Table 8.4 of the CEMP [REP4-026], the potential for the spread of infectious diseases is negligible. The CEMP is secured by Requirement 21 in the ExA's recommended
- 8.5.123 The ExA will now address Human Rights and temporary possession matters before concluding in section 8.6 of this Recommendation Report, on the objections which were made by APs to CA powers being granted.

EXA'S CONSIDERATION OF HUMAN RIGHTS ACT 1998

- 8.5.124 In considering specific plots and specific parties the ExA has had particular regard to Article 1 of the First Protocol to the European Convention on Human Rights (ECHR), as embodied in the Human Rights Act 1998, which states that:

'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.'

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.'

- 8.5.125 The ExA in relation to Article 1 of the First Protocol is satisfied that the proposed interference with the individual's rights would be lawful, necessary, proportionate and justified in the public interest
- 8.5.126 The ExA has also had regard to Article 8 of ECHR dealing with the right to respect for private and family life. None of the applications for CA relate to the CA of a house or dwelling and the ExA does not consider Article 8 to be infringed.
- 8.5.127 The ExA concludes that, the process of examining this application, including the opportunities to submit representations, a series of written questions and the opportunities to be heard at hearings¹²⁸ all means that those whose rights may be affected have been given access to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law for the purpose of Article 6 of the ECHR.

¹²⁸ And in the cases of Mr Davies, Mr Kil Kelly, Mrs Reader, Mrs Read and Mrs Miles to question the Applicant directly [EV-013 to EV-016]

TEMPORARY POSSESSION POWERS

- 8.5.128 The DCO Option A [REP8-015] and Option B [REP8-023] at Articles 28 and 29 (these are now Articles 27 and 28 in the ExA's recommended DCO Appendix D) respectively seeks powers to take temporary possession of land to carry out the authorised development and to maintain it. The land which is subject to these powers is described in Version E of the Book of Reference [REP8-019]¹²⁹ and shown on the revised Land Plans Option A [REP5-020 to REP5-022] and Option B [REP8-027].
- 8.5.129 The nature of the power is also described in the Book of Reference and the purpose and justification for these powers is set out in the Statement of Reasons Option A [REP7-009] and Option B [REP7-013]. The Funding Statement [APP-042] submitted with the application concludes that there will be no funding shortfall in meeting any compensation payments. The ExA has examined funding for CA and is satisfied there will be no likely shortfall (see paragraph 8.5.40).
- 8.5.130 As indicated above these powers are not CA powers and accordingly the tests under sections 122 and 123 are not applicable. However, the use of the powers must be justified in order to enable the proposed development to be implemented and maintained, the inevitable interference i.e. temporary constraints over use of farming land during construction (detailed in section 5.5 and at paragraphs 8.5.113 to 8.5.115 of this Recommendation Report) with human rights must be justified and there must be adequate compensation provisions in place for those whose land is affected.
- 8.5.131 The Human Rights Act 1998 considerations have been addressed above and the ExA is satisfied that the powers are needed both to facilitate implementation of the proposed development and to maintain it and that there are also adequate compensation provisions in place in articles 28 and 29 of the draft DCO for Options A and B (these are now Articles 27(6) and (7) and 28 (5) in the ExA's recommended DCO in Appendix D). These powers are justified in human rights terms because the ExA is content there are adequate compensation provisions in place for those whose land is affected for Options A and B in the ExA's recommended DCO in Appendix D.

8.6 CONCLUSION IN RESPECT OF APS WHO MADE REPRESENTATIONS IN WRITING AND VERBAL REPRESENTATIONS AT THE OFHS AND CAHS AND OTHER INTERESTS WHICH WERE NOT IDENTIFIED

- 8.6.1 The ExA has considered all the objections received. Many of the issues raised by objectors have also been considered in earlier parts of this Recommendation Report when considering the planning issues arising in relation to the DCO application. The objections are considered here

¹²⁹ Option A and B

in the context of the application for the grant of CA powers and for the grant of powers of temporary possession.

- 8.6.2 Although the ExA has specifically referred to objections raised by APs in section 8.5 of this Recommendation Report, he appreciates that this represents only a proportion of the 611 plots of land that would be affected. No specific objection has been raised in relation to any other particular plot of land. The ExA has nevertheless considered potential interests which might reasonably exist and applied the relevant tests to the whole of the land that would be subject to powers of CA (rights and restrictions only), or temporary possession, in reaching his overall conclusions.
- 8.6.3 In relation to the CA objections the ExA has examined them against the tests set out in s122 and s123 of PA2008, having regard to the DCLG CA guidance and with regard to the provisions of the Human Rights Act 1998. They are different from an objection to the application for powers of temporary possession under Articles 28 and 29 (now Articles 27 and 28 in recommended DCO Appendix D) of the draft DCO or by those who may be able to make a claim under section 10 of the Compulsory Purchase Act 1965 or section 152(3) of PA08. Similarly, the ExA had regard to the Human Rights Act in considering the application for the grant of powers of temporary possession and also the need and justification for such powers.
- 8.6.4 The ExA believes a clear link between the APs, and public interests, and how those individual interests have been considered in reaching his conclusions, is established by the ExA having regard to the objections made by APs (Paragraphs 8.5.58 to 8.5.83 of this Recommendation Report).
- 8.6.5 The case for the development itself has been agreed as having been made, as set out in Chapter 7, in relation to the need for the project. By virtue of the Applicant's direct functional need for the rights and restrictions sought for its overhead line and underground cable, the ExA considers that the tests set out in DCLG guidance relating to legitimacy, proportionality, reasonableness, and necessity are met. Taking into account the correspondence, responses to ExA written questions and the exchanges at the three CA hearings, cited in the preceding paragraphs, the ExA recommends that the SoS can authorise the CA of interests applied for in the following plot numbers:
- Mr E Jones - A267, A269, A272, A273, A274, 275, A276, A277, A278, A283, A284, B3, B5
 - Mr GA Duffy - plots C188, C189;
 - Mrs Susannah Rentmore - plots C202, C203, C204 and C210;
 - Iwan Jones, acting on behalf of BJP clients - plots A3, A4, A5, A8, A37- A42, A46, A52, A55- A57, A59, A63, A64, A66, A71, A72, A94, A95, A99, A102, A118, A120, A113, A115- A117, A121, A123- 125, A122, A126, A127, A132, A133, A134, A137- A149, A151, A153- A155, A157, A28, A211, A214, A215, A217, A221, A223- A226, A229, A230, A242, A243, A244, A246, A250, A252,

A254, A257, A260, A261, A264, A270, A271, A266, C3, C4, C5, C6, C54- C56, C58, C60, C61, C63, C64-C68, C70, C71, C76, C77, C79, C80, C141, C142, C144-C148, C150- C158, C160, C208, C209, C211- C215¹³⁰;

- Mrs Pauline Medland - Plot C205¹³¹;
- Mrs Diana Reader - Plots C167, C168;
- Mrs Karen Miles - Plots C121, C122, C123, C125, C127, C130, C131, C132, C133, C134, C135 and C136;
- Mr Leslie Birch - C187, C190;
- Bryan and Avril Davies - Plots C161, C162, C164, C165;
- Dawn Reed - Plots C52, C53, C54; and
- Mr Bryan and Mrs Kilkelly - Plots C208, C209, C211, C212, C213, C214, C215 .
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THE APPLICANT'S CASE IN RELATION TO CROWN LAND

8.6.6 Discussions are on-going in relation to an agreement to acquire the necessary interests in Crown land. By letter dated 7 May 2015, Cooke & Arkwright confirmed the Crown Estate's agreement in principle for the Applicant to be granted a lease of easement for the cable crossing of Crown land at the River Towy in Carmarthenshire. By letter to the Applicant dated 21 May 2015, NRW confirmed their consent, if the SoS was subsequently minded to make a DCO, for the inclusion of provisions, other than CA, in the Order, over the forestry Crown land vested in the Welsh Ministers pursuant to section 135(2) of the Act [APP-139]. The SoS may wish to consider if a further updated s135(2) consent is required from the Welsh Ministers. The ExA is not persuaded that this letter represents the appropriate Crown authority consent to an acquisition for the purposes of section 135(1) of the PA2008.

8.6.7 The Applicant's answer to CA2-09 is provided in [REP4-027] and it stated:

'Crown Estate (River Towy Crossing):

Draft HoTs have been prepared by Cooke and Arkwright acting on behalf of the Crown Estate. This has been reviewed by the WPD project team and returned with amendments for the Crown's consideration. However, because the Crown Estate do not hold the land on behalf of the Crown, but as the Crown, they do not engage the provisions of s.135 (1). There will, of course be an agreement in due course but the agreement does not need to be under s.135 (1).

This then means that the question becomes different – the relevant question is now (as in Hinkley) whether there is any evidence that the Crown is not going to consent. There is a letter dated 7 May 2015

¹³⁰ Kilkellys represented by two land agents

¹³¹ No poles on her land, nearest pole is 169 on Mrs Rentmore's land

which states they agree in principle. A legal note has been provided at Appendix 1 setting out the position for Crown Land. There is no evidence of any issue arising from the Crown's ownership of the crossing.

Crown Land (Forestry):

Draft HoTs were prepared following meeting with NRW on 18 January 2016 and were sent to NRW for comment. A follow up meeting has been arranged on 18 February 2016 to discuss the HoTs. There is every likelihood that at that meeting the HoTs will be agreed. NRW are the appropriate crown authority for the forestry land – this has been confirmed to the Examining Authority by NRW.'

- 8.6.8 In response to the ExA's Rule 17 questions [PD-036] the Applicant responded [REP8-032]:

'A form of Agreement and its associated documentation was subsequently issued to NRW on 31 March 2016 for execution. Further discussion ensued between the parties on Friday 01 April and 04 April 2016 respectively, and the Applicant is currently awaiting confirmation from NRW that the final content of the documentation is agreed.'

- 8.6.9 The Applicant goes on to re-iterate:

'In respect of the Towy crossing, which is Crown Land managed by the Crown Commissioners, no interest other than the Crown's is affected by the development. The Applicant will acquire an easement in the land by agreement. The Crown Commissioners have agreed in principle to grant an easement subject to commercial terms being agreed See appendix 1 [APP-041]. Therefore no consent to interfere, extinguish or acquire a third party interest in Crown Land (Section 135(1)) is necessary for this parcel of land (Book of Reference plot B6). However, to avoid any ambiguity on this point the Applicant is proposing to include the Schedule attached as an appendix to the note to provide that any consent, should it be necessary, is granted. However it is the Applicants view that Section 135(1) does not apply for plot B6.'

- 8.6.10 The ExA in coming to a view on Crown land, set out in the subsequent paragraphs of this section, has considered the statutory provisions set out in s135 and s227 of the PA2008 (as amended) and has had regard to the guidance contained, in particular, in paragraphs 39 and 40 and in Annex B of the DCLG Guidance.

- 8.6.11 The relevant provisions of s.135 are subsections (1) and (2):

'(1) An order granting development consent may include provision authorising the compulsory acquisition of an interest in Crown land only if—

(a) it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and
(b) the appropriate Crown authority consents to the acquisition.

(2) An order granting development consent may include any other provision applying in relation to Crown land, or rights benefiting the Crown, only if the appropriate Crown authority consents to the inclusion of the provision.'

8.6.12 Article 20(8) of the draft DCO Option A [REP8-015] and Option B [REP8-023] prohibits acquisition of Crown land unless the appropriate Crown authority consents to such acquisition. The ExA believes the draft Article 20(8), and hence Article 20(9), in the draft DCO Option A [REP8-015] and Option B [REP8-023], are superfluous as s135(1) already deals with that point.

8.6.13 Therefore the ExA's recommended DCO in Appendix D has amended the equivalent Article, by deleting the Applicant's paragraphs (8) and (9) and, as a revised Article 19(8), inserting the following provision instead:

"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."

Conclusion on Crown Land

8.6.14 The ExA did not receive any confirmation from the Crown Estate that the Applicant's position was acceptable to the Crown Estate for plot B6. The ExA is not persuaded that Appendix 1 of [REP7-013] represents the appropriate Crown authority consent to an acquisition for the purposes of section 135(1) of the PA2008 nor to the inclusion of provisions (other than CA) for the purposes of section 135(2) of the PA2008.

8.6.15 The ExA recommends that the powers sought in respect of Crown land for plots C216, C217¹³², C218 to C227 should not be granted until the appropriate Crown authority has provided any necessary consent for the purposes of section 135(1) of the PA2008.

8.6.16 The powers sought in respect of Crown land, plot B6 should not be granted until either the Crown (or its appropriate representatives) has confirmed that the necessary consent from the Crown authority is obtained. The SoS may wish to consider requesting s135(2) consents from both appropriate Crown authorities i.e. Welsh Government and Crown Commissioners in relation to any non-CA provisions in the DCO that affect any of their respective Crown land plots.

¹³² Previously in unknown ownership but now claimed by the Crown

APPLICANTS CASE IN RELATION TO STATUTORY UNDERTAKERS LAND

- 8.6.17 The Applicant in response to the ExA Rule 17 question [PD-039] on the 30 March 2016 requesting a progress report on progress on agreeing protective provisions with statutory undertakers and network operators stated [REP8-032]:

' In the case of National Grid Electricity and Gas and Dŵr Cymru, it has been necessary to settle not only a preferred set of Protective Provisions, but also a legal agreement between the Applicant and those undertakers to address commercial concerns which cannot be secured via Protective Provisions alone.

4.1.3 The legal agreement for Dŵr Cymru is in the process of being signed by WPD and will then be immediately sent to Dŵr Cymru for signature. The Protective Provisions within the Option A (3.1F) & Option B (9.31A) Development Consent Orders are the sets agreed in principle between the parties. The legal agreements for National Grid Electricity and Gas were signed and completed on 22 January 2016. The Applicant is chasing for formal letters from NGET and NGG confirming their acceptance of the Protective Provisions. An email from the lawyers acting for National Grid Electricity and Gas was received by the Applicant on 5 April 2016 and confirms that their relevant representation submitted on 3 August 2015 is withdrawn having concluded satisfactory protective provisions arrangements. A copy of this email is attached as Appendix 4. This email also confirms this confirmation will be provided on National Grid Electricity and Gas letterhead. This will be submitted to the Examining Authority as soon as they are received by the Applicant¹³³. The Protective Provisions within the Option A (3.1F) & Option B (9.31A) Development Consent Orders are the sets agreed in principle between the parties.

4.1.5 Wales and West Utilities, Mainline Pipelines and BT Openreach have all confirmed that they either have no objection or accept the Protective Provisions as drawn within the Development Consent Order. This has been confirmed in letters from Mainline Pipelines on 21 December 2015 [REP4-044], Wales and West Utilities on 4 April 2016 (Appendix 2) and BT Openreach on 4 April 2016 (Appendix 3).'

- 8.6.18 The Applicant in REP8-041 points out that no land in the ownership of statutory undertakers will be acquired. The Book of Reference indicates that only Class 2 Rights (acquisition of rights by the creation of new rights) are sought over Plot B50 (approximately 37 square metres of land lying to the east of Afon Gwili, Abergwili) which is in the ownership of Dwr Cymru. The Proposed Development will only interact with other statutory undertakers assets where it will cross

¹³³ [REP8-040] withdraws its RR

them and Protective Provisions have been agreed in this respect (Schedule 9, Part 3).

8.6.19 The DCLG Guidance 2013 states at Paragraph 14;

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

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

8.6.20 Dwr Cymru have not submitted any relevant representations or holding objections to the Proposed Development. The Applicant argues that to use Plot B50 for access will not cause any serious detriment to the carrying on of Dwr Cymru's undertaking. The Applicant stated [REP8-041]:

'Dwr Cymru have settled a legal agreement to agree Protective Provisions which is in the process of being signed and completed. Heads of Terms have been signed in respect of an easement for the benefit of the Applicant over Plot B50. The Applicant considers that, based on Dwr Cymru not objecting to the Project and having settled terms that no serious detriment arises. The Secretary of State should therefore be satisfied that the test in Section 127 (5) is met.'

8.6.21 Mainline Pipelines have confirmed that they have no objection to the Protective Provisions as drawn within the Development Consent Order. This has been confirmed in a letter from Mainline Pipelines on 21 December 2015 [REP4-044]. Mainline Pipelines Limited have not objected to the proposed development. BT Openreach have not objected to the proposed development or made representations. The Book of Reference does not identify any land within Mainline Pipelines or BT Openreach ownership within Order limits.

8.6.22 Wales and West Utilities (WWU) responded at D4 with a letter to the Planning Inspectorate which noted that WWU had no apparatus in the area of the 'enquiry' but have provided confirmation on 4 April 2016 that they are satisfied with the Protective Provisions within the DCO [REP4-002]. The Book of Reference does not identify any land within their ownership within Order limits. The Applicant argues that under s127 (1) no objections have been made by any statutory undertaker. However, the ExA notes that WWU has not formally withdrawn its WR [AS-006].

8.6.23 National Grid Electricity Transmissions (NGET) and National Grid Gas (NGG) submitted a letter to the Planning Inspectorate on 5 April 2016 withdrawing their relevant representation dated 3 August 2015 and

noting that satisfactory Protective Provision arrangements had been concluded [REP8-040].

- 8.6.24 The Applicant argues that with the exception of Dwr Cymru's ownership of Plot B50 which is considered above, no land or rights will be acquired over any other statutory undertakers land, therefore neither Section 127 (2) or 127 (5) will be engaged in respect of any other statutory undertaker.

ExA Conclusion on Statutory Undertaker and Operators of Electronic Communications Networks Land or apparatus

British Telecommunications Plc (BT)/Openreach

- 8.6.25 BT Openreach have not objected to the proposed development or made any representations. The Book of Reference¹³⁴ does not identify any land within their ownership within the Order limits. Part 5 of Schedule 9 of the draft DCO Option A [REP8-015] and B [REP8-023] contains protective provisions which provide protection for BT's apparatus (though not by name). The Protective Provisions for Operators of Electronic Communications Code Networks, to cover BT/Openreach, were not in an agreed version by the time that the examination closed. Section 138 of the PA2008, applies to an operator of an electronic communications code network (if that operator has a "relevant right" or "relevant apparatus", as defined in section 138, exists on, under or over land authorised to be acquired). The ExA has seen evidence in the BoR [REP8-019] e.g Plot no. A37, that BT has a "relevant right". The Applicant did not anticipate that the authorised development will interfere in any way with BT's apparatus and/or rights. The Applicant has provided for the protection of BT's apparatus through protective provisions in Part 5 of Schedule 9 to the recommended DCO. Given the protective provisions in Part 5 of Schedule 9, the ExA considers that the SoS can be satisfied that BT's/Openreach apparatus is protected.

National Grid Gas (NGG) Plc and National Grid Electricity Transmission (NET)Plc (Grid)

- 8.6.26 NET and NGG submitted a letter to the Planning Inspectorate on 5 April 2016 withdrawing their relevant representation [RR-017] dated 3 August 2015 and noting that satisfactory Protective Provision arrangements had been concluded [REP8-040]. Accordingly the provisions of s.127 are not engaged.
- 8.6.27 The Applicant has included powers to extinguish any right or remove any apparatus (contained in Article 30¹³⁵ of the draft DCO Option A [REP8-015] and B [REP8-023]) but made subject to the protective provisions in Part 2 Schedule 9. Given the protective provisions are

¹³⁴ Option A and Option B

¹³⁵ Article 29 of the ExA's recommended DCO Appendix D

agreed in Part 2 Schedule 9, the SoS can be satisfied that any extinguishment or removal would be necessary for the purpose of carrying out the authorised development (s138).

Dwr Cymru Cyfyngedig (DCC) (Welsh Water)

- 8.6.28 Dwr Cymru have not submitted any relevant representations or holding objections to the Proposed Development. The Applicant argues that to use Plot B50 for access will not cause any serious detriment to the carrying on of Dwr Cymru's undertaking. Dwr Cymru have settled a legal agreement to agree Protective Provisions which is in the process of being signed and completed. Heads of Terms have been signed in respect of an easement for the benefit of the Applicant over Plot B50 (37 m² or thereabouts of land lying to the east of Afon Gwili, Abergwili [REP8-019]¹³⁶).
- 8.6.29 The tests applicable to s127(5) of the PA2008 is will there be detriment to the undertaking. The ExA has examined those tests and his conclusion is that the right can be purchased without serious detriment to the carrying on of the undertaking or any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right because Dwr Cymru has not objected to the proposed development and has signed HoT with the Applicant.
- 8.6.30 The Applicant has included powers to extinguish any right or remove any apparatus belonging to statutory undertakers (contained in Article 30¹³⁷ of the draft DCO Option A [REP8-015] and B [REP8-023]). This power is made subject to the protective provisions in Schedule 9. Given the relevant protective provisions in Part 3 of that Schedule are agreed but not signed, the ExA considers that the SoS can be satisfied that any extinguishment or removal would be necessary for the purpose of carrying out the authorised development (s138(4) of the PA2008).

Wales & West Utilities Limited (Wales & West) (WWU)

- 8.6.31 Wales and West Utilities responded at D4 with a letter to the Planning Inspectorate which noted that WWU had no apparatus in the area of the 'enquiry' but have provided confirmation on 4 April 2016 that they are satisfied with the Protective Provisions within the DCO [REP8-019]. The BoR does not identify any land within their ownership within Order limits. Under s127 (1)(b) no objections have been made by any statutory undertaker. However, WWU has not formally withdrawn its relevant representation which stated they had no objection [AS-006].
- 8.6.32 The test in Section 127(5) is will there be detriment to the undertaking. The ExA has examined that test and its conclusion is the right can be purchased without serious detriment to the undertaking

¹³⁶ Option A and B

¹³⁷ Article 29 I the ExA's recommended DCO Appendix D

or any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right. The ExA also considers that, based on WWU not objecting to the proposed development and having settled terms that no serious detriment arises.

- 8.6.33 The Applicant has included powers to extinguish any right or remove any apparatus (contained in Article 30¹³⁸ of the draft recommended DCO) but made subject to the protective provisions in Part 4 Schedule 9. Given the protective provisions in Part 4 Schedule 9, the SoS can be satisfied that any extinguishment or removal would be necessary for the purpose of carrying out the authorised development (s138).

Mainline Pipelines Limited

- 8.6.34 Mainline Pipelines have confirmed that they have no objection to the Protective Provisions as drawn within the Development Consent Order. This has been confirmed in a letter from Mainline Pipelines on 21 December 2015 [REP4-044], Mainline Pipelines Limited have not objected to the proposed development. Mainline Pipelines Limited has the benefit of unknown rights in respect of an oil pipeline in the BoR [REP8-019]. Given that Mainline Pipelines Limited have no objection to the Protective Provisions as drawn and that Part 1 of Schedule 9 of the recommended DCO gives protection to Mainline Pipelines Ltd and its successors in title and function, the ExA concludes that the assets of Mainline Pipelines Limited and its successors in title and function are protected. The Book of Reference¹³⁹ does not identify any land within their ownership within the Order limits.
- 8.6.35 The ExA considers that, in relation to section 138 of the PA2008, the SoS can be satisfied that the powers to extinguish rights, remove or reposition apparatus and acquire new rights within the Order limits (and having regard to the protective provisions set out in Part 1 of Schedule 9 to the ExA's recommended DCO (Appendix D)) are necessary for the purpose of carrying out the development.

8.7 THE EXA'S OVERALL CA CONCLUSIONS

ExA approach

- 8.7.1 The ExA's approach to the question of whether and what CA powers it should recommend to the SoS to grant has been to seek to apply the relevant sections of PA2008, notably s122 and s123, the DCLG Guidance¹⁴⁰, and the Human Rights Act 1998; 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.

¹³⁸ Article 29 I the ExA's recommended DCO Appendix D

¹³⁹ Option A and Option B

¹⁴⁰ Guidance related to procedures for compulsory acquisition DCLG September 2013

- 8.7.2 The ExA understands, however, that the draft DCO Option A [REP8-015] and Option B [REP8-023] deals with both the development itself and CA powers. The case for CA powers cannot properly be considered unless, and until, the ExA has formed a view on the case for the development overall, and the consideration of the CA issues must be consistent with that view.
- 8.7.3 The ExA has shown in the conclusion to the preceding Chapter 7 that he has reached the view that development consent should be granted. The question therefore that the ExA 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.

The public benefit and private loss

- 8.7.4 The need for new nationally significant energy infrastructure projects is recognised by EN-1 and EN-5.
- 8.7.5 EN-1 explains 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 the types of energy infrastructure covered by it in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions. It advises that all applications for such development should be assessed on the basis that there is a need for those types of infrastructure and that the scale and urgency of that need is as described for each of them in Part 3 of EN-1.
- 8.7.6 There is a need in the public interest for the provision of the proposed development; to protect the overhead lines and underground cables once installed, and to ensure that the supply of electricity is not impeded. That represents a significant public benefit to be weighed in the balance.
- 8.7.7 In the light of the DCLG Guidance, paragraph 13, the ExA's FWQ CA04 asked what assessment had been made of the effect upon Affected Persons and their private loss that would result from the exercise of CA powers. In response, the Applicant stated that the effect of the overhead and underground electricity grid connections on affected persons has been considered as part of the ongoing engagement and consultation throughout the iterative route selection process [APP-122 and REP1-045]. The Applicant points out that any private loss suffered by an individual Affected Person may become the subject matter of a claim for compensation, to the extent that such loss may be properly claimed under the statutory compensation code (under agenda item 8 [EV-014]).
- 8.7.8 The Applicant has taken a number of steps to ensure that its approach to land acquisition and the exercise of compulsory powers in respect of each plot and each individual AP is proportionate and would not give rise to interference with private rights beyond what is necessary to deliver the proposed development. They include:

- keeping the areas of land affected to a minimum;
- minimising as far as possible any proposed permanent acquisition of land rights and restrictions;
- seeking wherever possible to rely on temporary possession of land rather than permanent acquisition; and
- engaging with all persons with an interest in land affected with a view to reaching a voluntary agreement.

- 8.7.9 The ExA recognises that the proposed development has been designed so that the Order limits have been minimised as far as possible. Where at all possible, temporary possession has been sought rather than permanent rights, and permanent rights and restrictions have been sought in place of permanent possession. The route selected seeks to minimise interference with private rights and, in particular, avoid so far as possible interaction with residential property and non-agricultural businesses. The majority of land over which permanent rights and restrictions are imposed or are to be acquired would experience only minor interference with the use of the land.
- 8.7.10 A significant proportion of the land over which permanent rights would be acquired and restrictions imposed is in agricultural use; the owners of such land would be able to continue to use the land for this purpose once construction is completed and it is likely that they would experience only limited interference over the lifetime of the development. The extent of any private loss has therefore been mitigated through the selection of the route. These factors must inherently reduce the extent of the private loss experienced by those affected by CA.
- 8.7.11 The case in the public interest for the proposed development is compelling. There is no disproportionate or unjustified interference with human rights such as to conflict with the provisions of the Human Rights Act 1998.
- 8.7.12 The ExA is satisfied that all of the rights and restrictions are required for the development to which the development consent relates or is integral to the development. The ExA is also satisfied that the rights to be acquired and restrictions to be imposed are no more than is reasonably required and is proportionate.¹⁴¹
- 8.7.13 The ExA is satisfied that the condition in s123 (2) of PA2008 is met because the application for the DCO included a request for CA of the land to be authorised.
- 8.7.14 Having regard to all the particular circumstances in this case, there is a compelling case in the public interest (s122 (3) of the PA2008) for the grant of the CA powers sought by the Applicant in respect of the CA of rights and restrictions on land as shown coloured green and blue on the Land Plans and for the grant of temporary powers in respect of

¹⁴¹ Guidance related to procedures for compulsory acquisition GCLG September 2013

land coloured purple, brown and red for Options A and B [REP5-020 to REP5-022]

- 8.7.15 With regard to section 120(5)(a) of the PA2008, the ExA is satisfied that as required by section 117(4) of that Act, the DCO has been drafted in the form of a statutory instrument and, further, that no provisions of the ExA's recommended DCO (Appendix D) contravene the provisions of s126 of the PA2008, which precludes the exclusion of compensation provisions for the CA of land rights.

Temporary possession

- 8.7.16 The temporary possession powers sought are necessary both to facilitate implementation of the proposed development and to maintain it and there are also adequate compensation provisions in place in articles 28(7) and 29(5) for Options A and B in the draft DCO (these are now the compensation provisions in Articles 27(7) and 28(5) in the ExA's recommended DCO of Appendix D).

8.8 THE EXA'S RECOMMENDATIONS ON THE GRANTING OF COMPULSORY ACQUISITION AND TEMPORARY POSSESSION POWERS (OPTIONS A AND B)

- 8.8.1 In the event that the SoS is minded to grant development consent for the proposed development, the ExA recommends that:
- The CA powers included in the recommended DCO be granted, except as set out below in relation to Crown land. CA powers can also if SoS is minded to pursue Option A, be granted;
 - The temporary possession powers included in the recommended DCO be granted;
 - The CA powers sought in respect of Crown land should not be granted until the appropriate Crown authority has provided any necessary consent(s) for the purposes of section 135 of the PA 2008. This relates to plots B6, C216, C217[1], C218 to C227 ;
 - The powers authorising the CA of rights over land of statutory undertakers be included in the recommended DCO should it be granted alongside the protective provisions set out in the schedules. The SoS can be satisfied that the tests set out in section 127 of the PA 2008 are met in the cases of Dwr Cymru and Wales & West Utilities. The SoS can be satisfied that any extinguishment or removal of rights or apparatus of statutory undertakers would be necessary for the purpose of carrying out the authorised development (section 138 of the PA 2008). The powers authorising the extinguishment of rights, and removal of apparatus, of statutory undertakers included in the recommended DCO be granted; and
 - The powers included in the recommended DCO to apply, modify or exclude a statutory provision be granted.

9 DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

9.1 INTRODUCTION

9.1.1 The original draft Development Consent Order (DCO) [APP-039] and Explanatory Memorandum (EM) [APP-040] were submitted as part of the application for development consent by the Applicant. The EM describes the purpose and effect of the provisions in the original draft DCO. The EM states at paragraph 1.2 that the original draft DCO is based on the General Model Provisions (the “general model provisions”) in the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the Model Provisions Order 2009) unless otherwise stated.

9.1.2 The original draft DCO for Option A was updated several times during the Examination with clean and track changed versions being submitted each time. Unless stated otherwise, references in this chapter will relate to clean versions of the draft DCO.

9.1.3 The application, if granted development consent, would authorise works for the construction of a 28.6 kilometres¹⁴² (“km”) 132,000 volts (“132kV”) distribution connection between the connection point near Llandyfaelog and the Brechfa Forest West Wind Farm comprising:

- the installation of two sections of 132kV overhead line; and
- the installation of 132kV underground cables including terminal connections to overground sections (see Chapter 2 of this Recommendation Report).

9.1.4 A detailed description of the proposed development is provided in the “Project description” in the Environmental Statement for Option A [APP-057] and for Option B [CR-003] which accompanies the Application. Full details of the proposed development Options A and B are also provided in Chapter 2 of this Recommendation Report.

9.1.5 To enable the ExA to make a decision on whether or not an Option B could be examined, the ExA requested, among other things, a revised draft DCO, showing all changes necessary for Option B through a Procedural Decision (PD) [PD-014] on the 7 December 2015. In response the Applicant submitted Option B details into the Examination on the 24 February 2016 [CR-001 to CR-026] and these were accepted by the ExA in a PD on the 1 March 2016 [PD-038]. The documents submitted by the Applicant included a draft DCO for Option B [CR-011] and an EM for Option B [CR-013]. These documents were subsequently updated by the Applicant in submitting its final draft DCO [REP8-023] and EM [REP8-025]. During the course of the Examination, the ExA has looked at the detail of the structure and

¹⁴² Same for Option A and B

effectiveness of the draft DCO for Option A [APP-039] (and subsequent versions A-F) and Option B [CR-011] (and subsequent Version A).

- 9.1.6 Fifty-two written questions [PD-011 and PD-019] were asked and the Applicant's responses can be viewed at [REP1-028 and REP4-027]. The ExA also held two Issue Specific Hearings (ISH) on the draft DCO for Option A (10 December 2015 [EV-023 to EV-025]) and 11 February 2016 for Option A and B [EV-027, EV-031 and EV-032]). The sequence of the submission of the various Option A and Option B draft DCO is set out in the Guide to the Application [REP8-037].
- 9.1.7 The distinction between Option A and B are localised to approximately 260m of ground on the southern slopes of the Towy Valley and are only related to landscape character effects on the Special Landscape Area (SLA) and historic landscape effects on the Registered Landscape of Historical Interest in Wales (RLOHIW). Both Carmarthenshire County Council (CCC) and Natural Resources Wales (NRW) believe these effects would be mitigated to residually insignificant effects by undergrounding of the overhead line between poles 84-86 proposed in Option B.
- 9.1.8 The Option A and Option B draft DCOs each set out the consent sought for the proposed development in respect of each option including:
- The permanent compulsory acquisition (CA) of interests in land,
 - by the creation of new rights and restrictions;
 - The obligations (s106 under TCPA 1990, see Sections 5.2 and 9.7 of this Recommendation Report) that the Applicant is prepared to accept to facilitate the development;
 - The further approvals that are required before particular works can commence;
 - The protective provisions necessary to safeguard the interest of other parties; and
 - The requirements (corresponding to planning conditions) to be met when implementing the consent.
- 9.1.9 Section 120(5)(a) of the Planning Act 2008 (PA2008) provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the DCO. If the DCO includes such provision, s117(4) of PA2008 requires that it must be in the form of a statutory instrument. The ExA confirms that the DCO is in the form of a statutory instrument.
- 9.1.10 A comparison [REP8-030] showing changes from the draft original DCO [APP-039] to Version F [REP8-015] was submitted on the 5 April 2016 as the final version of the Applicant's draft DCO for Option A. A copy showing changes in Option B from the draft DCO (Option B) [CR-011] to Version A of the draft DCO (Option B)[REP8-024] was submitted on the 5 April 2016.

- 9.1.11 The ExA has used Version F of the draft original DCO (Option A) [REP8-015] and Version A of the draft DCO (Option B) [REP8-023] to inform this Recommendation Report. Both of these DCOs are identical in all ways save for:
- Schedule 1:
 - In Option B: Works No.1 decreases from 11.2 km to 10.94km; Pole 86 becomes 84 and its grid reference changes;
 - In Option B: Works No.2 increases from 3.3km to 3.56km; Pole 86 becomes 84 and its grid reference changes;
 - Schedule 2:
 - In Option B: Parts 3,6,7,8,9 and 10 Revision labels for plans are altered to demonstrate updated versions and
 - In Option B: Schedule 3, Requirement 3 Table 1, Poles 85 and 86 are not used.
- 9.1.12 Much of the content of the draft DCOs for Options A and B respectively were not the subject of objection. Some proposed alterations in the recommended DCO are made for the purposes of clarification, for the correction of minor errors, or are consequential upon changes proposed elsewhere in it. Option B was orally examined at length on the 8 December 2015 at the Environmental Impact Assessment (EIA) ISH under agenda item 7.4. A 28 day consultation began on 6 January 2016 for Option B. Letters were sent to 93 statutory consultees, 8 landowners, 7 community councils, adverts were placed in local newspaper, land notices placed and details placed on the Planning Inspectorate's website. There were 12 responses, 5 positive and the rest, neutral.
- 9.1.13 The ExA has prepared a version of the draft DCO, which it recommends to the SoS (Appendix D- the recommended DCO). All of the changes suggested in it were considered in the Examination (see section 2.2 of this Recommendation Report [CR-021]).
- 9.1.14 The recommended DCO is based on the Applicant's final submitted version for Option B. This reflects the ExA's conclusion set out in section 4.6 of this Recommendation Report that route Option B should be chosen. It also contains a number of drafting changes which the ExA considers to be necessary to accommodate matters explored during the course of the Examination. These further changes are discussed below.
- 9.1.15 The ExA has not sought to reference in detail every representation made in relation to the drafting of the DCO, but have identified the representative issues that are pertinent to the ExA's examination.
- 9.1.16 In the event that the recommended DCO (Appendix D) is made, twenty seven plans and documents would require certification in accordance with Article 33 of it. In all cases it is the latest versions of

all plans and documents listed in Appendix B which will be certified. However, if the SoS chooses Option A, the changes required to make the ExA recommended DCO into support the implementation of Option A are listed in section 9.7 of this Recommendation Report.

PRACTICE APPROACHES FROM RECENTLY MADE ORDERS

- 9.1.17 In general, the draft DCOs for Options A and B took their approach from other made DCOs for electric lines or draft DCOs that were subject to on-going applications, with significant consideration of:
- The National Grid (King's Lynn B Power Station Connection) Order 2013¹⁴³ (a made Order); and
 - The National Grid (North London Reinforcement Project) Order 2014¹⁴⁴ (a made Order).
- 9.1.18 The protective provisions in Schedule 9 of the ExA's recommended DCO are based on similar protective provisions found in these Orders. SoCG with CCC.
- 9.1.19 A Statement of Common Ground (SoCG) between the Applicant and CCC (together the parties) was submitted at D7 on 31 March 2016 [REP7-018]. It confirms the position of the parties in their agreement or otherwise to the draft DCOs: Option A Version E [REP5-023] and Option B [CR-011].
- 9.1.20 Version E of the draft original DCO [REP5-023] was submitted by the Applicant into the Examination at D5 (17 February 2016 - Option A). As explained in paragraph 9.1.5 of this Recommendation Report, Draft DCO (Option B) [CR-011] is the original version of Option B. This was submitted by the Applicant into the Examination on 24 February 2016.
- 9.1.21 The parties agree that the information contained within the SoCG represents common ground between the Applicant and CCC. The SoCG stated that there is no outstanding disagreement between the parties in respect of the draft DCOs [REP5-023 or CR-011]. This position was not updated further and therefore the ExA has no reason to believe that any further iterations in the draft DCOs altered this opinion. The ExA took this view as there were few detailed concerns from IPs with early iterations of the DCO drafts.

9.2 THE RECOMMENDED DCO

- 9.2.1 The recommended DCO is in six parts and contains 11 schedules:
- Part 1 - This part contains the preliminary provisions providing for citation, commencement and interpretation;

¹⁴³ SI2013/3200

¹⁴⁴ SI2014/1052

- Part 2 - This part sets out the principal powers including those relating to the grant of development consent and maintenance;
- Part 3 - This part relates to streets and includes powers relating to street works, alterations to access, temporary closure of streets and PRow and access;
- Part 4 - This part provides supplemental powers relating to the discharge of water, defence to proceedings in respect of statutory nuisance and the survey of land;
- Part 5 - This part includes the powers in relation to acquisition and rights over land;
- Part 6 - This part contains a number of miscellaneous and general provisions; and
- Schedules - Schedules 1 to 11 contain a description of the authorised development, modifications of compensation provisions, information referred to in plans, requirements, the discharge of requirements, access to be maintained at public expense, street work details, streets/RoWs which may be temporarily closed, protective provisions, land of which temporary possession may be taken and removal of important hedgerows.

9.2.2 The recommended DCO is based on the Applicant's final submitted version draft DCO for Option B [REP8-023]. This reflects the ExA's conclusion set out in section 7.5 of this Recommendation Report that route Option B should be recommended.

9.3 ARTICLES

9.3.1 Many of the articles in the draft DCOs for Options A and B were not the subject of contention. It should be noted that there was only the most limited interest from IPs in the content or drafting of the proposed Articles. I examined the proposed Articles to assure myself that relevant policy tests had been discharged, guidance had been addressed and account had been taken of relevant practice examples arising from recently made Orders. The absence of reported engagement by IPs in these processes reflects the general absence of concern about these draft provisions. Some proposed alterations in Articles in the recommended DCO are made for the purposes of clarification, for the correction of minor errors, or to reflect changes proposed elsewhere in the draft DCO for Options A and B.

9.3.2 Those aspects of the Articles in the draft DCO for Option A which were raised in representations, are contentious or to which substantial alterations are proposed are considered in the following paragraphs.

9.3.3 All the changes were discussed at hearings and consultation was undertaken on Option B changes [CR-021].

- 9.3.4 The principal powers sought in the recommended DCO are for the construction, use and maintenance of the Works described in Schedule 1 of the recommended DCO. Unless stated otherwise in this Chapter, the numbering of Articles reflects that of the Applicant's final draft DCO, Version F Option A [REP8-015] and Version A Option B [REP8-023].

Article 2 - Interpretation

- 9.3.5 During the course of the Examination, a number of changes have been made to various definitions set out in this article. The changes made are shown in the tracked changed versions of the draft DCO Option A Version A [REP2-025]; Version B [REP3-049]; Version C [REP3-053]; Version D [REP4-025]; Version E [REP5-024] and the original Option B [CR-012] (which shows the differences between Option A and Option B) and Version A [REP8-024]. The ExA sets out below the definitions which the ExA considers require further elaboration to improve clarity.

business day

- 9.3.6 The Applicant amended the definition of 'business day' to be defined on basis of 1971 Banking Act at Article 2(1) to reflect the existing definition of business day in Schedule 10 to the draft DCO. No other IPs raised concerns with this issue. The ExA is content with the change.

Construction Environmental Management Plan (CEMP)

- 9.3.7 Requirement 21 was amended to remove the reference to the Habitats Management Plan (HMP) to reflect it being a standalone document as requested by NRW and to reflect the definition of CEMP found in Article 2(1). No other IPs raised concerns with this issue. The ExA is content with the change.

environmental statement

- 9.3.8 The original draft DCO Option A [APP-039] contained a definition of "environmental document". The ExA asked for this to be deleted from the DCO in its FWQ (DCO06) [PD-011] and to be replaced with a definition of an Environmental Statement (ES)¹⁴⁵. The ExA believed this change was required as this is the term used in the Directive and Regulations. The following definition has now been inserted:

"the environmental statement" means the environmental statement submitted under regulation 5(2)(a) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and certified as such by the Secretary of State for the purposes of this Order."

¹⁴⁵ The IP EIA Regulations (2009) as amended, clearly defines an ES at regulation 2(1)(a)(b)

- 9.3.9 No other IPs raised concerns with this issue. The ExA is content with the change.

maintain

- 9.3.10 The Applicant stated that the definition of “maintain” is based on the suggested wording of the Hinkley Point C Connection's ExA in their first written questions for the Draft National Grid (Hinkley Point C Connection Project) DCO 2015 (Q4.3)). The Applicant explained that the definition ensures that no works are authorised that have not been previously assessed in the ES, in accordance with paragraph 20 of the Planning Inspectorate's Advice Note 15 (paragraph 2.1.2 of [REP3-044]).
- 9.3.11 Article 4 permits the undertaker to maintain the authorised development. Maintain is a defined term and includes the rights to remove, reconstruct, relay and reconductor the line. The Applicant in its response to the ExA's FWQ DCO07 [REP2-033] clarified that the definition of maintain and the reference to the terms reconstruct, reconductor and relay are limited to the extent that has been assessed in the ES, so a wholesale rebuild of the line would not be permitted, it would only be those works that are required for the line as built to be kept in use. The Applicant, in its response, confirmed that no powers of reinforcement were being sought in the DCO. Any replacement of the line would be on a like for like basis.
- 9.3.12 The ExA is satisfied that the above explanation clarifies the Article's intention.
- 9.3.13 No other IPs raised this issue. No policy implications are envisaged. The ExA is satisfied that the above explanation of the definition of ‘maintain’ clarifies the definition's scope.

relevant highway authority

- 9.3.14 This means either the South Wales Trunk Road Agency (SWTRA) or CCC, whichever is the highway authority for the highway to which a provision relates. SWTRA were added at the request of CCC. No other IPs raised this issue. The ExA is content with the change.

plans, reports etc. requiring certification by the Secretary of State

- 9.3.15 Thirteen plan and report definitions were altered to reflect that they would now require certification by the SoS. No other IPs raised concerns with this issue. The ExA is content with the change.

Article 3 - Development consent granted by the Order

- 9.3.16 This article is a modification of the general model provisions. Article 3 grants development consent for the authorised development within the Order limits. Article 2(1) defines ‘authorised development’ to mean

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

and the development consent is subject to the Requirements set out in Schedule 3.

- 9.3.17 Paragraph (1) of Article 3 grants development consent to the Applicant to carry out any of the authorised development.
- 9.3.18 Paragraph (2) of Article 3 reflects, in part, s141 of PA2008, and provides that the Applicant has authority to install and keep installed the above ground electric lines and underground cables.
- 9.3.19 Paragraph (3) of Article 3 confirms that the Applicant may use the electric line and any other elements of the authorised development as part of the electricity distribution system in Wales. Paragraph (4) of Article 3 confirms the limits of deviation within which the authorised development can be undertaken. This is explained further by reference to Article 5 below.
- 9.3.20 The ExA has not made any change to this Article in the recommended DCO (Appendix D). No other IPs raised this issue. Having considered the views of the Applicant, Welsh Government, CCC and NRW, the ExA considers that Works No.2, Option A 3.3km and Option B 3.56 km of underground cable, forms an integral part of the NSIP development applied for, for the same reasons as those outlined in paragraphs 2.2.12 to 2.2.22 of this Recommendation Report. The undergrounding of the line in the area of the RLOHIW is required as mitigation for the project and therefore is integral to the development.

Article 5 - Limits of Deviation (LoD)

- 9.3.21 The Applicant confirmed that the working area for the overhead lines (as shown on the Works Plans, referred to in Schedule 2, Part 10) was 25 metres. This width enables a deviation of up to 5 metres laterally either side of the centre line of the pole and lines. The pole(s) and lines are approximately 5 metres in width with a permitted swing of up to 5 metres for the lines (total width 15 metres)[EV-024].
- 9.3.22 The Applicant confirmed that the upward vertical deviation of poles is limited to 2 metres upwards (Article 5(b)(i)) from the height of each pole specified in the third column of Table 1 in Requirement 3 of Schedule 3 to the recommended DCO. No limit is specified for downward vertical deviation below this specified height, as this is limited by usual safe operating distances. The foundation depths of the

poles will not exceed 2.7 metres in depth (Requirement 27 of Schedule 3) [REP3-036]¹⁴⁶.

- 9.3.23 The Applicant confirmed that the working width as shown on the Works Plans for the underground section of the line was 16 metres. This width provided sufficient working width for a 5 metre wide haul road, a cable trench of 1.5 metres width and a width of 9.5 metres for the storage of topsoil and subsoil.
- 9.3.24 The maximum depth of the cable trench is 1.5 metres where the cable is laid by open trench methods. Depths may be deeper where cables are laid by directional drilling or thrust boring underneath the Towy River and the highway crossing points.
- 9.3.25 The LoD are contained in Article 5 and Requirements 5, 6, 8 and 27 of Schedule 3. The Applicant provided plans of the LoD [REP3-036] and in the Draft DCO Options A and B, included these as the deviation plans and amended Requirement 3 so that the deviation limits on the deviation plans must be adhered to (Schedule 2 Part 5- [APP-030][APP-031] for Option A and [CR-020] for Option B and Schedule 2 Part 10 for Option A [REP8-009] and Option B[REP8-027]).
- 9.3.26 The Applicant argued the purpose of this provision was to provide the necessary flexibility when constructing the authorised development, reducing the risk of the proposed development as approved not being able to be implemented for unforeseen engineering or geological reasons [APP-040, REP3-044 and EV-023 to EV-025].

Article 8 - Application and modification of Hedgerow Regulations 1997

- 9.3.27 CCC agreed that the amendments to the Hedgerow Regulations 1997 as set out in Article 8 are acceptable. This matter was discussed under agenda item 4 [EV-024]. However, the ExA felt that Article 8's modification of the Hedgerow Regulations 1997 (by way of effectively providing a total exemption to the need for consent under those Regulations) and Article 33(4) (a more limited power to remove hedgerows) in effect contradicted each other. The ExA felt it inappropriate to retain both provisions in the recommended DCO as it could lead to ambiguity and uncertainty.
- 9.3.28 A limited power as in Article 33(4) (now Article 32(4) in the recommended DCO) to remove hedgerows rather than a total exemption as in Article 8, is preferred by the ExA. Therefore, the ExA has deleted Article 8, but added a further paragraph (as a new paragraph (5)) into Article 33 to read as follows (as per Article 15 of the consented Brechfa Forest West Wind Farm Order 2013):

¹⁴⁶ Deviation Plans[REP3-036] was produced in December 2015 following a request by the ExA [EV-024]

“(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)”.

- 9.3.29 Footnote (a) would then read as follows: “(a) S.I. 1997/1160, to which there are amendments not relevant to this Order”. The current paragraph (5) in Article 33 (to become Article 32 in the recommended DCO) would then be re-numbered as (6).
- 9.3.30 The ExA agrees that this would clarify intentions and powers. The recommended DCO includes this alteration (Appendix D).

Article 9 - Application of the New Roads and Street Works Act 1991 (1991 Act) (now Article 8 in the recommended DCO)

- 9.3.31 CCC agreed that Article 9 properly imports into the DCO those sections of the 1991 Act that are appropriate to apply to the works to streets, roads and highways as part of the development. CCC agreed that the powers to undertake works in the streets and upon the accesses listed in Schedule 6, Part 2 are appropriate and that the works can be undertaken pursuant to the powers in Article 10 (now Article 9 in the recommended DCO) under agenda item 4 [EV-024 and REP7-018]. No other IPs raised this as an issue. 'No other IPs raised concerns with this issue. The ExA agrees the approach.

Article 10 - Street works (now Article 9 in the recommended DCO)

- 9.3.32 In respect of Article 10(1)(e), the Applicant agreed that it would submit to CCC, an prior notification of their intention to erect and retain scaffolding. This Article permits the Applicant to place and keep during the construction and installation of the authorised development scaffolding above the street or on any verge to a street.

Article 12 - Temporary closure of streets and public rights of way (now Article 11 in the recommended DCO)

- 9.3.33 CCC agreed that the streets and public rights of way to be stopped up are agreed and the provisions of Article 12 that apply to these works are appropriate. CCC agree that the period of 42 days in Article 12(6) should apply, after which that paragraph would deem that approval is given to any request to close a street or public right of way if CCC fail to notify the Applicant of its decision within that period (agenda item 11[EV-025 and REP3-044]). The ExA made a minor drafting change to reflect the revised Article numbering in Article 12(4) i.e. added diverted to actually reflect the title of column 2 of Schedule 7. The recommended DCO includes this alteration (Appendix D). No other IPs raised this as an issue. The ExA is satisfied with its content.

Article 13 - Traffic regulation (now Article 12 in the recommended DCO)

- 9.3.34 CCC agreed that the period of 56 days in Article 13(5) in which it has to give a decision in respect of an application for a traffic regulation order from the Applicant (and that if it fails to do so such orders are deemed to be approved) is acceptable, as are the remaining provisions of Article 13 (see agenda item 4[EV-024 and REP3-044]). The ExA made a minor drafting change to reflect the revised Article numbering in Article 13(2) i.e. Article 13 became 12. The recommended DCO includes this alteration (Appendix D). No other IPs raised this as an issue. ExA agrees with the approach.

Article 14 - Access to works (now Article 13 in the recommended DCO)

- 9.3.35 The provisions in Article 14, including the period of 42 days in which CCC is to give its decision to any works to accesses or failing which such requests are deemed to be approved, are agreed by the parties.
- 9.3.36 The parties agreed that the Applicant shall, at the request of CCC, and in respect of any highway works to new accesses submit an application for consent to construct/alter vehicular access on to the public highway on the form at Annex 2 of REP7-018. CCC considers that there are no reasons not to approve any details of any access works pursuant to such applications and the provisions of Article 13 of the recommended DCO will apply to an application [EV-025 and REP3-044]. No other IPs raised this as an issue. ExA agrees with the approach.

Article 16 - Discharge of water (now Article 15 in the recommended DCO)

- 9.3.37 The ExA requested that in the interests of clarity, the provision should be amended to properly reflect parties i.e. NRW and legislation i.e. Water Resources Act, 1991, in its FWQ DCO10 [PD-011]. The Applicant confirmed that the changes to Article 16(9)(a) and (b) were corrections and clarifications of parties and legislation[REP1-028].
- 9.3.38 The ExA agrees that this would clarify the provision. The recommended DCO includes this alteration (Appendix D).

Article 17 - Defence to proceedings in respect of statutory nuisance (now Article 16 in the recommended DCO)

- 9.3.39 This Article amends the terms of the defence in the case of noise nuisance (other types of nuisance continue to have the general defence afforded by s158 of PA2008). The defence is available if the noise relates to the construction or maintenance of the project and is in accordance with any controls imposed by the Local Authority under the Control of Pollution Act 1974, or if it cannot reasonably be avoided, and is in accordance with any scheme of monitoring or

attenuation of noise agreed with the relevant local authority or cannot reasonably be avoided.

- 9.3.40 Based on the Applicant's statement on statutory nuisance [APP-052], the ES conclusions and consideration of persons for the purposes of Category 3 (as defined in s57(4) of PA2008) the Applicant does not expect that the proposed development will give rise to a statutory nuisance in any event.
- 9.3.41 The ExA is satisfied with the above explanation. The ExA believes EN-1 5.6.8 is conformed with, because the ExA felt it was justified because of the balance of environmental benefits of HDD and very temporary nature of works. However, the ExA has removed the reference to s65 of COPA in 16(1)(a)(i) as this was repealed on 1 October 2015 under the Deregulation Act 2015. The recommended DCO includes this alteration (Appendix D).

Article 20 - Compulsory acquisition of rights in, under or over land (now Article 19 in the recommended DCO)

- 9.3.42 The Applicant was requested in FWQ DCO13 [PD-011] to provide justification for the scope of this provision and further details in the light of the Planning Inspectorate's: Drafting Development Consent Orders (Advice Note 15), paragraph 26, on restrictive covenants.
- 9.3.43 The Applicant explained that the restriction sought is set out at Class 1 (f) of the BoR [REP8-019]¹⁴⁷. This restriction seeks to protect the overhead and underground electricity line within the Order limits from any works that may interfere with that use. The Planning Inspectorate's Advice Note 15 states that any restriction must be justified and proportionate. The Applicant argued that the restriction is justified on the basis of safety and the protection of a nationally important electricity distribution connection. The Applicant believes the restriction is proportionate in that it only applies to that land affected by the development once constructed. The land above and below the lines will continue to be useable as agricultural land (where this is the existing use) and the Applicant believes the effect of the restriction is limited and justifies appropriation of a right in land in terms of proportionality and human rights. A number of APs raised concerns regarding this Article in terms of the Applicant having "a hold" over their land. This is discussed further at section 8.
- 9.3.44 The ExA made minor drafting changes to reflect the revised Article numbering in Article 20(2) i.e. article 20 became 19 and in Article 19(4) i.e. Article 28 became 27. The recommended DCO includes this alteration (Appendix D).

¹⁴⁷ Option A and B

Crown land

- 9.3.45 The ExA believes that the draft Article 20(8), which reads as follows, is superfluous as s135(1) already deals with that point:

"(8) No interest in Crown land may be acquired pursuant to this Order unless the appropriate Crown authority consents to such acquisition."

- 9.3.46 As the BoR [REP8-019](Part 4 does not expressly exclude interests held by or on behalf of the Crown), the ExA proposes the inclusion of the following provision in its recommended DCO to replace paragraph (8):

"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."

- 9.3.47 In consequence, the ExA also proposes deletion of Article 20(9) as it would then be superfluous.

- 9.3.48 The ExA is satisfied that the above changes will protect Crown interests. The ExA have drawn the SoS's attention to the need for the consent of the appropriate Crown authority to be obtained before compulsory acquisition powers can be granted in respect of certain plots (see section 8.3 of this Recommendation Report).

Article 25 - Extinguishment of private rights and restrictive covenants relating to undertaker's apparatus removed from land subject to temporary possession (now Article 24 in the recommended DCO)

- 9.3.49 In response to the ExA's FWQ DCO15 [PD-011], the Applicant explained that it believed that this Article extinguishes any temporary rights for apparatus that the undertaker takes the benefit of under its powers of temporary possession. The Applicant states that those rights are extinguished when the temporary possession of land is given up by the undertaker. The Applicant argues that the Article therefore protects the owners of land that is possessed under temporary powers from being burdened with the apparatus of the undertaker for a longer period than required. The Applicant amended the title of this Article to clarify the power; to "Extinguishment of private rights and restrictive covenants relating to undertakers apparatus removed from the land subject to temporary possession".

- 9.3.50 However, the ExA believed that, in order to limit the operation of Article 25(2) to rights and restrictive covenants that benefit only the Applicant (not anyone else's rights and not anyone to whom the applicant can transfer the benefit of the order):

- (e) the wording providing such limitation needs to be in the operative wording of the article, not only in its heading, and
- (f) it should refer to the Applicant's name, not to the 'undertaker'.

- 9.3.51 This Article, in the recommended DCO, therefore, now reads as follows:

"Extinguishment of private rights and restrictive covenants relating to Western Power Distribution (South Wales) Plc's apparatus removed from land subject to temporary possession

24.—(1) This article applies to any Order land specified in Schedule 8 (land of which temporary possession may be taken) of which the undertaker takes temporary possession under article 27 (temporary use of land by the undertaker).

(2) All private rights vested in Western Power Distribution (South Wales) Plc or restrictive covenants the benefit of which are vested in Western Power Distribution (South Wales) Plc in relation to apparatus removed from any land to which this article applies pursuant to Schedule 1 (authorised development) are extinguished from the date on which the undertaker gives up temporary possession of that land."

- 9.3.52 Where the ExA has left in 'undertaker' this is deliberate, as it may be someone else who takes the temporary possession, as the undertaker can transfer the benefit of the DCO.
- 9.3.53 No other IPs raised any concerns. The ExA believes that these amendments would clarify intentions and powers.

Article 28 - Temporary use of the land by the undertaker (now Article 27 in the recommended DCO)

- 9.3.54 In response to the ExA's FWQ DCO16 [PD-011], the Applicant confirmed that Article 28(5) and (6) had been deleted from Option A Version A [REP8-015] and Option B [REP8-023] and the following inserted as a new Article 28(5):

"Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article."

- 9.3.55 The Applicant has provided a detailed justification for seeking temporary possession powers in response to the ExA's FWQ CA02 [PD-011] in REP1-028.
- 9.3.56 The ExA made minor drafting changes to reflect the revised Article numbering in Article 28(6) i.e. paragraph 6 became 5 and in Article 28(7) i.e. paragraph 6 became 5. The recommended DCO includes this alteration (Appendix D).
- 9.3.57 The ExA is satisfied that following this amendment, Article 28 contains appropriate limitations and controls to ensure that the temporary interference with the private rights of the owners and occupiers would be proportionate. There are also adequate compensation provisions in

place in articles 28 and 29 of the draft DCO (these are now Articles 27 and 28 in the ExA's recommended DCO of Appendix D). The ExA agrees that this article's intention and power are clear. No other IPs raised any concerns. The recommended DCO includes this change (Appendix D).

Article 33 - Felling or lopping of trees and removal of hedgerows (now Article 32 in the recommended DCO)

- 9.3.58 Please see paragraphs 9.3.26 to 9.3.29 of this Recommendation Report. The ExA believes the loss of trees in Brechfa Forest would be the same as ordinary felling in a managed forest. There would be no loss of ancient woodland, veteran trees or trees with a special status.

Article 34 - Certification of plans (now Article 33 in the recommended DCO)

- 9.3.59 The original draft of the DCO Option A [APP-039] limited certification to:

- (g) the environmental document¹⁴⁸;
- (h) the book of reference;
- (i) the design drawings;
- (j) the land plans;
- (k) the access and rights of way plans;
- (l) the trees and hedges with the potential to be affected plans;
- (m) the works plans;
- (n) the environmental features plans;
- (o) the heritage designations plans;
- (p) the crown land plans;
- (q) the habitat management plan¹⁴⁹;
- (r) the construction environmental management plan¹⁵⁰;
- (s) the construction traffic management plan¹⁵¹;
- (t) the overall location plan;
- (u) the master key plan;
- (v) the profiles; and

any other plans or documents referred to in the DCO¹⁵².

- 9.3.60 The Applicant's final draft (Option A Version F [REP8-015] and Option B Version A [REP8-023]) included, in addition to the above, the:

- (a) the archaeological written scheme of investigation¹⁵³;
- (b) the deviation plan;
- (c) the dust management plan;

¹⁴⁸ See paragraph 9.3.6 of this report.

¹⁴⁹ Requirement 15.

¹⁵⁰ Requirement 21.

¹⁵¹ Requirement 18.

¹⁵² In response to the ExA first round question DCO21[PD-011] this was removed

¹⁵³ Requirement 13.

- (d) the flood consequence assessment;
- (e) the frac-out contingency plan¹⁵⁴;
- (f) the invasive weeds management plan;
- (g) the pollution prevention and emergency response plan;
- (h) the public rights of way management strategy;
- (i) the transport assessment ;
- (j) the waste management plan; and
- (k) the water management plan,

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

- 9.3.61 The SoS may wish to request revised works plans due to discrepancies in colours between actual markings on plans and keys for the limits of deviation.
- 9.3.62 In response to the ExA second written question (SWQ) DCO2-17 [PD-019], the Applicant amended Schedule 3, Requirements 13, 15, 18, 21 and 24, to distinguish between the plans which will be provided for certification under Article 34 if the DCO is made and the final version of those plans which will be submitted to the relevant planning authority for approval, in the case of Requirements 18, 21 and 24 in consultation with the relevant consultee. References to "outline" and "detailed" plans have been deleted.
- 9.3.63 The recommended DCO (Appendix D) shows these alterations. In the event that the recommended DCO is made, twenty seven plans and documents would require certification in accordance with Article 34.

9.4 DESCRIPTION OF WORKS

- 9.4.1 Unless stated otherwise the numbering of Schedules reflects that of the Applicant's final draft DCO, Version F Option A [REP8-015] and Version A Option B [REP8-023].

Schedule 1 - Authorised development

- 9.4.2 Schedule 1 specifies numbered works comprised in the authorised development for which development consent is sought. The specified works are to be read alongside the relevant works plans (Schedule 2 Part 10).
- 9.4.3 As indicated in paragraph 9.1.5 of this Recommendation Report, there were two versions of the Applicant's draft DCO, one for Option A version F [REP8-015], and one for Option B version A [REP8-023], and the necessary works for each option are thereby clearly distinguished.

¹⁵⁴ Requirement 24.

- 9.4.4 A further, more detailed, description of the various elements of the authorised development is provided Chapter 2 of the ES for Option A [APP-057] and Option B [CR-011].
- 9.4.5 The ExA explored whether Work no. 2 would be an **integral** part of the overhead line in its DCO hearings, under agenda item 5 [EV-024]. The Applicant has provided a detailed argument in paragraphs 2.8 to 2.20 of the EM for Option A [APP-040] and Option B [REP8-025] and paragraphs 3.1.2- 3.1.8 of the Applicant's Response to ISH on the Draft DCO [REP3-044] on why Works no. 2 would be an integral part of the overhead line.
- 9.4.6 The ExA believes that the Option A 3.3km and Option B 3.56km of underground cable (Work No.2 [REP8-023]) is considered to form an integral part of the NSIP development applied for because of the reasons outlined in paragraphs 2.8 to 2.20 of the Explanatory Memorandum for Option A [APP-040] and Option B [REP8-025] paragraphs 3.1.2- 3.1.8 of [REP3-044] and paragraphs 4.3.12 to 4.3.20 of this Recommendation Report. Options A and B Works No.2 are integral to the project as for both options the line takes electricity seamlessly from Brechfa Forest to Llandyfaelog.

Schedule 2 - Plans

- 9.4.7 Schedule 2 lists the work plans, land plans, access and rights of way plans and other plans submitted with the application. The plans and documents that are required to be certified by the SoS are set out Article 33 of the recommended DCO.

9.5 REQUIREMENTS - SCHEDULE 3

- 9.5.1 Key requirements set out in Schedule 3 of the draft DCO Version F Option A [REP8-015] and Version A Option B [REP8-023], and those which were found to be contentious in the Examination, are described in the following paragraphs. An explanation of modifications made to those set out in the Applicant's first draft DCO Option A [APP-039] and Option B [CR-011], either agreed by the Applicant or suggested by the ExA, are given. The numbering of requirements reflect that of the Applicant's final draft DCO, Option A Version F [REP8-015] and Option B Version A [REP8-023].
- 9.5.2 EN-1, paragraph 4.1.7, advises that the decision-maker should only impose requirements in relation to a development consent that are:
- (1) Necessary;
 - (2) Relevant to planning;
 - (3) Relevant to the development to be consented;
 - (4) Enforceable;
 - (5) Precise; and
 - (6) Reasonable in all other respects.

- 9.5.3 The ExA has taken into account the policy set out in EN-1 in relation to the Requirements that have been included in the recommended DCO (Appendix D).

Requirement 1 - Interpretation

- 9.5.4 The definition of "stage" was modified at the request of CCC at the DCO ISH on the 10 December 2015 under Agenda item 7 [EV-025] and now refers to a defined section or part of the authorised development, the extent of which is shown in a scheme submitted to and approved by the relevant planning authority pursuant to Requirement 4 (Draft DCO Option A Version B [REP3-048] and Option B [CR-011]).
- 9.5.5 This definition was inserted to provide clarity to Requirement 29 – Otter Surveys. In this Schedule and in Schedule 9—"Nant Morlais Woodland" means *'so much of the Order limits shown hatched yellow on and so much of the Order limits shown shaded green on Figure 10.2: Botanical Phase 1 Survey Map 1 Issue A to the environmental statement [APP-078];'*
- 9.5.6 The ExA agrees that this would clarify intentions and powers. The recommended DCO includes these alterations (Appendix D).

Requirement 4 - Stages of authorised development

- 9.5.7 This Requirement was inserted at the request of CCC under agenda item 7 of the DCO ISH on the 10 December 2015 [EV-025] and is linked to Requirement 1 definition of "stage" [REP3-048].
- 9.5.8 The ExA agrees that this would clarify intentions and powers. The recommended DCO includes this alteration.

Requirement 5 - Restrictions on the limits of deviation

- 9.5.9 Requirements 5(3) and (4) were inserted at the request of CCC (paragraph 9.11 of REP1-025]) and in response to the ExA SWQ DCO2-12 [PD-019] to protect the bog at Rhydargaeau (Blanket Bog Section 42 habitat¹⁵⁵) and the glacial pingo features. The ES concludes that there are no significant effects anticipated from the proposed development on the bog at Rhydargaeau or the pingos¹⁵⁶ if embedded mitigation measures and management measures are adopted as part of the proposed scheme.
- 9.5.10 These measures include the use of twin poles (see Table 1 of Requirement 3) to avoid the need for foundations, micro-siting poles in less sensitive areas, minimising access track length, using protective surfacing for access and implementing strict controls on

¹⁵⁵ <http://ukbars.defra.gov.uk/project/show/25176>

¹⁵⁶ Paragraph 12.5.5 [APP-067]

working areas (Requirement 21(1)(b)[REP4-026]). CCC considers these mitigation measures should ensure impacts on the bog habitat are neutral but requested that they must be secured via written requirements in the DCO [REP1-025].

- 9.5.11 Requirement 5(5) enables this by allowing for the micro-siting of Pole 155 to the location identified within Option 4 of [REP7-017] provided this deviation is agreed in writing with the landowner (approval would also be sought from the relevant planning authority under Requirement 5 (3) due to pingos in the area. See section 5.4 of this Recommendation Report).
- 9.5.12 The ExA agrees that these amendments clarify intentions and powers. The recommended DCO includes this alteration.

Requirement 7 - Protection of private water supplies

- 9.5.13 This provides that the underground sections of poles 170¹⁵⁷, 171 and 172 shall be placed within a concrete sleeve. The purpose of this Requirement is to protect adjacent water supplies (see section 5.6 of this Recommendation Report).
- 9.5.14 The ExA agrees that this Requirement meets the tests set out in EN-1, paragraph 4.1.7 and meets requests raised by interested parties in the examination as precautionary mitigation. The recommended DCO includes this alteration (Appendix D).

Requirement 8- HDD drill depths and construction periods

- 9.5.15 This provides a minimum depth of horizontal directional drilling (HDD) under river beds and watercourses and restricts any HDD under the bed of the River Towy/Afon Tywi so that it cannot take place between 1 April and 30 June in any calendar year, as this is when migratory fish species will be present.
- 9.5.16 NRW, in its relevant representation [RR-021], supported the Applicant's approach in the No Significant Effects Report (NSER) [APP-053 and APP-065] in respect of the proposed HDD of the underground cable a minimum of 5 metres below the river bed level of the Afon Tywi/River Towy and programmed outside the migration/spawning periods [RR-022].
- 9.5.17 The ExA agrees that this Requirement meets the tests set out in EN-1, paragraph 4.1.7. The recommended DCO includes this alteration.

¹⁵⁷ The Applicant neglected to include pole 170 in this Requirement even though it is clearly labelled "sleeve" in Table 1 of Requirement 3

Requirement 12 - Contaminated land and groundwater

- 9.5.18 This was amended at NRW's request to include them as a consultee under agenda item 7 of the DCO ISH on the 10 December 2015 [EV-025].
- 9.5.19 The recommended DCO shows this alteration (Appendix D).

Requirement 15 - Habitat management plan

- 9.5.20 This provides that no stage of works in areas identified in the habitat management plan (HMP) shall commence until a final HMP, consistent with it, has been submitted to and approved by the relevant planning authority. The Requirement further provides that the authorised development will be implemented, maintained and monitored in accordance with the approved final HMP. The plan will be reviewed for a period of up to 5 years by the Applicant, in consultation with the relevant planning authority.
- 9.5.21 NRW and CCC expressed their support for the Requirement's intentions and powers in their responses to the ExA FWQ [REP1-014 and REP1-019] and at the DCO ISH under agenda item 7 at the DCO ISH [EV-025].
- 9.5.22 The ExA agrees that this Requirement meets the tests set out in EN-1, paragraph 4.1.7.

Requirement 18 - Construction traffic management plan

- 9.5.23 The Applicant responded to the ExA FWQ DCO31 [PD-011] with a proposal to amend Requirement 18 of the draft DCO Version B [REP3-048] to state:

"Prior to the commencement of development, the CTMP shall be submitted to and approved in writing by the relevant planning authority. The works shall be carried out in accordance with the approved CTMP."

- 9.5.24 More detail on the content of the Construction Traffic Management Plan (CTMP) was requested following discussions at the 10 December 2015 DCO ISH under Agenda item 7 of the DCO ISH [EV-025]. These details were provided in draft DCO Option A Version B [REP3-048] and were captured in draft DCO Option B in [CR-011] as follows:

"The construction traffic management plan (CTMP) must be consistent with the CTMP submitted in outline and shall include proposals for the movement of construction traffic including measures to promote sustainable travel. It shall also include for:

- (a) site access and traffic management;*
- (b) a routing strategy for construction traffic;*

(c) the location and means of temporary road closure.,

(d) the management of public rights of way consistent with CTMP Annex 1 the Public Rights of Way Management Strategy;

(e) Other Management Matters including conditions surveys and wheel and street cleaning.'

- 9.5.25 This was subsequently edited at CCC's request following discussions at [EV-025] to:

"No numbered work of the authorised development other than tree felling is to commence until a final CTMP covering that numbered work has been submitted to and approved by the relevant planning authority in consultation with the Department for Transport of the Welsh Government."

- 9.5.26 This change was reflected in Draft DCO, Option A, Version D DCO [REP4-024] and was also captured for Option B in [CR-011].

- 9.5.27 The Applicant responded to the ExA SWQ DCO2-09 [PD-019] with a proposal to amend Requirement 18 of the draft DCO Option A Version B [REP3-048] to remove reference to an "outline CTMP" and replace with "final CTMP". This was also captured for Option B [CR-011]. This was subsequently modified to:

"certified as the CTMP by the Secretary of State for the purposes of this Order"

following discussion at the DCO hearing on the 11 February 2016 under agenda item 7 [EV-032].

- 9.5.28 The ExA agrees that these changes clarify intentions and powers. The recommended DCO includes these alterations (Appendix D).

Requirement 19 - Temporary bridge

- 9.5.29 One temporary bridge may be needed should the load bearing limit on the existing bridge be deemed insufficient. The land within which the bridge would be located is identified on plan drawing number WPD15045/S12/R0/BRIDGE [REP4-029], as an underground cable (UGC) work area. The bridge would be used to cross a tributary of the Afon Gwili, to the west of the area identified for underground cabling approximately 80m west of the tributary's confluence with the Gwili.

- 9.5.30 Schedule 1 (Work No. 2) was amended at the ExA's request through FWQ DCO29 [PD-011], to insert the right to construct the temporary bridge. This Requirement was not altered at any stage.

- 9.5.31 The recommended DCO includes this alteration to Schedule 1 (Appendix D).

Requirement 21 - Construction environmental management

plan

9.5.32 The Applicant responded to the ExA's FWQ DCO31 [PD-011] with a proposal that the approval of the CEMP, HMP and Frac-Out Contingency Plan, lies within the remit of the relevant planning authority. The ExA noted that the relevant planning authority is responsible for discharging, monitoring and ultimately enforcing Requirements. The ExA noted that the Requirement obliged that, when deciding to approve a plan as required by a Requirement, the relevant planning authority will engage and consult with NRW.

9.5.33 More detail on the content of the CEMP was requested by the ExA following discussions at the 10 December 2015 DCO ISH under agenda item 7 [EV-025]. These details were provided in draft DCO, Option A, Version B [REP3-048] and captured for Option B in [CR-011] as follows:

'The CEMP must be in accordance with the outline CEMP and must include the following during construction:

(a) a waste management plan,

(b) a pollution prevention and emergency response plan,

(c) a water management plan,

(d) a habitat management plan,

(e) a dust management plan and an invasive weeds management plan.'

9.5.34 The HMP (Requirement 15) was removed from under the CEMP umbrella and made a stand alone document, like the Frac-out contingency plan[REP1-076], at NRW's request under agenda item 7 [EV-025] and in response to the ExA SWQ DCO2-15 [PD-019].

9.5.35 The ExA agrees that these changes would clarify intentions and powers. NRW are content with this wording. The recommended DCO includes this alteration (Appendix D).

Requirement 24 - Frac-out¹⁵⁸ contingency plan

9.5.36 This Requirement provides that prior to the commencement of the undergrounding works in Work No. 2 (Schedule 1), a frac-out contingency plan shall be submitted to and approved by the relevant planning authority in consultation with NRW. The plan shall then be implemented.

¹⁵⁸ Fractures in geological horizons which could transport HDD bentonite lubricant to potentially sensitive habitats

- 9.5.37 More detail on the content of the Frac-out contingency plan was requested by the ExA following discussions at the 10 December 2015 DCO ISH under agenda item 7 [EV-025]. These details were provided in Draft DCO Option A, Version B [REP3-048] and captured for Option B in [CR-011] as follows:

'The final Frac-Out Contingency Plan shall include:

(a) the persons responsible for implementing the measures to be set out within the plan;

(b) design protocols and measures to be implemented for the protection of sensitive ecological receptors;

(c) confirmation of the suitability of the formations to be drilled;

(d) measures to monitor the drilling process for frac-out; and

(e) the measures to be initiated to protected sensitive ecological receptors should frac-out occur.

23.(2) The Frac-Out Contingency Plan must be implemented as approved.'

- 9.5.38 The ExA agrees that these changes clarify intentions and powers. The recommended DCO includes this alteration (Appendix D).

Requirement 25 - Decommissioning

- 9.5.39 The Applicant responded to the ExA FWQ EIA28 [PD-011] with a commitment to introduce this Requirement. These details were provided in Draft DCO, Option A, Version A [REP2-027].

- 9.5.40 This Requirement provided that should the "connection hereby approved" become redundant (as determined by the undertaker) for operational purposes the undertaker shall submit to the relevant planning authority, a decommissioning and restoration plan for approval. Decommissioning shall be completed within 24 months following the decommissioning and restoration plan approval. The ExA has, in his recommended DCO, replaced "connection hereby approved" with "authorised development", for the purposes of greater clarity. The ExA is satisfied that this is what the Applicant meant by 'connection' and is how IPs understood it.

- 9.5.41 The recommended DCO includes this alteration (Appendix D).

Requirement 27 - Foundation depths

- 9.5.42 The Applicant responded to the ExA FWQ EIA03 [PD-011] with a commitment to introduce this Requirement. These details were provided in Draft DCO, Option A, Version A [REP2-027] and captured for Draft DCO, Option B in [CR-011].

9.5.43 This Requirement provides that the overhead line poles foundation depths shall not exceed 2.7m measured from natural ground level. This was agreed by all parties.

9.5.44 The recommended DCO includes this alteration (Appendix D).

Requirement 28 - Hedgerows

9.5.45 The Applicant responded to the ExA FWQ EIA16 [PD-011] with a commitment to introduce this Requirement to provide the dimensions of hedgerow removals. These details were provided in draft DCO, Option A, Version A [REP2-027] and captured for draft DCO Option B in [CR-011].

9.5.46 This Requirement provides that the width of individual hedgerows to be removed shall be restricted to a maximum width of 8m within Work No.2 and 6m within Work No.1 and Work No.3. The hedgerow within work No.2 shall be translocated and reinstated.

9.5.47 The recommended DCO includes this alteration (Appendix D).

Requirement 29 - Otter surveys

9.5.48 The Applicant responded to the ExA FWQ HA09 [PD-011] with a commitment to introduce this Requirement to provide for pre-construction otter surveys. These details were provided in draft DCO, Option A, Version A [REP2-027] and captured in draft DCO Option B [CR-011].

9.5.49 This Requirement provides that prior to the commencement of development within the Nant Morlais Woodland (Work No. 1) (Figure 3 of [APP-100] and Work No.2 that pre-construction otter surveys shall be undertaken and the result submitted to the relevant planning authority in consultation with NRW. Development shall not commence within the Nant Morlais Woodland [APP- 007] Work No.1 and Work No.2 until either the absence of otters is confirmed or the mitigation proposed is agreed by the relevant planning authority in consultation with NRW and implemented. NRW are content with this wording.

9.5.50 The recommended DCO includes this alteration (Appendix D).

9.6 PROTECTIVE PROVISIONS - SCHEDULE 9

9.6.1 This sets out the provisions for the protection of statutory undertakers and electronic communications code network operators affected by the authorised development:

- Part 1 provides protection for the oil undertakers (limited to Mainline Pipelines Limited and its successors in title and function) (paragraph1(2));
- Part 2 provides protection for National Grid Gas Plc (NGG) and National Grid Electricity Transmission Plc (NGET) but also protects any licence holder within the meaning of Part 1 of the

Electricity Act 1989; and a gas transporter within the meaning of Part 1 of the Gas Act 1986;

- Part 3 comprises protection for Dwr Cymru Cyfyngedig/ Welsh Water;
- Part 4 covers protection for Wales and West Utilities Limited; and
- Part 5 for the protection of electronic communication code network operators.

Each have interests in the land within the Order limits. These interests include telecommunications lines for British Telecom (BT)/Openreach and other operators, water mains and associated apparatus in respect of Welsh Water, a gas pipeline of Wales & West Utilities, an oil pipeline in respect of Mainline Pipelines Ltd and electricity and gas pipelines in respect of National Grid Electricity Transmission (NGET) and National Grid and Gas (NGG) respectively.

9.6.2 The protective provisions are based on similar protective provisions found in:

- the National Grid (King's Lynn B Power Station Connection) Order 2013;
- the National Grid (North London Reinforcement Project) Order 2014 and

9.6.3 Article 2(1) defines 'undertaker' for the purposes of the whole of the DCO i.e. the Applicant or any other person who has the benefit of the order. In some places in Schedule 9 of Draft DCO Option A Version F[REP8-015] and Option B [REP8-023], the Applicant has used 'undertaker' to mean a person benefitting from protective provisions and has also, in some places, given the Applicant a different definition i.e. 'promoter'. The ExA believes this could create confusion. The recommended DCO has amended Schedule 9 to address this. These ExA amendments do not alter the intention or effect of any of the provisions in the Schedule.

9.6.4 The status of these draft protective provisions are as follows:

Mainline Pipelines Limited

9.6.5 Mainline Pipelines have confirmed that they have no objection to the Protective Provisions as drawn within the DCO. This has been confirmed in a letter from Mainline Pipelines on 21 December 2015 [REP4-044]. Mainline Pipelines Limited have not objected to the proposed development. Mainline Pipelines Limited has the benefit of unknown rights in respect of an oil pipeline in the BoR [REP8-019]. Given that Mainline Pipelines Limited have no objection to the Protective Provisions as drawn and that Part 1 of Schedule 9 of the recommended DCO gives protection to Mainline Pipelines Ltd and its successors in title and function, the ExA concludes that the assets of Mainline Pipelines Limited and its successors in title and function are protected.

National Grid Gas (NGG) Plc and National Grid Electricity Transmission (NGET) Plc

- 9.6.6 NGET and NGG submitted a letter to the Planning Inspectorate on 5 April 2016 withdrawing their relevant representation [RR-017] dated 3 August 2015 and noted that satisfactory Protective Provisions arrangements had been concluded [REP8-040]. The ExA concludes that there is no outstanding objection from NGG/NGET, as represented by National Grid (NG), to the inclusion of the Protective Provisions as Part 2 of Schedule 9. The draft Protective Provisions (with a wide definition of protected persons)¹⁵⁹, which are in an agreed version (see paragraph 9.6.3 of this Recommendation Report where definitions of parties was clarified)(Part 2), have been incorporated into the recommended DCO (Appendix D).

Dwr Cymru Cyfyngedig (DCC) (Welsh Water)

- 9.6.7 DCC has not submitted a relevant representation or any other representations regarding the proposed development.
- 9.6.8 The Applicant argues that to use Plot B50 for access will not cause any serious detriment to the carrying out of DCC's undertaking. DCC has settled a legal agreement with the Applicant to agree Protective Provisions which are in the process of being signed and completed [REP8-022]. Heads of Terms have been signed in respect of an easement for the benefit of the Applicant over Plot B50. The ExA considers that, based DCC not objecting to the Project and having settled terms, that no serious detriment will arise.
- 9.6.9 The Applicant has included powers to extinguish any right or remove any apparatus (contained in Article 30¹⁶⁰ of the draft DCO Option A [REP8-015] and B [REP8-023]) but made subject to the protective provisions in Part 3 Schedule 9. Given the protective provisions are in the process of being agreed in Part 3 Schedule 9, the SoS can be satisfied that any extinguishment or removal would be necessary for the purpose of carrying out the authorised development (s138 of PA2008).

Wales and West Utilities Limited (WWU)

- 9.6.10 WWU responded at D4 with a letter to the ExA [REP4-002] which noted that WWU had no apparatus in the area of the 'enquiry' but provided confirmation on 4 April 2016 that they are satisfied with the Protective Provisions within the draft DCO [REP8-022]. The BoR [REP8-019]¹⁶¹ does not identify any land in their ownership within Order limits.. However, WWU has not formally withdrawn its representation [AS-

¹⁵⁹ Part 2 provides protection for National Grid Gas Plc and National Grid Electricity Transmission Plc but also protects any licence holder within the meaning of Part 1 of the Electricity Act 1989; and a gas transporter within the meaning of Part 1 of the Gas Act 1986

¹⁶⁰ Article 29 I the ExA's recommended DCO Appendix D

¹⁶¹ Identical for Option A and B

006]. The ExA concludes that there is no outstanding objection from WWU Limited to the inclusion of the Protective Provision as Part 4 of Schedule 9.

- 9.6.11 The Applicant has included powers to extinguish any right or remove any apparatus (contained in Article 30¹⁶² of the draft DCO Option A Version F [REP8-015] and draft DCO Option B Version A [REP8-023]) but made subject to the protective provisions in Part 4 of Schedule 9. Given the protective provisions in Part 4 of Schedule 9, the SoS can be satisfied that any extinguishment or removal would be necessary for the purpose of carrying out the authorised development (s138).

Operators of electronic communication code networks

- 9.6.12 No operators of electronic communication code networks have objected to the Proposed Development or made any representations. BT has been named in the BoR [REP8-019]¹⁶³ as possessing a "relevant right" at numerous points along the route e.g Plot no. A37. Given that there is no outstanding representation from operators and that Part 5 of Schedule 9 of the recommended DCO gives protection for operators of electronic communications code networks, the ExA concludes that the assets of operators are protected.

ExA conclusion on protective provisions

- 9.6.13 The Protective Provisions for operators of electronic communication code networks, WWU Limited and Mainline Pipelines Limited and its successors in title were not in an agreed version by the time that the examination closed.
- 9.6.14 The Applicant has included powers to extinguish any right or remove any apparatus (contained in Article 30¹⁶⁴ of the draft DCO Option A Version F [REP8-015] and draft DCO Option B Version A [REP8-023]) but made subject to the protective provisions in Part 1, 4 and 5 of Schedule 9. Given the protective provisions provided by the Applicant in Part 1, 4 and 5 of Schedule 9, the SoS can be satisfied that any extinguishment or removal would be necessary for the purpose of carrying out the authorised development (s138 of PA2008).
- 9.6.15 The ExA recommends the protective provisions for these parties should be endorsed by the SoS for the reasons outlined in paragraphs 9.6.5- 9.6.14 of this Recommendation Report, and, therefore, Schedule 9, Parts 1- 5 of the Applicant's draft DCO have been incorporated into the recommended DCO (Appendix D) (see paragraph 9.6.1 of this Recommendation Report).

¹⁶² Article 29 I the ExA's recommended DCO Appendix D

¹⁶³ Identical for Options A and B

¹⁶⁴ Article 29 I the ExA's recommended DCO Appendix D

9.7 OTHER SCHEDULES

- 9.7.1 **Schedule 4 (Modification of compensation and compulsory purchase enactments for creation of new rights).** Pursuant to Article 19 (Article 18 in the recommended DCO) , this sets out the modifications to the statutory provisions applicable to compensation and compulsory purchase under the DCO where new rights are to be acquired. The ExA is content with this Schedule and there were no issues raised by the APs.
- 9.7.2 **Schedule 5 (Parts of access to be maintained at the public expense).** This sets out those parts of accesses that are to be maintained at the public expense pursuant to Article 11 (Article 10 in recommended DCO). The ExA is content with this Schedule and there were no issues raised by the APs.
- 9.7.3 **Schedule 6 (Streets subject to street works).** This sets out the streets referred to in Article 10 (Article 9 in recommended DCO) that will be subject to street works. The schedule is split into two parts. Part 1 refers to crossing points and Part 2 refers to accesses. The ExA is content with this Schedule and there were no issues raised by the APs.
- 9.7.4 **Schedule 7 (Streets /rights of way to be temporarily closed).** This sets out the streets and public rights of way which are subject to temporary closure powers under Article 12 (Article 11 in recommended DCO). The ExA is content with this Schedule and there were no issues raised by the APs.
- 9.7.5 **Schedule 8 (Land of which temporary possession may be taken).** This sets out the land referred to in Article 28 (Article 27 in recommended DCO) which the Applicant may temporarily occupy and the purpose for which that temporary occupation may be taken. The ExA is content with this Schedule and there were no issues raised by the APs.
- 9.7.6 **Schedule 10 (Discharge of requirements).** This applies to any consent, agreement or refusal which needs to be obtained under the Requirements set out in Schedule 3 Requirements. It clarifies the procedure which applies in respect of these additional consents. Paragraph (6) was deleted following discussions between CCC and the Applicant at the 11 February 2016 DCO ISH under agenda item 13 [EV-032]. The ExA is content with this Schedule.
- 9.7.7 **Schedule 11 (Removal of important hedgerows).** This sets out those hedgerows, which are defined as important hedgerows under the Hedgerow Regulations 1997, which can be removed for the purposes of the authorised development. The inclusion of this schedule is based on the advice of the Planning Inspectorate in Advice Note 15. The ExA is content with this Schedule and there were no issues raised by the APs.

Amendments required to the recommended DCO should the Secretary of State be minded to consent Option A

9.7.8 This Chapter, as previously stated (at paragraphs 9.1.13-9.1.16 of this Recommendation Report), is based upon the ExA's recommendation DCO which is based upon the Applicant's final Option B draft DCO [REP8-023]. Should the SoS, however, be minded to consent Option A, a number of alterations would be required to the recommended DCO.

9.7.9 The changes to the recommended DCO that would be needed if the SoS was to prefer Option A, based on [REP8-015], are as follows:

- In Schedule 1, Work No 1 replace:
 - "10.94" with "11.2";
 - "pole number 84" with "pole number 86";
 - "SN 43571 19638" with "SN 43515 19882"
- In Schedule 1, Work No 2 replace:
 - "3.56" with "3.3"
 - "pole number 84" with "pole number 86";
 - SN 43515 19882 with SN 43571 19638.
- In Schedule 2 (should replace with tables in Schedule 2 of Option A Version F [REP8-015]):
 - Part 3 Revision first two B become A;
 - Part 7 Revision first B becomes A;
 - Part 8 Revision 2nd D becomes C and 3rd D becomes C;
 - Part 9 Revision first 2 Bs become As;
 - Part 10 Revision first 2 Bs become As.
- Schedule 3 (should replace with Table 1 in Schedule 3 of Option A Version F [REP8-015]) where Requirement 3 Table 1 changes to:

84	A/WP/PS/7	15	Twin
85	A/WP/PS/7	17	Single
86	A/WP/PS/7	15	Terminal Four
87	B/WP/PS/2	15	Terminal Four

9.8 OTHER LEGAL AGREEMENTS/RELATED DOCUMENTS

9.8.1 EN-1, paragraph 4.1.8, advises that the decision-maker may take into account any development consent obligations that an Applicant agrees with Local Authorities. These must be relevant to planning, necessary to make the proposed development acceptable in planning terms, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development and reasonable in all other respects.

SECTION 106 AGREEMENT

- 9.8.2 The Applicant and CCC have agreed a draft Agreement under section 106 of the Town and Country Planning Act 1990 Act (1990 Act) [REP7-011]. The draft s106 Agreement is agreed between the Applicant and CCC. As of 6 April 2016, the Applicant had signed this s106 Agreement and it was with CCC for execution and completion. At the close of examination CCC had not confirmed that it had been executed by them or entered into.
- 9.8.3 At paragraph 19.16 of the LIR [REP1-025], CCC state that the provision of a s106 agreement is to secure landscape and biodiversity enhancement measures along land running adjacent to the Order limits of the proposed development. CCC believe that this proposal broadly accords with the intent of the policy Policy GP3 – Planning Obligations and is also in compliance with Policy EQ4 which promotes net enhancement from development proposals.
- 9.8.4 The draft s106 Agreement contained draft obligations relating to the following matters:
- The Council may utilise the Fund for the following purposes:
 - No more than (£104,980) shall be used by CCC to administer and manage the Fund such amount to be utilised to appoint a project officer for 3 days per week for a period of no more than one year within a two year period;
 - The remainder of the Fund shall be provided as Works Grants to a Qualifying Person¹⁶⁵ to be spent on any Qualifying Land¹⁶⁶ for the following purposes:
 - The laying (and fencing) of hedgerows;
 - The planting of trees and woodland creation;
 - The planting of new hedgerows/hedgerow plants;
 - The blocking of existing drainage ditches;
 - The removal of invasive species; and
 - The provision of nest boxes (birds, bats, dormice).
 - A Qualifying Person shall only be entitled to make one application for a Works Grant and receive one Works Grant in respect of any area of Qualifying Land in the ownership of that Qualifying Person;
 - CCC shall use its reasonable endeavours to have made Works Grants for the whole of the amount in the Fund available for Works Grants within 12 months of appointing the project officer and shall return any unspent Contribution held in the Fund where such amount is not committed or spent within 2 years of the date of receipt of the Contribution from the Applicant; and
 - On receipt of a request in writing from the Applicant, CCC shall provide details of the Qualifying Persons who have been provided with a Works Grant and the relevant Qualifying Land to which the

¹⁶⁵ "Qualifying Person" means any owner of any Qualifying Land

¹⁶⁶ "Qualifying Land" means any land within 3 kilometres of the Order Land

Works Grant has been applied together with any details that the Council has describing the purposes for which the Works Grant has been used.

- 9.8.5 The ExA has had regard to the covenants set out in the s106 agreement, in the light of the EN-1 policy statement. The ExA has explained in Chapter 7 of this Recommendation Report, that this development consent obligations are considered to be compliant with that national policy, and that the ExA has taken it into account in reaching its conclusions and making its recommendation. The ExA has given weight to the grants for laying hedgerows, planting of trees, woodland creation and the habitat enhancements secured in the s106 agreement schedule fund at 2.2(b))(i)(ii)(iii), which the ExA considers is necessary to make the proposed development acceptable in planning terms. The ExA considers they are related to the proposed development, fairly and reasonably related in kind and scale, enforceable and reasonable in all other respects. The matters covered by the s106 agreement are important and relevant and have been taken into account in this Recommendation Report.

9.9 OTHER CONSENTS REQUIRED

- 9.9.1 Whilst the need for separately obtaining a number of consents under different aspects of legislation would be obviated by the recommended DCO (Appendix D), if made, the proposed development would, nonetheless, require a number of other consents and licences. These were originally listed by the Applicant in the Details of Other Consents and Licences [APP-150] and are set out in Chapter 1 of this Recommendation Report. An update to that list of consents and licences was provided by the Applicant during the Examination [REP3-054]. Given the final position of NRW and CCC in relation to matters within their jurisdiction, the ExA does not envisage any particular issues or impediments that are likely to arise in connection with the necessary grant of licences and permits by those bodies.

9.10 OTHER MATTERS

- 9.10.1 The ExA has considered all other representations received, including a number from persons who were not IPs to ensure fairness. The ExA has also had regard to all other important and relevant matters in its consideration of the application and has taken all representations and all these matters into account.

9.11 CONCLUSIONS ON RECOMMENDED DCO

- 9.11.1 The ExA has had regard to all important and relevant matters in its consideration of the application and has taken all representations and all these matters into account. The ExA concludes that for the reasons set out in this Recommendation Report the recommended DCO at Appendix D of this Recommendation Report should be granted.

10 SUMMARY OF FINDINGS AND CONCLUSIONS

10.1 SUMMARY OF FINDINGS AND CONCLUSIONS

- 10.1.1 The Examining Authority (ExA) considers that the application is in line with, and supports, the Governments policy objectives for energy as set out in National Policy Statements (NPS) EN-1: Overarching National Policy Statement for Energy and EN-5: National Policy Statement for Electricity Networks and Planning Policy Wales (PPW).
- 10.1.2 The ExA consider that the proposed development contributes to meeting the need for energy capacity.
- 10.1.3 In determining the application in accordance with s104 of the PA2008 (as amended), the ExA has had regard to the relevant NPS, LIRs, prescribed matters and other matters considered to be relevant to the decision. In the light of the tests set out in s104 PA2008, the ExA is satisfied that none of the sub-sections (5) 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. The ExA's overall conclusion on the case for development consent for the project is based on an assessment of these matters.
- 10.1.4 The ExA considers that the application would not be in conflict with the UK Government's international and European obligations under s104 (4).
- 10.1.5 The ExA concludes that the proposed development Option B conforms to, and supports, local planning policy. Option A remains in conflict with eight policies in the local plan. The ExA is satisfied the requirements of EN-1, EN-5 and PPW have been met for both Options A and B. However, Option B clearly complies with Local Policy and the ExA has given this compliance weight.
- 10.1.6 CCC and NRW believe, where the overhead line i.e. Option A is sited within this SLA and RLOHIW designations, negative impacts occur. CCC and NRW class these as "serious concerns" i.e. major adverse significant impacts as defined in EN 5 at paragraph 2.8.8, would occur on the SLA landscape character and the setting of the RLOHIW. The ExA agrees with the CCC/NRW assessment.
- 10.1.7 The further extent of undergrounding provided by Option B would be sufficient to mitigate the negative impact on landscape character and the Towy valley. Therefore the ExA recommends that the alternative of undergrounding Poles 84-86 i.e. Option B, is included in the recommended DCO that is attached at Appendix D to this Recommendation Report.
- 10.1.8 The ExA considers that, taking into account the mitigation measures set out in the recommended DCO, the implementation of the project

would not put the UK in breach of the Habitats Directive and would maintain the coherence of Natura 2000.

- 10.1.9 The ExA has had regard to the duties set out in Regulations 3 (historic heritage) and 7(biodiversity) of The Infrastructure Planning (Decisions) Regulations 2010. Matters regarding historic heritage (including listed buildings) and biodiversity are discussed in Sections 5.7 and 5.3 respectively in this Report. The ExA concludes that whilst there are some impacts of the proposed development in terms of visual and the effect on the local natural environment, the recommended DCO contains sufficient measures to mitigate those impacts.
- 10.1.10 The ExA in reaching its recommendation has given full regard to the Local Impact Report submitted and all other matters raised and representations made have been taken into account.
- 10.1.11 The ExA is satisfied that the adverse impacts of the proposed development would not outweigh its benefits for both Options A and B.
- 10.1.12 In considering these matters the ExA found no relevant matters of such importance that they would individually or collectively lead to a different recommendation to that set out below.
- 10.1.13 The ExA has considered the requests for powers to compulsorily acquire rights and restrictions which formed part of the application. The ExA concludes that there is a compelling case in the public interest and the requests for powers are proportionate and meet the tests set out in statute and in guidance. However, we have drawn the SoS's attention to the need for the consent of the appropriate Crown authority to be obtained before compulsory acquisition powers can be granted in respect of certain plots. Also the SoS may wish to request new revised works plans and to also seek confirmation that the s106 agreement has been entered into by CCC.

10.2 RECOMMENDATION

- 10.2.1 Both Option A and B are acceptable in planning terms and either could be granted consent but only Option B clearly complies with Local Policy as detailed in paragraph 7.1.16 of this Recommendation Report.
- 10.2.2 The adverse effects on landscape character and historic setting of the Special Landscape Area (SLA) and Registered Landscape of Historic Interest in Wales (RLOHIW) respectively in the Southern slopes of the Towy Valley are clearly mitigated by Option B, and the ExA has given this compliance weight.
- 10.2.3 Having had regard to all the above factors, the ExA recommends that the proposed Brechfa Forest Connection should be granted consent. Because of all of the above reasons and in the light of the ExA's findings and conclusions on important and relevant matters set out in the report, the ExA under the PA 2008 recommends that the SoS should make the DCO in the form attached.

- 10.2.4 The changes to the recommended DCO that would be needed if the SoS was to prefer Option A, based on [REP8-015] are detailed at paragraph 9.7.9 of this Recommendation Report.

APPENDICES