GREEN GEN CYMRU

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Survey Access Protocol

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1.0 Introduction

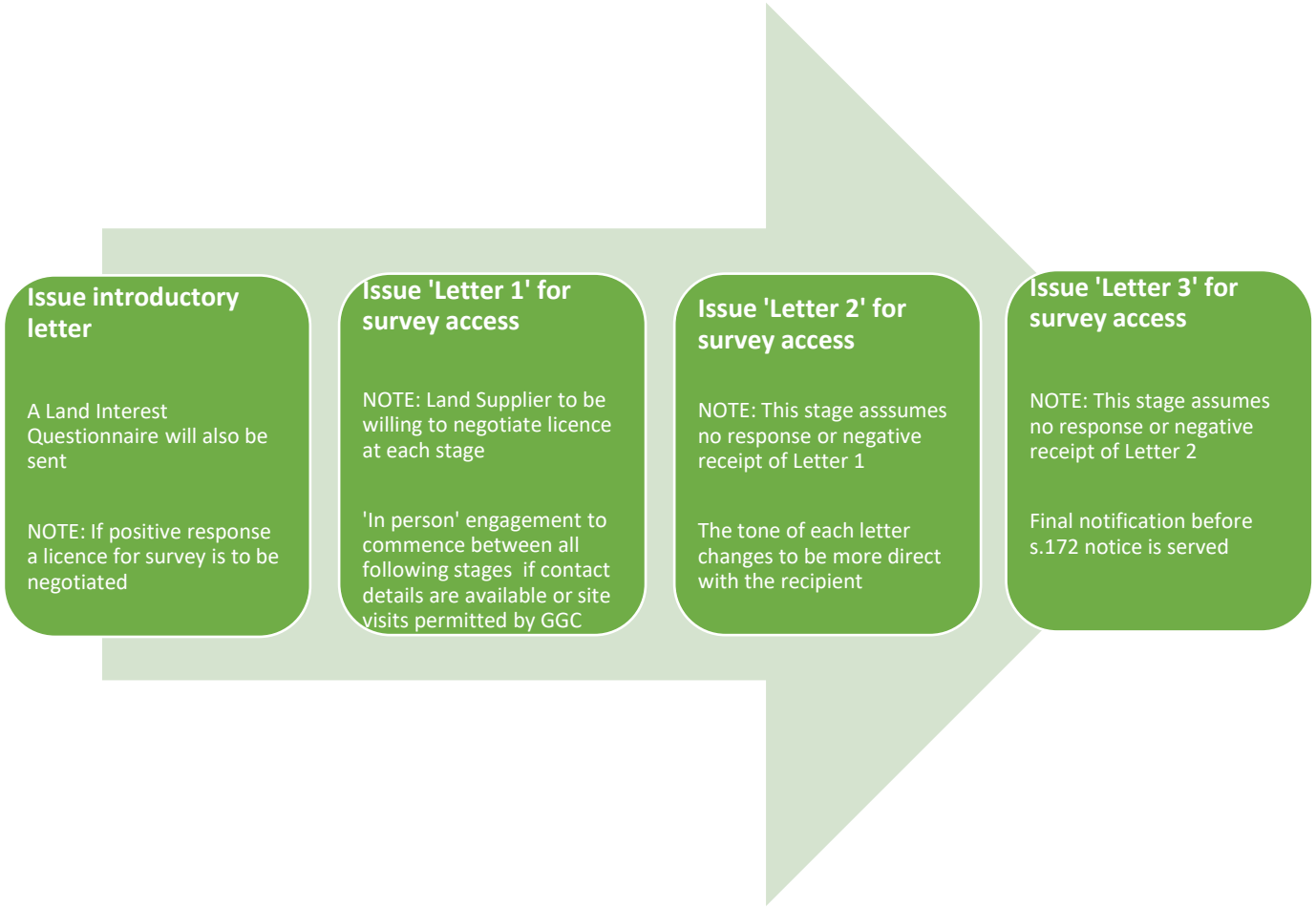
1.1) The purpose of this document is to set out standards and procedures for Green Gen Cymru and its authorised contractors to follow before and during utilising powers of entry under s.172 of the Housing and Planning Act 2016 (the Act). This standard is to ensure consistency across the business and provide greater clarity for those acting under the statutory notices and for those affected by them. This process only relates to the exercise of s.172 powers. Land Managers should ensure compliance with licence terms otherwise agreed.

1.2) This protocol is to be considered alongside the specific requirements under the Act and Green Gen Cymru's other relevant policies and procedures. These procedures do not relate to the access to any premises used as a private dwelling.

1.3) Within this Procedure, the following words and expressions have the following meanings:

a) "**Authorised Contractors"** means the suppliers contracted to GGC that it authorises to access land for the purposes set out under a s.174 notice
b) **"GGC"** means Green Generation Energy Networks Cymru Limited
c) **"Land Agent"** means the land agency instructed to act on behalf of GGC in relation to the relevant project
d) **"Land Manager"** means the land manager responsible for the relevant project, employed by Green Gen Cymru

2.0 Pre-Utilisation of Statutory Powers Procedure



3.0 Approval of Use of Statutory Powers Procedure

3.1) In the event the above process has been exhausted, and consent has not been obtained, it may be necessary to consider the service of a s.172 notice for powers of entry. Prior to the issue of the notice the following reviews and approvals are required:

3.1 - Justification for surveys

3.1.1) Confirmation and approval of a full schedule or surveys, including brief methodology and timing of each survey. A list of the confirmed and approved surveys will be attached to the proposed notice. A justification and recognition of potential consequence in the event the surveys are not completed is to be signed and completed by:

1. EIA consultant in respect of environmental surveys (if appropriate)
2. FEED consultant in respect of engineering surveys (if appropriate)

3.2 - Details of attempts for voluntary access

3.2.1) It is important that reasonable efforts have been made to reach voluntary agreement for survey access. The flow chart set out above sets the general standard by which GGC will consider whether reasonable efforts to agree voluntary access have been employed to agree a licence in circumstances where there is no response or no reasonable effort on the part of the counterparty to enter into negotiations in good faith in a timely manner consistent with meeting the underlying project's programme.

3.2.2) Ultimately, whether or not GGC concludes it has employed reasonable efforts to negotiate, particularly in instances where a party does engage in licence negotiations, is a decision for the relevant Land Manager informed by discussions with the project's Land Agents

3.2.3) There may also be circumstances where it may not be practicable within the project's overall programme to fully complete all steps within the 'three letter' process outlined above. In each instance where this may be the case it will be for the Land Manager for the project, informed by discussions with the project's Land Agents, to reach a judgement whether or not in the circumstances reasonable efforts have been made to negotiate access before authorising the issue of statutory notices.

3.2.4) The service of statutory notices should not be taken to mean that negotiations for agreeing licences for access are closed and such negotiations should be pursued in parallel with the exercise of statutory powers.

3.3 - Quality assurance of notice recipient information and preparation of the notice

3.3.1) The project's Land Agents will be responsible for carrying out the necessary inquiries from publicly available information and by making direct inquiries as to the nature of the interests in land and their owners, and information concerning the occupiers of that land.

3.3.2) In addition to identifying the owners and occupiers of the relevant land in this way, the Land Agents will also be responsible for identifying whether any of the land is subject to the enhanced authorisation procedure set out in section 175 of the Housing and Planning Act 2016.

3.3.3) It is necessary for this information to be compiled in order to effectively engage with owners and occupiers of land and, in due course, to comply with the requirements of the planning process. It will also be required to support negotiations for the acquisition of the relevant interests in land and to comply with the processes for seeking the authorisation of compulsory acquisition powers.

3.3.4) The legal supplier for the project will be required to review a sample of the information compiled for the purposes of serving statutory notices and to review the form of proposed notice. The scope of that review is to be agreed between the legal supplier and the Land Manager.

3.3.5) The Authorised Contractors will be required to identify the surveys that are required to be conducted together with a short explanation of the reasons those surveys are required for the Land Managers agreement and to supply the details of those surveys required by section 174 of the Act to be included in the statutory notice. Where it is necessary to undertake such surveys outside the hours of 07:00–19:00, or during weekends or Bank Holidays, this requirement shall be expressly notified to the Land Manager and the appointed legal supplier in advance, so that it may be appropriately considered and reflected within the relevant statutory notice by informing landowners and occupiers that certain surveys may have to be conducted outside of business hours.

3.4- Equalities Impact Assessment and Human Rights

3.4.1) An Equalities Impact Assessment (EqIA) has been carried out by GGC that has regard to the public sector equality duty in the exercise of its statutory powers to survey land. The Land Manager must review the EqIA and, informed by discussions with the appointed Land Agents and any relevant GGC Vulnerability Liaison Officer (see GGCs

'Vulnerable Person Protocol') and having regard to any consultation feedback received to date and any other relevant factors, consider whether or not the conclusions of the EqIA remain valid.

3.4.2) If there are reasonable grounds to consider that the proposed exercise of statutory survey powers would lead to disproportionate impacts or differential impacts on protected characteristic groups not previously considered in the EqIA then a further or updated EqIA should be carried out.

3.4.3) It may be the case that the exercise of statutory survey powers is subject to the provisions of the Human Rights Act 1998. The procedures set out in this document are intended to ensure that those powers are exercised in a proportionate manner having regard to owners' and occupiers' human rights.

3.5 - Authorisation in principle and delegated exercise of the power of entry

3.5.1) When the first four points of the above list are complete, the following GGC roles must sign a 'S.172 Authorisation Form' to confirm their approval of the request to utilise powers for entry:

1. Land Manager
2. Senior Land Manager
3. Senior Project Manager
4. External Affairs Manager
5. Project Director

3.5.2) Once the authorisation form has been completed the Green GEN Land Manager is delegated the authority to oversee the subsequent exercise, or non-exercise, of the statutory power.

3.5.3) In exercising this delegation, the Land Manager should have regard to the scope of the authorisation in principle and if there are any material changes in circumstances liaise with the GGC officeholders mentioned above to determine whether it would be appropriate to revisit the decision to delegate in the light of those circumstances. Records should be kept of such discussions and their outcomes.

3.5.4) The Land Manager exercising the delegated authority should keep in mind that ownership and occupation of land may change over time and should work with the appointed Land Agents and legal supplier to ensure that up to date information is used. The mere change in the identity of the owner or occupier of land in relation to which an authorisation in principle is given would not necessarily be a reason to require a

further or updated authorisation in principle provided the Land Manager is satisfied that all other requirements of this policy have been met (in particular, in relation to the justification for the surveys and that reasonable efforts have been made to negotiate access). However, if new land is required to be surveyed that was not previously subject to an authorisation in principle the Land Manager should seek a new delegated authority in accordance with this policy.

4.0 Service of Notice

4.1) Prior to serving notice, it is important that the party responsible for carrying out service cross-references the relevant requirements of the Act with the notices. Additionally, the Home Office Code of Practice 'Powers of Entry' December 2014 (the Code) recommends including the following information:

1. Whether the entry will be conducted with or without a warrant
2. The powers of entry and associated powers used
3. The occupier's rights
4. Any compensation or complaints procedures that exist
5. Where a copy of this Code of Practice may be obtained

The covering letter accompanying the notice should address the above matters and should also enquire whether:

1. any particular measures or precautions are necessary when entering the land;
2. there are any issues or requirements relating to the land which may otherwise affect or be affected by the carrying out of the proposed surveys or which the recipient would otherwise like Green GEN and its Authorised Contractors to have regard whilst entering the land and carrying out surveys.

4.2) Working with the legal supplier the Land Manager should also ensure that all notices include an appropriate date by which they expire. When determining the expiry date, the Land Manager should bear in mind that it is possible to serve a subsequent notice in accordance with this policy, should it be necessary to carry out surveys after the expiry date.

4.3) Particular care is required where intrusive surveys are proposed. For the purposes of this policy 'intrusive surveys' are considered to be surveys involving significant earthworks that are carried out on land for a period exceeding 24 hours which, as a consequence, may have the effect of temporarily dispossessing the owner or occupier of their enjoyment of the land for the duration of the surveys. Examples of intrusive surveys include (i) borehole monitoring, (ii) ground investigations involving trial

trenching and (iii) archaeological investigations that include trenching. The use of handheld augurs does not comprise an intrusive survey for the purposes of this policy.

4.4) In view of the fact that, by their nature, intrusive surveys may have a more significant impact on the owners' and occupiers' use of their land, the Land Manager should work closely with the Project team to provide in the notice as much information as is reasonably practicable concerning the nature, duration and extent of the proposed survey activity.

5.0 Prior to entry

5.1) The Act requires that at least 14 days' notice be given to each owner and occupier of the land to be surveyed before the first day on which the authority intends to enter the land under the power conferred by the Act.

5.2) The nature of the surveys that are required in connection with the promotion of grid connection projects are such that there are significant practical difficulties associated with giving a detailed schedule of the times, dates and specifics of individual surveys. There are a range of reasons why this is the case. These include:

- The need for some types of survey will only be identified subsequent to an initial survey for example, where an initial survey identifies the presence of particular species or habitats that require more specialist investigations;
- Surveys that are sensitive to weather conditions (such that they may need to be re-arranged at short notice when faced with inappropriate weather conditions);
- The availability of surveyors (which may be influenced by the rate of progress elsewhere in the surveying campaign);

5.3) In relation to some species and habitats, to be considered to be technically robust, it is necessary that they are undertaken in particular seasons or other intervals within the course of a year.

5.4) Similarly, some surveys are required to be undertaken at times of the day or night which are outside of ordinary working hours (for example, dawn/dusk surveys for particular species) or which require monitoring over a particular period of time, or at particular intervals.

5.5) Having regard to these difficulties and the need to co-ordinate survey campaigns across the project and in accordance with the terms of licences (where these are agreed) a reasonable degree of flexibility is required. The need for this flexibility must be balanced with regard to the potential for disruption that may be occasioned to owners and occupiers of the land to be surveyed.

5.6) To seek to strike an appropriate balance the Land Manager should adhere to the following guidelines:

1. Unless commitments have been given to a greater period of advanced warning the Land Manager should ensure that the person(s) understood to be in control of the land are given no less than 14 days advance warning ahead of entry onto the land. If it is not practicable to give 14 days advance warning (if for example, the proposed survey date falls shortly after the statutory 14 day notice period following service of the section 174 notice) the notice should provide as much information as is reasonably practicable in the circumstances, the covering letter should confirm that no additional 14 day warning will be provided and the covering letter should confirm that approximately 48 hours advance warning will be provided per point 5 below.

2. The advanced warning should give an indication of when the entry onto the land is proposed, its anticipated duration and the nature of the survey activity being undertaken. Due to the uncertainties noted above, it may be necessary to give an advance warning of a 'window' within which entry is expected to be taken. The Land Manager should strive to ensure that any such window given is proportionate to the degree of uncertainty. Where surveys are expected to take place surveys outside the hours of 07:00–19:00 or during weekends or Bank Holidays, the advanced warning should make this clear.

3. The advance warning should invite the person(s) understood to be an Owner or person(s) who appears to be in control of the land to provide any information that may be of relevance to the conduct of the surveys such as the presence of any livestock or other particular biosecurity concerns, the presence of any hazards on the land and their preferences in terms of the parking of vehicles.

4. The Land Manager in conjunction with the Land Agents should conscientiously consider any reasonable requests made by the person(s) in control of the land and should make reasonable efforts to meet these where it is practicable to do so without unduly affecting the efficient and timely running of the survey campaign. Such agreed accommodations should be recorded and communicated to the Land Agents and the persons authorised to take entry. In particular, the Land Manager and the Land Agents should have particular regard to GGC's 'Vulnerable Person Policy'.

5. The advanced warning should be followed up approximately 48 hours in advance of the proposed date of entry to provide an update regarding the proposed entry.

6. The means by which the advanced warning and subsequent confirmation are to be given is a matter for the Land Manager in conjunction with the Land Agents to determine. This should reflect the communication preferences of person(s) in control of the land and could take the form of a letter, email or telephone call or such other means as are considered appropriate in the circumstances. The Land Manager and the appointed land agent must ensure that records are kept of these communications and of any responses received.

7. All correspondence, including unsuccessful attempts at contacting any Owner or person(s) who appears to the Land Manager to be in control of the land should be recorded by GGC's land agent in a secure and legible format. Any scheme specific land access trackers must also be kept up to date. Such trackers must record any reasonable, specific access requirements requested by the landowner which in turn need to be distributed to the relevant authorised contractors.

8. Land Managers and the Land Agents should exercise particular caution where a significant period of time has expired since the service of formal notice. In advance of such circumstances arising the Land Manager and Senior Managers should consider whether it would instead be appropriate to issue a new statutory notice.

9. Avoid where possible conducting surveys outside the hours of 07:00–19:00, or during weekends or Bank Holidays unless necessary with strong justification.

6.0 Documents and Equipment to be held whilst on site

6.1) There are several documents that all personnel are required to have readily available to present on request. They are:

1. A form of ID showing their name and the name of the Authorised Contractor for whom they act
2. Sufficient copies of the 'Notice of Powers and Rights' to be given to the occupiers or otherwise deposited in a conspicuous location on the land
3. Evidence of GGC's authority to conduct the survey
4. A copy of the list of Authorised Contractors
5. A copy of the current Biosecurity Protocol
6. Appropriate biosecurity equipment
7. A copy of the relevant information outlining GGC's insurance cover
8. If the use of reasonable force has been authorised by warrant, a copy of the relevant warrant
9. Such other equipment or documentation as the Land Manager may require

7.0 Conduct on site

7.1) It is important to be mindful of the circumstances under which access is being taken to third party land. The exercise of statutory powers may be an emotional event for the owners and occupiers of the land and personnel should conduct themselves in a sensitive and professional manner.

7.2) Consider if a Welsh speaker may be required to support discussions. If the landowner or person in control of the land has notified of their preference to speak Welsh this should be accommodated, where practicable and appropriate in the circumstances having regard to the advice of the project's Vulnerability Liaison Officer.

7.3) No more personnel than is reasonably required for the survey should be present. Generally, this is considered to be the survey team accompanied by no more than two land agents who are required to be present to liaise with landowners and to assist the Land Manager in ensuring that GGC's policies and procedures are followed.

7.4) Where powers of entry are exercised without the consent of the PIL an Authorised Contractor or the appointed land agent should identify themselves clearly to the occupiers of the land (where present) by showing their authorisation and formal identification (except in situations where the safety of Authorised Contractor would be compromised by doing so or where to do so would not be appropriate having regard to GGC's Vulnerable Person Policy as advised by the Land Manager with the assistance of the Land Agents), and explain clearly the purpose of the visit.

7.5) The landowner or occupier may accompany Authorised Contractors during the course of a visit, if in the opinion of the Authorised Contractor, it would not interfere with the purposes of the visit. If an Authorised Contractor requests that a landowner / occupier does not accompany him/her during the visit he/she should give that person clear reasons, for example health and safety issues.

7.6) When requested to do so, Authorised Contractors should:

1. Give his/her name and the name of his/her organisation
2. Provide an official contact address and telephone number
3. Provide evidence of the Authorised Contractor having been granted GGC's authority to conduct the survey
4. Make available for inspection the documents referred to above under the heading "documents and equipment to be held whilst on site"

7.7) Whilst exercising powers an Authorised Contractor must:

1. Only carry out the activities on the land that they have been authorised by GGC to conduct
2. Behave in a professional and courteous manner
3. Comply with GGC's relevant policies and procedures with particular regard to the Biosecurity Protocol, the Vulnerable Personnel Protocol and the Surveys - Protected Site and Species Protocol
4. Have regard for health and safety of the owners and occupiers of the land and any lawful visitors, the Authorised Contractors' personnel, and to the extent relevant, the public at large
5. Conduct themselves so as to cause no unnecessary harm to property, livestock, wildlife or biodiversity
6. If the land is unoccupied or if the occupier is absent from the land when it is entered, the Authorised Contractor must ensure that it is left as secure against trespassers as when it was entered
7. Provide the persons present on the land a copy of the Notice of Powers and Rights or if no, persons are present, leave a copy in a conspicuous location on the land

7.8) The Land Manager working with the appointed Land Agents and Authorised Contractors must maintain a record of each entry made onto land made pursuant to the statutory power. This must include:

1. Information to identify the land that was entered;
2. The date and duration that the powers were exercised;
3. The identities of the personnel that entered the land;
4. A summary of the surveys conducted together with a record of interactions with persons occupying or otherwise being present on the land;
5. If the land was entered pursuant to a warrant, details of that warrant.

7.9) Unless taking such steps would frustrate the purpose of the visit, when exercising powers to enter business premises Authorised Contractors should where relevant:

1. Seek to minimise the potential for causing reputational damage to businesses, particularly where the high visibility of operations, for example during peak business trading hours, may give rise to customer concerns
2. Have regard to businesses' ability to continue legitimate trading operations and seek to cause as little disruption to the legitimate conduct of business as possible, where that is reasonably practicable.

8.0 Record Keeping

8.1) All required records shall be maintained in a professional, accurate, and up-to-date manner and stored within the GGC file sharing system in accordance with agreed project procedures. The Project Manager shall be responsible for ensuring that survey teams comply with record-keeping requirements and that all records remain complete, accurate, and appropriately managed throughout the duration of the project.

9.0 Obstruction of Entry

9.1) In the event access is obstructed, it is advisable that the authorised contractors withdraw from site, keep accurate records of the circumstances giving rise to the obstruction and notify the appointed Land Agents and Land Manager (or Police if deemed necessary).

9.2) Examples of obstructed access are listed below but personnel on site should use their professional judgement to determine the appropriate next steps having particular regard to the welfare of survey personnel and any owners/occupiers of the land or other persons present.

1. Physical obstruction – locked gates, fencing, vehicular obstruction, other physical barrier
2. Threat to H&S of site team – heightened aggravation, physical or verbal threats, human barrier, presence of dangerous animals or other intimidatory conduct

9.3) Once the team have withdrawn from the site, the project team and Land Manager will determine the appropriate next steps.

9.4) **Under no circumstances should any physical force be used by any personnel to gain entry to the land or to remain on the land unless the person using reasonable force is authorised to do so by warrant.**

10.0 Warrant Procedure

10.1) In circumstances where entry onto the land has been obstructed it may be appropriate for the Land Manager to make an application to the Magistrates' Court for a warrant to authorise the use of reasonable force.

10.2) The Land Manager working with the relevant Authorised Contractor, the appointed Land Agents and the appointed legal supplier should review the circumstances of the obstruction and seek the approval of the Project Director before making an application for a warrant.

11.0 Claims Procedure

11.1) If, as a result of the survey access, a landowner identifies damage to their land or suffers a loss which can be evidenced, GGC welcome a compensation claim to be submitted under s.176 of Housing and Planning Act 2016 which outlines the right to compensation after entry to land.

11.2) Claims should be submitted to the appropriate Land Agent with supporting evidence to substantiate the claim. GGC recommends appointing an independent land agent to act on the landowner's behalf and is willing to cover reasonable professional fees as set out within "Environmental And Engineering Surveys" document available on the GGC website.

12.0 Complaints

12.1) The Authorised Contractors undertaking surveys and taking access have been briefed on the requirements of this protocol. If you have any concerns about adherence and adoption of these standards, please ensure these are raised as soon as possible using the below details: complaints@greengencymru.com Please include details of your property and your specific concerns in relation to surveyors' behaviours against the requirements in this document.