

South Hook CHP Plant Herbrandston, Pembrokeshire

Explanatory Memorandum

The Planning Act 2008

**The Infrastructure Planning (Applications: Prescribed Forms & Procedure)
Regulations 2009**

Regulation 5(2)(c)



April 2014

Applicant: QPI Global Ventures Limited

Revision History

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Draft 1	31 May 2013	Application draft
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EXPLANATORY MEMORANDUM

1. Introduction

- 1.1 This memorandum accompanies an application for development consent (the **Application**) by QPI Global Ventures Limited (the **Applicant**). The memorandum explains the purpose and effect of each article of, and Schedule to, the draft Proposed South Hook CHP Plant Order (the **Order**) and any divergences from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the **Model Clauses**), as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.
- 1.2 The Order is based on the Model Clauses as well as on model provisions provided by the Department of Energy and Climate Change in respect of carbon capture readiness. It occasionally departs from the Model Clauses and draws from and reflects the drafting used in other orders determined under the Planning Act 2008 as amended (the **2008 Act**) and power stations consents granted under section 36 of the Electricity Act 1989 as amended (the **Electricity Act**) where appropriate.

2. The purpose of the Order

- 2.1 The Applicant has made an application to the Secretary of State for a development consent order to construct and operate a combined heat and power plant (the **CHP Plant**) to be co-located with the existing South Hook LNG Terminal (the **LNG Terminal**) situated near Herbrandston, in the county of Pembrokeshire, Wales. The CHP Plant will have an installed capacity of up to 500MWe – sufficient to meet the LNG Terminal's power needs and to allow the export of surplus power. Heat which results from power generation will be used in the LNG Terminal to vaporise liquefied natural gas.
- 2.2 This Order is for the construction and operation of the CHP Plant only (the **Project**). The grid connection to connect the CHP Plant to the national electricity transmission or distribution system will be the subject of a separate consenting process which will be dependent upon which of the possible connection routes is taken forward.
- 2.3 The Order seeks authority for the construction and operation of an electricity generating station (under sections 37, 114, 115 and 120 of the 2008 Act) on the following grounds:
- (A) Pursuant to sections 14(1)(a) and 15(2) of the 2008 Act, a non-offshore generating station in England or Wales having a capacity of more than 50 MWe is a nationally significant infrastructure project (**NSIP**).

(B) Section 31 of the 2008 Act provides that a development consent order is required under that Act to the extent that a development is or forms part of a NSIP.

(C) As the proposed CHP Plant is a non-offshore generating station with a capacity in excess of 50 MWe it is a NSIP within the definition contained in sections 14 and 15 of the 2008 Act.

2.4 It is for these reasons that the Applicant has made the application of which the draft Order forms part. The 2008 Act requires that in order to authorise construction and operation of the CHP Plant an application must be made to the Secretary of State, under section 37 of the 2008 Act.

2.5 A full, technical explanation of the Project is contained in Chapter 4 of Volume 1 of the Environmental Statement (Document 1.3.1) accompanying the Application.

PRELIMINARY

Articles 1 and 2 of the Order contain preliminary provisions.

Article 1	<i>(Citation and commencement)</i> provides for the commencement and citation of the Order.
Article 2	<i>(Interpretation)</i> principally follows the relevant Model Clause and provides for the interpretation of the Order. The “undertaker” with the benefit of the Order is defined as South Hook CHP Limited. The definition of “relevant planning authority” is either Pembrokeshire Coast National Park Authority (PCNPA) or Pembrokeshire County Council (PCC) for their respective areas of jurisdiction (and “relevant planning authorities” refers to both PCNPA and PCC together). This is because the LNG Terminal and the development authorised by the Order straddle the jurisdictions of PCNPA and PCC (although the location of the CHP Plant itself is within the Pembrokeshire Coast National Park boundary, some temporary and permanent works will take place within PCC jurisdiction). A definition of “commissioning” (as referred to in Article 14) is provided (the testing of the installed systems and components without prejudice to the meaning of commissioning for the purposes of environmental permitting) and this is also referred to in the requirements. Definitions of “permanent works” and “temporary works” are provided which refer to the listed works contained in Schedule A and which are used in relation to the restoration obligations at requirements 21 and 24.

OPERATIVE PROVISIONS

Articles 3 to 16 of the Order contain provisions for and relating to the authorised development and miscellaneous and general provisions. The Schedules contain details of the permanent and temporary works to be authorised by the Order and the requirements to which the development and operation of the CHP Plant will be subject.

Article 3	<i>(Development consent etc. granted by the Order)</i> is based on the relevant Model Clause and grants development consent for the authorised development within the Order limits thereby authorising the construction of the authorised development. The authorised development means the development under sections 14(1)(a) and 15(2) of the 2008 Act. Schedule A describes the authorised development. In identifying the development authorised by this Order, Article 3 also makes provision (not included in the Model Clauses) for the numbered works (specified in Schedule A to the Order) to be constructed within the defined areas shown and identified on works plan (part A) (Document 1.10A) and for the key buildings/ structures which are shown and identified in works plan (part B) (Rev B) to be constructed within the parameters shown on this works
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	<p>plan (Document 1.10B) and the section drawing plan (Rev C) (Document 1.9). As the Applicant has been unable to fix the precise location of the electrical sub-station (as this will depend upon which grid connection option is ultimately chosen) and the stack (as this will depend upon the final plant configuration) a limits of deviation approach is set out for these two buildings/structures which may be constructed within the blue edged rectangles shown on works plan (part B) (Rev B) and the section drawing plan (Rev C). The dimensions of these limits of deviation are also detailed in the body of the Article. The authorised development is also to be carried out in accordance with the requirements set out in Schedule B.</p>
Article 4	<p><i>(Procedure in relation to certain approvals etc under requirements)</i> is not based on the Model Clauses and is a new provision. It is drafted in relation to the further approvals required by the requirements contained in Schedule B of the Order. The article seeks to replicate the procedure for the discharge of planning conditions contained in section 78 of the Town and Country Planning Act 1990 as amended (the 1990 Act), with particular reference to the ability for the undertaker to appeal against either the refusal or non-determination of any such application for approval. This mechanism is appropriate to deal with the situation where the undertaker is of the view that the approval has been refused unreasonably or that approval has been delayed. In order to avoid any confusion or overlap with Welsh local governance, it is confirmed that the right of appeal is to the Secretary of State. It is also confirmed that for the purpose of such appeals the undertaker is deemed to be the holder of an electricity generation licence.</p>
Article 5	<p><i>(Maintenance of authorised development)</i> is substantially the same as the relevant Model Clause and clarifies that the undertaker is provided with the power to carry out works of maintenance to the authorised development.</p>
Article 6	<p><i>(Operation of generating station)</i> is not taken from the Model Clauses but is inserted pursuant to section 140 of the 2008 Act to authorise the undertaker to operate the authorised development in accordance with the provisions of this Order. In order to clarify the primary operating mode of the generating station, it is confirmed that the generating station will operate primarily as a combined heat and power plant with heat being provided to the LNG Terminal together with the generation of electricity.</p>
Article 7	<p><i>(Consent to transfer benefit of Order)</i> is the same as the relevant Model Clause and enables agreements between the undertaker and other persons for the transfer or grant of any or all of the benefit of the provisions of this Order and such related statutory rights as agreed between the undertaker and the other person.</p>

Article 8	<i>(Defence to proceedings in respect of statutory nuisance)</i> is the same as the relevant Model Clause and provides that no one shall be able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out or maintenance of the authorised development and for which notice has been given under section 60 or consent obtained under section 61 or 65 of the Control of Pollution Act 1974 or which cannot reasonably be avoided.
Article 9	<i>(Access to works)</i> is based on the relevant Model Clause and confers powers for the purposes of the authorised development to provide or improve access at locations within the Order limits provided that prior approval of the relevant planning authority is obtained. Article 9 does not contain the relevant provisions of the Model Clause which enables access for areas outside of the Order limits (as detailed in a schedule to the Order) as such access is not required for the Project.
Article 10	<i>(Discharge of water)</i> is substantially the same as the relevant Model Clause and enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised development with the approval and supervision (if provided) of the authority to which the watercourse, public sewer or drain belongs (such approval not to be unreasonably withheld) and subject to certain other conditions. The provision has been updated to reflect the introduction of water pollution control under the environmental permitting regime and the creation of Natural Resources Wales (NRW), the successor body to the Environment Agency in Wales.
Article 11	<i>(Authority to survey, investigate and remediate the land)</i> is based on the relevant Model Clause and confers upon the undertaker a power to survey, investigate and/or remediate the land within the Order limits. The right includes an ability to make trial pits or bore holes, to use and leave apparatus on the land in question and to enter the land. This article also makes provision in relation to the payment of compensation. The Model Clause has been modified to extend this right to carry out remediation as may be required within the Order Limits in connection with the authorised development but subject to the requirement to approve a scheme with the relevant planning authorities under requirement 9. Similarly, the right to conduct archaeological or ecological investigations is subject to the approval provisions of requirements 10 and 11.
Article 12	<i>(Application of landlord and tenant law)</i> is the same as the relevant Model Clause and overrides the application of landlord and tenant law in so far as it may prejudice the operation of any agreement for leasing the whole or part of the authorised development or the right to operate the same

	and any agreement for the construction, maintenance, use or operation of the authorised development or any part of it entered into by the undertaker.
Article 13	<i>(Operational land for the purposes of the 1990 Act)</i> is the same as the relevant Model Clause and provides that for the purposes of section 264(3)(a) of the 1990 Act the development consent granted by the Order shall be treated as specific planning permission. This is required as the undertaker will obtain a generation licence under the Electricity Act and will thus be a statutory undertaker for the purposes of section 262 of the 1990 Act.
Article 14	<i>(Carbon Capture Readiness)</i> is not based on the Model Clauses and is a new provision. It is the same as the Model Conditions for Carbon Capture Readiness set out in Annex G to Guidance from the Department of Energy and Climate Change on Carbon Capture Readiness (CCR) dated November 2009. It provides for the undertaker to set aside a designated site as identified in a CCR Feasibility Study and not to dispose of such land until the development is decommissioned or do anything that could diminish its ability to fit carbon capture equipment. The undertaker is required to regularly report on its compliance with these requirements, and is also required to keep its proposals for carbon capture up to date in light of technical developments.
Article 15	<i>(Certification of plans etc)</i> is the same as the relevant Model Clause and requires the undertaker to submit copies of the plans and other documents referred to in the Order to the Secretary of State for certification as true copies following the making of the Order. Certified copies of these plans and documents are also to be provided to the relevant planning authorities.
Article 16	<i>(Arbitration)</i> makes provision for differences arising under any provision of the Order, unless otherwise agreed between the parties, to be settled by arbitration.
Schedule A	<i>(Authorised development)</i> specifies the authorised development comprising the scheduled works. It has been spilt into the permanent works required for the development and operation of the CHP Plant and the temporary works that are required for purposes of construction and commissioning and which will be removed thereafter. Schedule A also makes clear which work areas are solely within the jurisdiction of PCNPA, which are within the jurisdiction of PCC, and which work areas are in the jurisdiction of both relevant planning authorities. Provision for additional works within the Order limits (such as the construction of drainage systems, landscaping and roads) that are required for the construction

	and operation of the CHP Plant are included at the end of Schedule A.
Schedule B	<i>(Requirements)</i> sets out certain requirements that the undertaker must meet in relation to the construction and operation of the authorised development. These requirements take a similar form to planning conditions. The requirements follow the form of those in the model provisions except where the particular requirements of the authorised development justify an amendment to those provisions, or additional requirements.
Requirement 1	<i>(Interpretation)</i> provides for the interpretation of words and phrases used in Schedule B. It introduces the definition of “permitted preliminary works” which are works which may be undertaken without the need for detailed design approval by the relevant planning authorities.
Requirement 2	<i>(Time limits)</i> specifies the time limit for commencing the authorised development as the standard period of 5 years from the date of the Order, as provided for in Regulation 3 of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010.
Requirement 3	<i>(Commencement of authorised development)</i> is based upon the Model Clause that covers the requirement to approve the stages of development. The development of this Project is straightforward and is not a staged development. Consequently this requirement has been amended to simply require the undertaker to give notice of the commencement of development where practicable, prior to commencement and in any event within seven days.
Requirement 4	<i>(Commencement and completion of commissioning)</i> is, as referred to in relation to requirement 3, for the undertaker to notify the relevant planning authorities when commissioning starts and when it is concluded.
Requirement 5	<i>(Detailed design approval)</i> is based upon the relevant Model Clause but does not apply to permitted preliminary works. It provides for the relevant planning authority to approve the design details of the Project and makes reference to the Design Principles Statement (Document 1.22) that contains the maximum parameters for the key buildings and structures such as the main CHP Plant buildings and which sets out the basis of the architectural treatment that will be used to soften the visual impact of the development. It contains a further provision to control subsequent high level structures that have the potential to detract from the design principles so that additional development (that is not covered by the Order) and which is greater than five metres in height above adjacent

	ground level will require the prior approval of the relevant planning authorities.
Requirement 6	<i>(Provision, implementation and maintenance of landscaping)</i> is based upon the relevant Model Clause for landscaping and has been combined with the separate Model Clause for the maintenance of landscaping for convenience. It does not apply to permitted preliminary works. A draft landscaping plan has been submitted which will form the basis of the landscaping scheme.
Requirement 7	<i>(Fencing and other means of enclosure)</i> is based upon the relevant Model Clause in requiring permanent fencing and other means of enclosure to be approved before the authorised development is commenced, that construction works shall be securely fenced and that temporary fencing shall be removed after completion of commissioning. Since temporary fencing is included under permitted preliminary works, this requirement has been modified from the relevant Model Clause so that the approval requirement refers solely to permanent fencing, and the approval process defers to the design approval contained in requirement 5 unless otherwise agreed with the relevant planning authorities prior to completion of commissioning. Temporary fencing must be removed within six months of the completion of commissioning.
Requirement 8	<i>(Drainage)</i> is based upon the relevant Model Clause in providing that the authorised development shall not be commenced until details of the surface water, foul water and process waste water drainage systems have been approved by the relevant planning authorities in consultation with NRW and Dwr Cymru (Welsh Water) (who are the relevant sewerage and drainage authorities). The details of these systems shall reflect the drainage design contained in Volume 1 of the Environmental Statement (Document 1.3.1). The process waste water drainage system is specifically referred to as this can be considered to be neither surface water or foul water and it has been the subject of careful design and consultation with NRW. In order to protect the integrity of the Pembrokeshire Marine SAC, a specific requirement (not based on a Model Clause) is included at the request of NRW that the process waste water discharges and aerial emissions from the CHP Plant must not increase the overall nitrate loads consented under the existing permit for the LNG Terminal and the undertaker must ensure no other discharges or emissions of contaminants cause an adverse effect.
Requirement 9	<i>(Contaminated land and groundwater)</i> follows the relevant Model Clause and provides that the authorised development shall not be commenced until approval by the relevant planning authority (after consultation with NRW) of a scheme to deal with the contamination of any land which is likely to

	cause significant harm to persons or pollution.
Requirement 10	<i>(Archaeology)</i> is based on the relevant Model Clause and provides that a written scheme for an archaeological investigation is required to be approved by the relevant planning authority before the authorised development is commenced. The requirement slightly differs from the Model Clause to only apply this requirement to Work Nos. 4 and 7A (as defined and described in Schedule A) which are the only areas identified as requiring investigation. The scheme must be implemented as approved and where field works or a watching brief is required then this must be carried out by a suitably qualified and approved person or body.
Requirement 11	<i>(Ecological management plan)</i> follows the relevant Model Clause and provides that a written ecological management plan to reflect the matters and mitigation measures identified in Volume 1 of the Environmental Statement (Document 1.3.1) is required to be approved by the relevant planning authority before the authorised development commences. The requirement slightly differs from the Model Clause at the request of NRW to require prior consultation with NRW prior to submission of the ecological management plan to the relevant planning authorities for approval.
Requirement 12	<i>(Code of Construction Practice)</i> follows the relevant Model Clause and provides that the authorised development shall not commence until approval by the relevant planning authority of a code of construction practice (CCP) which sets out the broad principles that will be adopted for the construction phase of the CHP Plant and which will reflect the draft CCP (Document 1.23) provided with the Application.
Requirement 13	<i>(Construction Environmental Management Plan)</i> is not based on a Model Clause. This requirement to submit for approval and adopt a construction and environmental management plan (CEMP) has been added to reflect best practice and the use of a single integrated CEMP means that individual subject specific requirements are not required in the DCO. The CEMP (which must contain a number of specific matters listed in the requirement) will reflect the draft CEMP provided at Appendix 4.2 of Volume 3 of the Environmental Statement (Document 1.3.3).
Requirement 14	<i>(Construction Traffic Management Plan)</i> is not based on a Model Clause. This requirement to submit for approval and adopt a construction traffic management plan (CTMP) has been added to reflect best practice. The CTMP (which must contain a number of specific matters listed in the requirement) will reflect the draft CTMP provided at Appendix E of the Transport Assessment (Document 1.19A).

Requirement 15	<i>(Local Liaison Committee)</i> is not based on a Model Clause. This requirement to set up and support a local liaison committee has been added to reflect best practice. The existing LNG Terminal operates such a committee and the functions of these committees may be combined. The relevant planning authorities, NRW and other groups will be invited to participate. There is also a new requirement, not based on a Model Clause, to require notification to the committee of steam purging (which may be required, infrequently, as part of power generation activities and which can take place over several days). The steam purging, so far as reasonably practicable, is to take place between Mondays and Saturdays and not to take place over Sundays or public holidays.
Requirement 16	<i>(External lighting)</i> follows the relevant Model Clause and provides that the authorised development shall not commence until a lighting plan has been consulted on with NRW and approved by the relevant planning authorities. The lighting plan will contain the details of external lighting to be used during the construction and operation of the CHP Plant and will reflect the matters and mitigation measures identified in Volume 1 of the Environmental Statement (Document 1.3.1) and specific provisions are included at the request of NRW to mitigate and control the effect of external lighting on local bat populations.
Requirement 17	<i>(Construction hours)</i> is based on the relevant Model Clause and provides for construction hours on specified days, excluding Sundays or bank holidays, unless agreed with the relevant planning authority. The requirement slightly differs from the Model Clause to clarify that the limitation on activities outside of these hours does not apply to non-construction activities such as the arrival and departure of personnel, on-site meetings and other non-intrusive activities.
Requirement 18	<i>(Accumulations and deposits)</i> is based on the relevant Model Clause and where accumulations or deposits of material may be noticeable from outside the Order limits, then a written scheme for the management of such deposits is required to be approved by the relevant planning authority. The requirement differs from the relevant Model Clause in that it is limited to Work No. 10A (as defined and described in Schedule A) which is the only area where excavated material will be permanently stored.
Requirement 19	<i>(Travel plan)</i> is modified from the relevant Model Clause so that it applies to the operational stage of the development (as requirement 14 requires a travel plan for construction traffic). This requirement provides that the authorised development shall not commence operations until approval by the relevant planning authorities (which includes PCC acting as the relevant highway authority) of a travel plan to cover travel to and from and parking at the CHP Plant. The travel plan will

	reflect the draft travel plan provided at Appendix F of the Transport Assessment (Document 1.19A) and must be implemented within one month of the completion of commissioning.
Requirement 20	<i>(European protected species)</i> is based on the relevant Model Clause regarding the requirement to survey certain species which are protected under European habitats legislation. If such species are found, a scheme for their protection and mitigation is required for approval. The requirement however differs from the relevant Model Clause to reflect the extensive survey work that has already been undertaken for Volume 1 of the Environmental Statement (Document 1.3.1) such that further survey work is not required. These surveys established that bats are present within the Order limits and the requirement to adopt a scheme for protection and mitigation measures for approval therefore specifically refers to bats.
Requirement 21	<i>(Restoration of land used temporarily for construction)</i> is based on the relevant Model Clause and provides that any land temporarily used for the temporary works (which is defined by reference to Schedule A) should be reinstated to the condition it was in prior to the start of construction or such other condition as the undertaker may submit to the relevant planning authorities for approval. The restoration must take place within 6 months of the completion of commissioning.
Requirement 22	<i>(Grid connection)</i> is not based on a Model Clause and is included to provide assurance that the grid connection for export of electricity from the CHP Plant to the national grid (which is not part of the development covered by the Order) will wherever possible be underground.
Requirement 23	<i>(Carbon capture and storage)</i> is not based on a Model Clause and is included to reflect local concerns for continuity of design so that in the event that carbon capture equipment was required at the CHP Plant, it should, so far as reasonably practicable and where feasible, reflect the principles set out in the Design Principles Statement (Document 1.22).
Requirement 23	<i>(Decommissioning)</i> is not based on a Model Clause and is included to allow the relevant planning authorities to approve the decommissioning of the CHP Plant. The decommissioning proposed is to demolish and remove the permanent works (which is defined by reference to Schedule A) from the site and to restore it to the condition it was in after the completion of the permitted preliminary works (as this includes any preliminary site remediation that may be required) or such other condition as the undertaker may submit to the relevant planning authorities for approval. A decommissioning scheme should be submitted to the relevant planning authorities within 12 months of the permanent cessation of activities. To reflect the fact that a gas fired power station may need to be temporarily

	shut down to reflect prevailing market conditions, the requirement further provides that if such a temporary cessation is likely to exceed 12 months then the undertaker shall notify the planning authority of the reasons for and expected duration of such a cessation. Any decommissioning must take place in accordance with the approved scheme.
Requirement 24	<i>(Requirement for written approval)</i> follows the relevant Model Clause and provides that where any requirement requires the approval of the relevant planning authority or other person such approval shall be in writing.
Requirement 25	<i>(Amendments to approved details)</i> follows the relevant Model Clause and provides that any details approved pursuant to any requirement shall be taken to include any amended details which are subsequently approved.