



The Hirwaun Power Project (Gas Fired Power Station) Order

Areas of Agreement between Hirwaun Power Limited and the Natural Resources Body for Wales Statement of Common Ground

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Contents

- 1 General 1**
 - 1.1 Introduction 1
 - 1.2 THE APPLICATION..... 1
 - 1.3 THE PROJECT AND ITS DESCRIPTION..... 2
- 2 The ES 3**
 - 2.1 Introduction 3
 - 2.2 Regulatory and Policy Background 3
 - 2.3 Methodology 3
 - 2.4 Air Quality 3
 - Methodology / Data Collection / Baseline..... 3*
 - Assessment (Construction) 4*
 - Assessment (Operation)..... 4*
 - Mitigation 5*
 - Cumulative Effects..... 5*
 - 2.5 Ecology 6
 - Methodology / Data Collection / Baseline..... 6*
 - Assessment (Habitats) 6*
 - Assessment (Protected Species) 6*
 - Mitigation 7*
 - Cumulative Effects..... 8*
 - 2.6 Landscape and Visual Impacts 8
 - Methodology / Data Collection / Baseline..... 9*
 - Assessment 9*
 - Mitigation 9*
 - Cumulative Effects..... 9*
 - 2.7 Land Potentially Affected by Contamination 9
 - 2.8 Conclusions 9
- 3 The Conclusions of the NSER/HRA..... 10**
 - 3.1 Introduction 10
 - 3.2 HRA Screening Assessment 10
 - 3.3 Conclusions 10
- 4 EPS Licensing 12**
 - 4.1 Introduction 12
 - 4.2 EPS Licensing 12
- 5 Environmental Permit 13**
 - 5.1 Introduction 13
 - 5.2 Background 13
 - 5.3 Permitting Approach 13

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1 General

1.1 Introduction

- 1.1.1 This document comprises the Statement of Common Ground (“SoCG”) between the Natural Resources Body for Wales (“NRW”) and Hirwaun Power Limited (“HPL”) relating to the application (“the Application”) for a Development Consent Order (“DCO”) submitted to the Planning Inspectorate (“PINS”) for development of the Hirwaun Power Gas Fired Power Station (“the Project”).
- 1.1.2 For the purpose of this SOCG, HPL and NRW are jointly referred to as "the Parties".
- 1.1.3 HPL has applied to the Secretary of State under the Planning Act 2008 for a Development Consent Order to construct, operate and maintain:
- (a) An up to 299 MWe thermal generating station (the "Power Generation Plant") on land at the Hirwaun Industrial Estate, near Aberdare, South Wales;
 - (b) an underground gas pipeline ("Pipeline") with an Above Ground Installation ("AGI") (together the "Gas Connection") to provide fuel to the Power Generation Plant; and
 - (c) an underground cable circuit (the "Cable") connecting the Power Generation Plant to the National Electricity Transmission System;
- 1.1.4 This is collectively referred to as “the Project”.
- 1.1.5 Preparation of this SOCG has been informed by discussions between the Parties.
- 1.1.6 This SOCG relates to the following topics:
- (a) the Environmental Statement (ES);
 - (b) the conclusions of Habitat Regulations Assessment (HRA);
 - (c) European Protected Species (EPS) licensing; and
 - (d) the Environmental Permit (EP).
- 1.1.7 Overall this SOCG is intended to give a clear position of the state and extent of agreement between the Parties as at the date on which this SOCG is signed and submitted to the Secretary of State.

1.2 THE APPLICATION

- 1.2.1 The Application was submitted on 21 March 2014 and accepted by the Secretary of State on 24 April 2014. The Application was accompanied by an ES.

1.3 THE PROJECT AND ITS DESCRIPTION

1.3.1 The Project is described above at paragraph 1.1.3.

1.3.2 The site within which the Project is located is entirely within the administrative boundary of Rhondda Cynon Taf County Borough Council ("RCTCBC").

2 The ES

2.1 Introduction

- 2.1.1 The Environmental Statement (ES) is document reference 6.1.0 of the Application.
- 2.1.2 The Parties are AGREED on all matters in relation to the adequacy and conclusions of the ES and in particular are AGREED on those matters set out below:

2.2 Regulatory and Policy Background

- 2.2.1 The Policy Framework information is set out in Section 2 of the ES and Chapter 5 of the Planning Statement.
- 2.2.2 The Planning Act 2008 (the "Act") provides that an application must be decided in accordance with any relevant national policy statement (NPS), where an NPS has effect in relation to the development under and subject to the provisions of s104 of the Act, (NPSs EN-1, EN-2 and EN-4 are relevant for the purposes of the Project). The parties AGREE that the range of UK, Wales and local policy designations and evidence as set out in Chapter 5 of the Planning Statement (Document Reference 10.1.0) and Section 2 of the ES (Document Reference 6.1.0) are also of relevance.

2.3 Methodology

- 2.3.1 The methodology for the environmental impact assessment is set out in Section 3 of the ES and describes the approach taken for all topics (except to the extent described in the methodology section in each topic chapter).
- 2.3.2 Both Parties AGREE that the approach of identifying and assessing a realistic worst case scenario from within the Project parameters is reasonable and appropriate and that the scenario assessed for each topic chapter cited below is appropriate.

2.4 Air Quality

- 2.4.1 The Air Quality and Emissions information is contained within Section 6 of the ES.

Methodology / Data Collection / Baseline

- 2.4.2 Information regarding the air quality assessment methodology is contained in Section 6.4 of the ES and information regarding the baseline is contained in Section 6.7 of the ES.
- 2.4.3 Both Parties AGREE that the methodology used to model the impacts of the Project on local air quality is appropriate. Both parties AGREE that for the purposes of NRW's involvement in the DCO application NRW is satisfied that a detailed review of the model is not necessary; the methodology used by HPL

is sufficiently precautionary to enable NRW to have confidence that the worst case scenario presented is appropriate

- 2.4.4 Both Parties AGREE that the air quality standards, critical loads and critical levels, specified in Tables 6.1, 6.5 and 6.6 of the ES, against which impacts are assessed, are appropriate.
- 2.4.5 Both Parties AGREE that the Air Quality Assessment (“AQA”) as presented in Section 6 of the ES provides a reasonable likely worst case assessment of the predicted emissions from the Project and the consequent effects on nitrogen concentrations and deposition over statutory designated nature conservation sites.
- 2.4.6 It is AGREED that, in the context of the existing background nitrogen deposition exceedance, a scheme of Project-specific monitoring to improve understanding of baseline air quality in the local area is necessary.
- 2.4.7 Both parties AGREE that that an agreed scheme of Project-specific baseline air quality monitoring will be provided by HPL. This will be secured through a DCO Obligation and the content relating to the air quality monitoring scheme will be agreed with NRW prior to signing of the DCO Obligation. The details of the monitoring are to be agreed and it is anticipated that this will take the form of either an undertaking by HPL to deliver the monitoring, or a contribution made by HPL in order to fund the monitoring to be undertaken by NRW or their agent. The contribution would be made to RCTCBC through the DCO Obligation and NRW would advise on and agree the scheme of monitoring.

Assessment ¹(Construction)

- 2.4.8 Information regarding the assessment of impacts from construction is discussed in Section 6.8 of the ES.
- 2.4.9 Both Parties AGREE that construction traffic would not be likely to give rise to any significant adverse effects on sensitive statutory habitats.

Assessment (Operation)

- 2.4.10 Information regarding the assessment of impacts from operation of the Project is discussed in Section 6.8 of the ES.
- 2.4.11 Both Parties AGREE that the air quality assessment for Blaen Cynon Special Area of Conservation (“SAC”) has concluded that the Project itself would not contribute more than 1% of the relevant ecological standard for both nitrogen deposition and acidification (0.56% and 0.3% respectively). Using the Environment Agency’s H1 Guidance, Annex F, this is regarded as not significant.
- 2.4.12 Both Parties AGREE that, for 30m stacks, the air quality assessment has predicted a process contribution of 0.056kgN/ha/yr to Cors Bryn-y-Gaer SSSI,

¹ In the context of the ES, assessment includes the data and statistical analysis, the application of expert judgement and assumptions, and the quantification of impacts described in the ES in order to reach the conclusions on likely significant effects.

which is equivalent to 1.1% of the minimum critical load for the lowland raised bog habitat of 5kgN/ha/yr and therefore just above the 1% significance threshold of the Environment Agency's H1 Guidance, Annex F.

- 2.4.13 Both Parties AGREE that the process contribution identified in the Assessments is not categorised as significant and it is unlikely that an emission at this level would make a significant contribution to air quality (according to EA H1 Annex F Guidance).
- 2.4.14 Both Parties AGREE that NRW has no objection to the predicted air quality impacts of the Project. Both parties AGREE that it would be helpful to the more detailed understanding of baseline air quality in the local area for a scheme of Project-specific monitoring to be delivered. The results of the baseline monitoring could then be used to inform the development of future policy / local guidance and provide a more strategic and rigorous approach to air quality protection and improvement, in order to help improve the existing situation and assist in recovery to FCS.
- 2.4.15 Both Parties AGREE that project specific baseline monitoring of air quality be undertaken. It is proposed that the monitoring takes the form of diffusion tubes located at two sites as identified by NRW in the Written Representation (21st August) (subject to landowner agreement) and that HPL make a financial contribution towards this under a DCO Obligation.
- 2.4.16 Both Parties AGREE that in respect of potential visible emissions (e.g. smoke or steam), no emissions of combustion-related products are expected other than those issuing from the stacks and no visible stack emissions are expected.
- 2.4.17 Both Parties AGREE that operational traffic would not be likely to give rise to any significant adverse effects on sensitive statutory habitats.

Mitigation

- 2.4.18 Information regarding the air quality mitigation measures proposed is contained in Section 6.9 of the ES.
- 2.4.19 Both Parties AGREE that successful implementation of an agreed CEMP which is to include a site specific dust management plan, to be secured by Requirement 12(1) (c), Schedule 2 of the draft DCO and as discussed in paragraph 6.9.1 of the ES, should ensure that construction dust would not give rise to any significant adverse effects on sensitive statutory habitats.

Cumulative Effects

- 2.4.20 Information regarding the air quality cumulative impact assessment is contained in Section 6.10 of the ES.
- 2.4.21 Both Parties AGREE that all reasonably foreseeable relevant schemes have been included in the assessment of cumulative impacts correct as at March 2014, and that the cumulative effects of these have been adequately considered.

- 2.4.22 Both Parties AGREE, based on the information provided that the impacts on air quality predicted as a result of the Project would not have a significant effect on Blaen Cynon SAC, Coedydd Nedd a Mellte SAC or Cwm Cadlan SAC when considered alone or cumulatively / in-combination with other reasonably foreseeable plans or projects in the vicinity of the proposed site.

2.5 Ecology

- 2.5.1 The Nature Conservation / Ecology information is contained within Section 8 of the ES.

Methodology / Data Collection / Baseline

- 2.5.2 Information regarding the assessment methodology for the ecological impact assessment is contained in Section 8.4 of the ES and information on the baseline is contained in Section 8.6 of the ES.
- 2.5.3 Both Parties AGREE that the study area for ecological receptors discussed in paragraphs 8.4.1-8.4.10 of the ES has been appropriately defined in relation to potential effects on such receptors.
- 2.5.4 Both Parties AGREE that the appropriate scope of desk study research and field surveys discussed in 8.4.14 has been undertaken in respect of statutory designated species and habitats with the potential to be affected by The Project.
- 2.5.5 Both Parties AGREE that the Ecological Impact Assessment within the Environmental Statement has been produced in accordance with the Institute for Ecology and Environmental Management ("IEEM") "Guidelines for Ecological Impact Assessment" (2006).

Assessment (Habitats)

- 2.5.6 Information regarding the impacts of the Project on habitats is contained in Section 8.8 of the ES.

Assessment (Protected Species)

- 2.5.7 Information regarding the impacts of the Project on protected species is contained in Section 8.8 of the ES.
- 2.5.8 Both Parties AGREE that the European Protected Species (EPS) bats and otters may potentially be affected by The Project without appropriate mitigation.
- 2.5.9 Both Parties AGREE that the following protected species/groups may potentially be affected by The Project without appropriate mitigation: marsh fritillary butterfly, populations of widespread amphibians, populations of widespread reptiles, breeding birds.
- 2.5.10 Both Parties AGREE that water vole are unlikely to be present within the Project site.

Mitigation

- 2.5.11 Information regarding ecological mitigation measures is discussed within Section 8.7 of the ES.
- 2.5.12 Both Parties AGREE that the delivery of an agreed Construction Environmental Management Plan (“CEMP”) and Ecological Management Plan (“EMP”) (to be secured by requirements 12 and 10 respectively in Schedule 2 of the draft DCO) is appropriate and should ensure the protection of habitats during and post-construction. Both Parties AGREE that NRW has been provided with an advance draft of revision 2.0 of the draft DCO submitted at deadline 2.
- 2.5.13 Significant effects upon European Protected Species (bats and otters) are unlikely to occur, subject to the implementation of the mitigation measures set out in the ES in Chapter 16, Mitigation Schedule and secured by the Requirements described below. This agreement is subject to NRW review of the draft DCO to be submitted for PINS' Examination Deadline 2 of 10 September 2014.

Bats

- a) Within the draft Method Statement for the bat licence that forms part of the DCO application, detailed mitigation measures are proposed to prevent the direct mortality of bats utilising the building for roosting, via timing of works, exclusion and/or removal methods for bats.
- b) As part of the identified mitigation a new structure will be created for the bats to roost in. It is anticipated that the proposed mitigation structure will be provided in 2016, one year prior to demolition of the existing structures.
- c) 35 bat boxes will be installed on retained vegetation around the Power Generation Plant compound and in woodland to the north within HPL's ownership.
- d) Habitats will be restored in accordance with the Landscape Strategy submitted.
- e) The five year aftercare period will help ensure new planting is successful.
- f) During construction, the working width will be minimised as far as possible.
- g) Rather than creating new gaps, existing gaps in linear features will be utilised or enlarged wherever possible.
- h) Works will be undertaken during daylight hours (i.e. 7:00 to 18:30) during the bat active season and artificial lighting overnight will be minimised. Where this is not possible, low sodium lighting will be used as this is known to have a minimal impact on bats relative to the majority of other types of construction lighting.
- i) Light spillage onto linear features will be avoided by the use of directional lighting (i.e. the use of hoods and / or cowls). The project will have regard to

The Institute of Lighting Engineers/Bat Conservation Trust best practice guidance in relation to lighting and bats.

Otters

- a) The works programme will be staged so as to minimise the length of time works are carried out along any watercourse affected by construction of the Gas Connection.
 - b) Watercourse crossings would be worked on for the minimum duration necessary (with the intent being for the duration of in-channel works to last no more than one day per watercourse).
 - c) It is proposed that a simple Otter Method Statement is included in the CEMP to capture the points below.
 - a. Measures to ensure that otters can cross the working width / working corridor will be included. As otters are most active around dawn and dusk (and therefore temporary obstructions during daylight construction are unlikely to require specific mitigation), fencing will be used outside working hours to create suitable commuting routes if necessary;
 - b. Any trenches / pits which are excavated adjacent to suitable habitat should be covered over outside working hours, or include an appropriate ramp to allow an otter to escape; and
 - c. All works in the vicinity of watercourse crossings will be undertaken under the guidance of a suitably qualified Ecologist.
 - d. Undertake a pre-construction Otter Monitoring Survey. ”
- 2.5.14 Significant effects upon terrestrial and aquatic invertebrates, marsh fritillary, populations of widespread amphibians, populations of widespread reptiles and breeding birds are unlikely to occur, subject to the implementation of the mitigation measures secured by Requirements 10 and 12 of the draft DCO. This agreement is subject to NRW review of the draft DCO to be submitted for PINS' Examination Deadline 2 of 10 September 2014.

Cumulative Effects

- 2.5.15 Information regarding the ecological cumulative impact assessment is contained in Section 8.10 of the ES.
- 2.5.16 Both Parties AGREE that all reasonably foreseeable relevant schemes have been included in the assessment of cumulative impacts correct as at March 2014, and that the cumulative effects of these have been adequately considered.

2.6 Landscape and Visual Impacts

- 2.6.1 The Landscape and Visual Assessment is contained in Section 11 of the ES.

Methodology / Data Collection / Baseline

- 2.6.2 Information regarding the assessment methodology for the landscape and visual impact assessment is contained in Section 11.4 of the ES and information on the baseline is contained in Section 11.6 of the ES.
- 2.6.3 Both Parties AGREE that the assessment methodology for the landscape and visual assessment is appropriate.

Assessment

- 2.6.4 Both Parties AGREE that an adequate assessment of landscape and visual impacts has been undertaken.

Mitigation

- 2.6.5 Both Parties AGREE that a landscaping plan is an appropriate way of agreeing the site landscape proposals including new planting to help screen the development. This plan is to be largely in accordance with the mitigation proposals in Figure 11.5 of the ES) as required by requirement 5 of Schedule 2 of the draft DCO at the detailed design stage of The Project.

Cumulative Effects

- 2.6.6 Information regarding the landscape and visual cumulative impact assessment is contained in Section 11.9 of the ES.
- 2.6.7 Both Parties AGREE that all relevant schemes have been included in the assessment of cumulative impacts correct as at March 2014, and that the cumulative effects of these have been adequately considered.

2.7 Land Potentially Affected by Contamination

- 2.7.1 Further intrusive investigation of contamination and geotechnical conditions will form part of a pre-construction site investigation that will then form part of the specification for the Engineering, Procurement Construction (“EPC”) contract. These measures are required by Requirement 9 of Schedule 2 of the draft DCO. A specification for the site investigation will be prepared and submitted for agreement with RCTBC, in consultation with NRW. That will include measures to be applied in the event that contamination is present and will then be implemented in advance of construction. Both Parties AGREE that this approach is appropriate for addressing land potentially affected by contamination.

2.8 Conclusions

- 2.8.1 Both Parties AGREE that Requirements 9, 10 and 12 of Schedule 2 of the Draft DCO are necessary to deliver the agreed mitigation in respect of air quality, ecology, landscape and land potentially affected by contamination.
- 2.8.2 It is agreed that the ES forms a full and complete ES for the purposes of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the EIA Regulations).

3 The Conclusions of the NSER/HRA

3.1 Introduction

- 3.1.1 The No Significant Effects Report (NSER) is document reference 5.5.0 of the Application.
- 3.1.2 It should be noted that NRW have not undertaken a detailed review of the model that has been used to produce the figures for process contribution; this would ordinarily be done as part of any future EPR application for the Project. NRW is satisfied that a detailed review of the model is not necessary at this stage because the methodology used by HPL is sufficiently precautionary to enable us to have confidence that the worst case scenario that has been presented is appropriate
- 3.1.3 The Parties are AGREED on those matters set out below:

3.2 HRA Screening Assessment

- 3.2.1 The HRA screening assessment is contained within Section 5 of the NSER report. Information regarding in combination impact is provided in section 5.5 of the NSER report
- 3.2.2 Both Parties AGREE that modelled values provided by HPL indicate that the worst case likely impacts of the Project on nutrient nitrogen deposition over sensitive habitats in European sites will be less than 0.07kgN/ha/yr, and less than 1% of the critical load for the acid grassland habitats favoured by the marsh fritillary butterfly (*Euphydryas aurinia*), this being only at the point of maximum deposition within Blaen Cynon SAC, and that impacts on other European sites are lower and also not significant in line with EA H1 Annex F Air Quality Guidance.
- 3.2.3 Both Parties AGREE that due consideration has been given to the Environment Agency's Horizontal Guidance H1 Environmental Risk Assessment Annex F (Emissions to air), which sets out the distances over which emissions of aerial pollutants require consideration for potential impacts on statutory designated sites.
- 3.2.4 Both Parties AGREE that modelled results produced by HPL indicate that emissions from the Project will not lead to increases in deposition of nitrogen or acidification that exceeds 1% of the relevant minimum critical loads (as defined on the APIS.AC.UK website) of any European designated sites, including the Blaen Cynon SAC. It is further agreed that emissions from the Project would not have a likely significant effect alone or in-combination on the designated feature of Blaen Cynon SAC (the marsh fritillary butterfly).

3.3 Conclusions

- 3.3.1 It is agreed that the results of air quality modelling undertaken by HPL indicate that the Project will not give rise to likely significant effects on any European site alone, or in-combination. This statement is made by NRW in its advisory role as statutory consultee for the purposes of the Examination. It should be

noted that NRW's remit as a statutory consultee in respect of the DCO application is distinct and separate from its functions under the EPR. Any such application for a permit (or indeed any application under other relevant legislation) will be determined on its own merits and such application could be granted or refused.

4 EPS Licensing

4.1 Introduction

- 4.1.1 British bats are European Protected Species, legally protected under The Conservation of Habitats and Species Regulations 2010 (as amended). Where a European Protected Species is present and development proposal is likely to contravene the legal protection they are afforded, the development may only proceed under licence issued by Natural Resources Wales.
- 4.1.2 An EPS licence application has yet to be submitted to NRW. This licence can only be issued for the purposes of 'preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature, and beneficial consequences of primary importance for the environment.' Furthermore, the licence can only be issued by NRW having satisfied itself that there is 'no satisfactory alternative', and that 'the development will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.'
- 4.1.3 The draft method statement for the bat licence is document reference 6.2.0 Environmental Statement Appendices Volume D Appendix 8.9 of the Application.
- 4.1.4 The Parties are AGREED on those matters set out below:

4.2 EPS Licensing

- 4.2.1 Both Parties agree that an EPS licence will be required prior to any activity which is likely to breach the protection afforded to European Protected Species.
- 4.2.2 Both Parties AGREE that surveys to reassess the use of buildings within the Project redline boundary by roosting bats will be required in the year prior to/during which demolition/construction commences. It is agreed that these surveys will need to be undertaken in accordance with the guidance presented in Bat Surveys: Good Practice Guidelines (Bat Conservation Trust, 2012).
- 4.2.3 Based on the current status of the bat roost and delivery of the commitments set out within the method statement and currently available information, both Parties AGREE that the proposed Project is unlikely to cause detriment to the maintenance of the favourable conservation status of the bat species present and therefore it appears that it would be possible in principle to grant the licence for the Project. However, NRW is unable to provide a binding commitment at this stage as to the subsequent determination of the application and it should be noted that a licence may or may not be issued. Both Parties AGREE that any changes in the bat roost status of buildings following the resurvey will require a review of the mitigation. At this stage, NRW is unable to provide any binding commitments to the subsequent determination of an application.

5 Environmental Permit

5.1 Introduction

- 5.1.1 An application for an EP has yet to be submitted to NRW. An EP will need to be issued by NRW prior to first operation of the plant.
- 5.1.2 The Parties are AGREED on those matters set out below:

5.2 Background

- 5.2.1 Both Parties AGREE that in respect of an EP application, NRW is the relevant competent authority. Furthermore both Parties AGREE that an EP is required for the Project under the EPR prior to the operation of the Project.
- 5.2.2 It is agreed that UK Policy (EN1 – paragraph 4.10.6) states that, wherever possible, applicants are encouraged to submit applications for EPs at the same time as applying for development consent, however, EN-1 recognises this is not always possible and that a DCO application should not be refused on this basis unless the Secretary of State has " good reason to believe that any relevant necessary operational pollution control permits or licences or other consents will not subsequently be granted " (EN-1 paragraph 4.10.8). In this case, HPL has not applied for a permit yet.

5.3 Permitting Approach

- 5.3.1 Both Parties AGREE that upon the information currently available, it appears that it would be possible in principle to grant consent for the Project. However NRW is unable to provide any binding commitments at this stage as to the subsequent determination of the application and it should be noted that consent may be granted or refused.
- 5.3.2 Both Parties AGREE that a BAT assessment is not needed as part of the DCO application.