

Planning Act 2008

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

The Port Talbot Steelworks (Power Generation Enhancement) Order

3.02 Rev.1 Explanatory Memorandum (Revision 1)

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1. SUMMARY

- 1.1 This memorandum explains the purpose and effect of each article of, and Schedules to, the draft Port Talbot Steelworks (Power Generation Enhancement) Order (“the Order”), as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009¹.
- 1.2 The Order is based on the General Model Provisions² (the “model provisions”), unless otherwise stated. Where there is a departure from the model provisions or an article is based on other precedent orders, an explanation of the new provision is provided.
- 1.3 Whilst the power for the Secretary of State to designate, and the requirement to have regard to, model provisions have been removed by the Localism Act 2011, the applicant considers it is still relevant to note and explain variations where the Order contains variations to the model provisions.

2. PURPOSE OF THE ORDER

- 2.1 Tata Steel UK Limited (“the applicant”) is making an application to the Secretary of State for a development consent order for the construction and operation of a electricity generating station on the site of the Port Talbot Steelworks (“the proposed development”).
- 2.2 The proposed development is a nationally significant infrastructure project (“NSIP”) for the purposes of sections 14 and 15 of the Planning Act 2008 (“the Act”). As the proposed development is an NSIP, development consent must be obtained to authorise it, and an application for a development consent order is being made to the Secretary of State under section 37 of the Act.
- 2.3 The Order would authorise the following development:
- 2.3.1 up to two steam boilers and their associated stacks (maximum 80m in height), annexe bay and boiler house;
 - 2.3.2 a turbine hall housing turbine sets and associated condensers;
 - 2.3.3 a cooling tower unit;
 - 2.3.4 an electrical switchgear station building;
 - 2.3.5 a condensate storage tank and additional condensate polishing units;
 - 2.3.6 water treatment plant and chemical dosing system skids;

¹ S.I 2009/2264

² The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (S.I. 2009/2265).

- 2.3.7 administration, workshop, pump house, gas booster house, control buildings and ancillary infrastructure;
- 2.3.8 the extension of existing pipe work connections (for water, nitrogen, steam, process gases, natural gas and compressed air) from the existing on site utilities pipe work infrastructure to the generating station. All the extended pipe work will be contained within the Order Limits. The indicative location of these connections are shown in Figure 3.10;
- 2.3.9 a 66kV electrical connection up to 2.8km in length to connect the generating station to the existing onsite substations on the south east of the site. For most of the route, the cables will either be run underground (either in new and existing ducting and excavations) or be supported off existing structures. There will potentially be a cable bridge constructed, due to restricted space to run cables underground, at the southern end of the electrical connection between the two onsite existing substations. If required, this cable bridge will be consistent with the other cable bridges on site and be constructed of a metal lattice structure approximately 5m in height (to provide suitable clearance) and approximately 800m in length;
- 2.3.10 modifications to the two existing onsite substations to accept the electrical connection including the installation of new 66kV bays at each substation;
- 2.3.11 security infrastructure, including perimeter fencing and site lighting infrastructure;
- 2.3.12 connections to the existing internal road layout for the provision of site vehicular access(es), roads, pedestrian network, parking and cycle storage;
- 2.3.13 temporary construction compounds; and
- 2.3.14 connection to site drainage systems.

3. ANCILLARY POWERS

- 3.1 The Order also contains several powers that are ancillary to the authorised development (i.e. provisions not consisting of development).
- 3.2 The main ancillary matter is a power to acquire rights compulsorily or by agreement, in accordance with section 120(4) and 122 of the Act. A justification for these powers is set out in the Statement of Reasons that accompanies the application.

3.3 The Order seeks to apply and modify statutory provisions in relation to the compulsory acquisition of land. In such cases, sections 117 and 120(5) of the Act require that the Order be made by Statutory Instrument. The Order is therefore drafted in that form.

4. DRAFT ORDER

4.1 The provisions of the Order are explained below.

4.2 Part 1 – Preliminary

Article 1 (citation and commencement)

4.3 These are preliminary provisions. Article 1 provides for the way in which the Order should be cited and when it takes effect.

Article 2 (interpretation)

4.4 Article 2 provides for the interpretation of the rest of the Order, including the Schedules. Article 2 makes alterations to the model provisions to accommodate the departures from the model provisions elsewhere in the Order, and to add required definitions, including:

4.4.1 “approved plans” means the works plans and such revised or supplemental plans as may be approved pursuant to the requirements;

4.4.2 “electronic transmission”, which has been included as the Order authorises the serving of notices under the Order by electronic transmission;

4.4.3 "environmental statement", which has been included to define this term which is used throughout;

4.4.4 "the requirements" which means those requirements which are set out at Schedule 2; and

4.4.5 “undertaker” means Tata Steel UK Limited and any other person who has the benefit of the Order in accordance with article 6 (Benefit of Order).

4.5 Article 2(2) expands the definition of rights over land, in line with the model provision.

4.6 Article 2(3) defines measurements as approximate, in line with the model provisions.

4.7 Articles 2(6) sets out that the areas given in the book of reference are approximate, since these are not covered by Article 2(3).

4.8 **Part 2 - Principal powers**

Article 3 (Development consent etc. granted by the Order)

4.9 Article 3 gives the principal power to carry out the authorised development as described in Schedule 1. The development consent order is subject to the requirements listed in Schedule 2. The article permits construction and maintenance to be carried out within the limits of deviation shown on the works plans and in accordance with those plans.

Article 4 (Power to maintain authorised project)

4.10 This article sets out the scope within which the undertaker may maintain the development. Paragraph (1) is identical to the general model provision article 3, but an additional sub-paragraph (2) has been added which provides that the power to remove or replace the authorised development only applies to the constituent parts and not the whole of any numbered work. “Maintain” is defined in article 2(1) and the definition generally follows that used in the model provisions. However, the definition has been expanded to clarify that the scope of any works falling within the definition must not give rise to any new or materially different environmental effects to those identified in the book of reference.

Article 5 (operation of generating station)

4.11 This is not a model provision. It authorises the undertaker to operate the generating station comprised in the authorised project an agreement made under the Order. This provision is included pursuant to section 140 of the 2008 Act. Article 5(2) clarifies that the authorisation does not relieve the undertaker of any requirement to obtain any permit or licence under any legislation that may be required from time to time to authorise the operation of a generating station.

Article 6 (Benefit of Order)

4.12 This article provides that the undertaker has the sole benefit of the Order. This provision overrides section 156(1) of the Act (as permitted by section 156(2)) which, if applied, would confer the benefit of the Order on anyone with an interest in the land. Statutory powers may usually only be exercised by the body on whom they are conferred, and it is appropriate in this case for the Order powers to be exercised only by the undertaker.

Article 7 (Consent to transfer benefit of Order)

4.13 This article allows any or all of the benefit of the provisions of the Order and related statutory rights to be transferred to another person, with the

consent of the Secretary of State. The drafting of this article generally follows the general model provision.

- 4.14 Paragraph (2) has been added which provides that the Secretary of State's consent is not required for a transfer or grant to a licence holder within the meaning of Part 1 of the Electricity Act 1989 of the benefit of such provisions of the Order as are reasonably necessary to carry out 'the substation works'. These works are defined in article 2(1) as the modifications to the existing onsite substations comprising Work No. 2(b). This provision would enable these modifications to be carried out by the licensed distribution network operator who operates the substation without requiring the consent of the Secretary of State.

Article 8 (Defence to proceedings in respect of statutory nuisance)

- 4.15 Section 158 of the Planning Act 2008 confers statutory authority for the purposes of a defence in statutory nuisance generally. 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 section 158). The defence is available if (a) the noise relates to the construction or maintenance of the project; (b) is in accordance with any controls imposed by the local authority in respect of noise that are imposed under the through the requirements in respect of noise included in Schedule 2; or (c) cannot reasonably be avoided. The drafting of this article generally follows the general model provision with the inclusion of additional wording which refers to the specific requirements in respect of noise control which are included in Schedule 2.

4.16 **Part 3 – Streets**

Article 9 (Street works)

- 4.17 Article 9 allows the undertaker to carry out street works in accordance with the statutory rights under the New Roads and Street Works Act 1991. Although all the streets within the Order limits are private roads owned by the undertaker, this power has been included in view of the general prohibition on street works in section 51 of the 1991 Act which applies to all streets, not just public highways. Article 9 follows the drafting of the model provision except that the power to enter onto streets within the Order limits for the purposes of carrying out such works is omitted as it is unnecessary.

4.18 **Part 4 - Supplemental powers**

Article 10 (Discharge of water)

4.19 This article sets out the circumstances in which the promoter is entitled to discharge water into a sewer or watercourse. Essentially this can be done with the consent of its owner, but consent cannot be withheld unreasonably. The article is similar to the model provision, except for the following changes:

4.19.1 Paragraphs (7) and (9) are updated to refer to the Environmental Permitting (England and Wales) Regulations 2010 which came into force as a replacement for the relevant provisions of the Water Resources Act 1991 after the model clauses were drafted.

4.19.2 Joint planning board and National Park Authority have been omitted from paragraph (9) as no such bodies own sewers or drains within the Order limits. References to the Environment Agency have been replaced with references to Natural Resources Wales.

Article 11 (Authority to survey and investigate the land)

4.20 Article 11 is a model provision which allows the undertaker to survey and/or investigate land including bringing equipment onto the land and making trial holes. The power is subject to a number of conditions including a requirement for 14 days' notice to be given, and is subject to the payment of compensation.

4.21 **Part 5 - Powers of acquisition**

Article 12 (Compulsory acquisition of rights)

4.22 Article 12 gives the undertaker power to create new rights in the parts of the Order land described in the book of reference and shown on the land plans. Paragraph (2) provides that where the undertaker needs only to acquire rights over land, it shall not be obliged to acquire any greater interest in that land.

Article 13 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)

4.23 This article applies the provisions of this 1981 Act to compulsory acquisition under the Order. Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase (the other being by means of a notice to treat). They allow title in the land to pass to the acquirer more efficiently than using the notice to treat method, and also allow several parcels to be acquired at once. The article is

identical to the model provision except for the references to rights in paragraph (8) rather than land.

Article 14 (Compulsory acquisition of land – incorporation of the mineral code)

4.24 This article is adapted from the model provisions and provides for the incorporation of the Statutory Minerals Code set out at Schedule 2 to the Acquisition of Land Act 1981 to be incorporated into the Order. The authorised development is located in an area where coal mining has taken place and rights to mines and minerals are reserved to the Coal Authority and/or other parties. The undertaker believes it is appropriate therefore to have the ability to restrict the working of those mines and minerals in appropriate circumstances, in accordance with the Statutory Code.

Article 15 (Time limit for exercise of authority to acquire land compulsorily)

4.25 This article gives the promoter five years to issue ‘notices to treat’ or make a ‘general vesting declaration’ to acquire the rights that are subject to the power of compulsory purchase. These are the two main procedural methods by which the process of acquiring rights is undertaken should this Order be made. The article is identical to the model provisions article.

Article 16 (Application and modification of legislative provisions)

4.1 Section 120(5)(a) of the Act provides that an Order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order. Under this power, article 16 provides that the legislative provisions relating to compensation for compulsory purchase apply, with certain modifications in cases where the Order authorises the compulsory acquisition of a right by the creation of a new right. The modifications which apply in these circumstances are set out in Schedule 3.

Article 17 (Statutory authority to override easements and other rights)

4.2 Article 17 provides, for the avoidance of doubt, that by virtue of section 158 of the 2008 Act in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, the undertaker may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to use of land arising by virtue of contract. It also provides that by virtue of section 152 of the 2008 Act, compensation may be payable under section 10 of the Compulsory Purchase Act 1965 for any such interference or breach.

4.3 This is not a model provision, but is added to clarify the position with regard to rights burdening land required for the authorised project. It

has precedent, for example, in the Rookery South (Resource Recover Facility) Order 2011.

Article 18 (Acquisition of subsoil or airspace only)

4.4 This article allows the promoter to acquire rights below the ground or above it. The article is similar to the model provision except that it has been extended to include airspace as well as subsoil and to relate to rights only. This is so that the rights required for the authorised development can be acquired with as little impact as possible on the remaining interest of the affected landowners.

Article 19 (Private rights)

4.5 Article 19 is based on a model provision and has the effect of suspending or extinguishing private rights over land:

4.5.1 in which the undertaker acquires a right, whether compulsorily or by agreement; or

4.5.2 which is owned by the undertaker.

4.6 In either case, the suspension or extinguishment takes effect to the extent that the continuance of the rights would be inconsistent with an activity authorised by the Order. The drafting departs from the model provision in that it relates to all rights over land, not just rights of way, to ensure that any other rights that may exist cannot prevent the implementation or use of the authorised development. The Article follows the approach in the Rookery South (Resource Recovery Facility) Order 2011 and the M1 Junction 10a (Grade Separation) Order 2013.

Article 20 (Statutory undertakers)

4.7 Article 20 allows the undertaker to extinguish rights of statutory undertakers (i.e. utilities such as electricity and gas companies), and remove and reposition their apparatus. The article is based on the model provision, with the following changes:

4.7.1 the undertaker owns the freehold of all the land within Order limits (with the exception of the Ogmere Vale railway line that runs through the site), so the references in the model provision to land owned by statutory undertakers are redundant and have been removed; and

4.7.2 the text in sub-paragraph (b) of the model provision referring to the plans is replaced with a reference to the Order land, meaning that it is not restricted to apparatus which has been specifically shown on the land plans and described in the book of reference. In practice it is impracticable to show and describe

all such apparatus and so a general power for the extinguishment of rights and removal or relocation of apparatus belonging to statutory undertakers over or within any Order land is required. As the land where this power may be exercised is shown on the land plans, and the beneficiaries of such rights are described in the book of reference, this wording satisfies the requirements of regulations 5(2)(i)(iii) and 7(1)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

4.8 **Part 6 – Protective Provisions**

Article 21 (For protection of railway interests)

4.9 This article gives effect to Schedule 5 which contains protective provisions for the benefit of railway interests.

Article 22 (For protection of Western Power Distribution)

4.10 This article gives effect to Schedule 6 which contains protective provisions for the benefit of Western Power Distribution.

Article 23 (For protection of National Grid)

4.11 This article gives effect to Schedule 7 which contains protective provisions for the benefit of National Grid.

Article 24 (For protection of Welsh Water)

4.12 This article gives effect to Schedule 8 which contains protective provisions for the benefit of Welsh Water.

Article 25 (For protection of Associated British Ports)

4.13 This article gives effect to Schedule 9 which contains protective provisions for the benefit of Associated British Ports.

4.14 **Part 7 – Miscellaneous and general**

Article 26 (Application of landlord and tenant law)

4.15 This article governs the leasing of land by the undertaker to any other person. It allows the terms of the lease to override any statutory provisions relating to landlord and tenant law. The article is identical to the model provisions article.

Article 27 (Operational land for purposes of the 1990 Act)

- 4.16 This article provides that the development consent shall be treated as specific planning permission for the purposes of determining operational land of a statutory undertaker for the purposes of the Town and Country Planning Act 1990. The article is identical to the model provision.

Article 28 (Certification of plans etc.)

- 4.17 This article requires the promoter to submit the final versions of the plans and other documents referred to in the Order for certification to the Secretary of State. The article is based on the model provision, amended to refer to the names of the plans and other documents that are part of the application.

Article 29 (Service of notices)

- 4.18 This article governs how any notices that may be served under the Order shall be deemed to have been served properly. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner.
- 4.19 Although the article is not in the model provisions it is common to have such an article in an order authorising development such as this. The provision is necessary to cater for sections 229 and 230 of the Act applying to notices served under a development consent order.

Article 30 (Procedure in relation to certain approvals)

- 4.20 This article provides a procedure in relation to consents and approvals required pursuant to the Order. It applies to all such consents and approvals, except those under requirements in Schedule 2, where a separate more detailed procedure is provided for in Schedule 4.

Article 31 (Arbitration)

- 4.21 This article governs what happens when two parties disagree in the implementation of any provision of the order. The matter is to be settled by arbitration. If the parties cannot agree on who the arbitrator should be, this is decided by the President of the Institute of Civil Engineers. The article is based on the model provision with the insertion of the President of the Institute of Civil Engineers where an appropriate body is required.

4.22 Schedules

Schedule 1 (Authorised development)

- 4.23 Schedule 1 describes the authorised development.

Schedule 2 (Requirements)

4.24 Schedule 2 sets out the requirements which apply to the carrying out of and operation of the authorised development under the Order. They broadly follow those set out in the model provisions, where relevant, and where they have been amended this has been done following input from with the relevant planning authority and/or other statutory consultees. The requirements closely relate to the mitigation set out in the Environmental Statement (document ref. 6.02).

4.25 The requirements have been drafted to provide flexibility for the authorised development to be constructed in a single stage or in two separate stages. This reflects the two construction scenarios assessed in the Environmental Statement and referred to in that document as Options 1 and 2. Where necessary, individual requirements specify that, where the authorised development is constructed in two stages, the obligations imposed on the undertaker apply in respect of each stage.

Requirement 1 sets out various defined terms used in the requirements.

Requirement 2 requires that the authorised development is commenced within five years of the date of the Order. This follows the model provision.

In addition, it provides that, if the authorised development is to be constructed in two stages, the second stage must be commenced within 10 years of the commencement of the first stage.

Requirement 3 requires the undertaker to notify the relevant planning authority prior to commencement whether the authorised development is to be constructed in one or two stages. This reflects the two construction scenarios assessed in the Environmental Statement (document ref. 6.02) and referred to in that document as Options 1 and 2. If the notice states that the authorised development is to be constructed in two stages, it must set out the extent of the authorised development that is to be constructed in the first stage.

Requirement 4 sets maximum parameters for certain buildings or structures in accordance with the parameters assessed within the Environmental Statement (document reference 6.02). These include maximum parameters for the first stage of the construction. If the authorised development is constructed in two stages.

Requirement 4(4) requires details of the layout, scale

and appearance of buildings and structures to be submitted and approved by the relevant planning authority prior to work commencing. This is because these details will not be known until the detailed design of the authorised development has been produced.

Requirement 5 requires that specified elements of the existing onsite generating station are decommissioned as soon as reasonably practicable following commissioning of the authorised development and, in any event, within two years. If the authorised development is constructed in two stages, the requirement makes clear that this obligation applies from the date on which the second stage is commissioned. This requirement reflects the basis on which the likely effects of the authorised development are assessed in combination with the existing onsite generating facilities in the Environmental Statement (document ref 6.02).

Requirement 6 requires the submission of a landscaping plan (containing certain specified details) for the approval of the relevant planning authority. Landscaping works then have to be carried out in accordance with this approved plan and to the timescales set out in that plan. The requirements also requires that if any tree or shrub dies or becomes seriously damaged or diseased within 5 years of planting it must be replaced. This follows the principle of the model provision but provides more detail.

Requirement 7 secures the submission of details on all proposed permanent fencing and means of enclosure to the relevant planning authority for approval. Once approved, the details are to be implemented prior to the commissioning of the development.

Requirement 8 is derived from a model provision and requires the approval by the relevant planning authority and implementation by the undertaker of a written scheme of archaeological investigation. It requires, in particular, that the scheme must contain identify areas where palaeo-environmental sampling must be carried.

Requirement 9 is based on a model requirement and requires a written habitat management plan to be submitted to the relevant planning authority for its approval and for the undertaker to carry it out according to the

timetable it specifies. The plan is to reflect the mitigation and enhancement measures contained in the ecological management strategy in the Environmental Statement (document ref 6.02).

- Requirement 10 is not a model provision, although it does incorporate several separate provisions. The requirement secures the submission for approval by the relevant planning authority of a Code of Construction Practice (CoCP) for the construction phase of the authorised development. The plan must be substantially in accordance with the outline construction environment management plan contained in the Environmental Statement (document reference 6.02). The requirement also specifies particular plans that the CoCP must contain. The CoCP must be implemented.
- Requirement 11 provides for the submission to, and approval by, the relevant planning authority of the construction mitigation plans listed in the requirement and for the works to be carried out in accordance with those approved plans.
- Requirement 12 requires the submission to and approval by the relevant planning authority of written details of all external lighting prior to commissioning of the authorised development. The lighting scheme must be implemented as approved before the authorised development is brought into operation.
- Requirement 13 is based on a model provision and specifies the hours within which construction works can take place. The requirement does not prevent the undertaker from undertaking these works outside the specified hours but this must be done with the prior, written approval of the relevant planning authority.
- Requirement 14 requires the submission to and approval by the relevant planning authority of a written scheme for noise management for the operation of the authorised development. The scheme must contain specified details and must be approved before commissioning of the authorised development commences. The noise management scheme must be implemented as approved and maintained for the duration of the operation of the authorised development.

- Requirement 15 is based on a model provision. It requires details of surface and foul water drainage to be submitted to the relevant planning authority for approval and to be implemented thereafter.
- Requirement 16 requires aviation warning lighting to be installed on any chimney stack forming part of the authorised development.
- Requirement 17 requires a scheme for monitoring ambient concentrations of nitrogen dioxide to be submitted and approved by the relevant planning authority not less than 12 months before commissioning of the authorised development. The scheme must contain specified details and must be implemented as approved.
- Requirement 18 provides that the authorised development must not commence until a written scheme on ground conditions has been approved by the relevant planning authority and Natural Resources Wales.
- Requirement 19 requires details of the size, layout and location of the temporary structures comprising authorised Work 1B to be submitted and approved by the relevant planning authority before construction commences.

Schedule 3 (Modification of compensation and compulsory purchase enactments for creation of new rights)

- 4.26 Pursuant to articles 12(1) and 16, this Schedule sets out the modifications to the statutory provisions applicable to compensation and compulsory purchase under the Order where new rights are to be acquired.

Schedule 4 (Procedure for discharge of requirements)

- 4.27 Schedule 4 sets out a process for the discharge of the requirements in Schedule 2 as no process is provided by the Planning Act 2008 or secondary legislation (unlike the Town and Country Planning Act 1990 regime). The undertaker considers it is logical that a formal process is set out for clarity. Processes similar to this have precedents in many of the development consent orders made so far under the Planning Act 2008.

Schedules 5 to 9 (Protective provisions)

- 4.28 Schedules 5 to 9 contain protective provisions for the protection of the following organisations:

Schedule 5 - Network Rail

Schedule 6 - Western Power Distribution

Schedule 7 - National Grid

Schedule 8 – Welsh Water / Dŵr Cymru Cyfyngedig

Schedule 9 – Associated British Ports