

# Planning Act 2008

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

## The Port Talbot Steelworks (Power Generation Enhancement) Order

### D3OC1.01 - Issue Specific Hearing on draft Development Consent Order: Summary of Oral Case

<b>PINS Reference</b>	EN010062
<b>Document No.</b>	D3OC1.01
<b>Author</b>	Pinsent Masons

<b>Revision</b>	<b>Date</b>	<b>Description</b>
0	February 2015	Submission Version

## Contents

<b>1.0</b>	<b>Introduction</b>	<b>2</b>
<b>2.0</b>	<b>DCO Articles</b>	<b>3</b>
<b>3.0</b>	<b>DCO Schedule 1</b>	<b>8</b>
<b>4.0</b>	<b>DCO Schedule 2</b>	<b>11</b>
<b>5.0</b>	<b>DCO Schedule 3</b>	<b>25</b>
<b>6.0</b>	<b>DCO Schedule 4</b>	<b>26</b>
<b>7.0</b>	<b>Update on Statements of Common Ground</b>	<b>27</b>

## 1.0 Introduction

1.1 This document comprises a summary of the oral case put by the applicant at the issue specific hearing on the draft development consent order (DCO) on 12 February 2015.

1.2 The applicant was represented at the hearing by:

- Guy Simms – Tata Steel
- Muhammad Jhandeer – Tata Steel
- Duncan O'Connor - Pinsent Masons LLP
- Sheelagh MacGregor – Pinsent Masons LLP
- Catherine Anderson – AECOM
- Ben Lewis - GVA

1.3 The numbering of DCO articles throughout this document refers to the numbers used in Revision 1 of the draft DCO submitted to the Examining Authority (ExA) on 5 February 2015.

---

## 2.0 DCO Articles

### Article 2 – Definition of 'Maintain'

- 2.1 The applicant explained the concerns raised in its response to Q. 4.01; in particular, that the suggested amendment could potentially be interpreted as restricting the ability of the undertaker to replace the whole of a numbered work by means of the cumulative replacement of individual parts over a period of time.
- 2.2 The applicant confirmed that, having considered the issue further, it was satisfied that the terms 'remove' and 'replace' in the definition of 'maintain' could be qualified to make clear that these terms relate only to the constituent parts (but not the whole) of a numbered work.
- 2.3 The applicant considers that the issue can best be addressed by an amendment to article 4 (power to maintain) of the DCO and will include this wording in the next draft of the DCO.

### Article 3 – "in accordance with works plans"

- 2.4 The applicant has inserted the words "in accordance with the works plans" into article 3.
- 2.5 The applicant considers this wording is needed to ensure the authorised works are carried out in accordance with the details and in the areas shown on those plans. Although article 3 already refers to the 'Order limits' and the 'limits of deviation', those terms are not specific to the individual numbered works listed in Schedule 1. Accordingly, the additional reference to the Works plans is necessary to ensure the numbered works must be constructed within the relevant areas shown on the plans.

---

## Article 8 - Defence to Nuisance

- 2.6 The applicant's response to Q4.02 explains that the defence would only be available where the authorised development is carried out in accordance with requirements and any noise control measures required under the requirements.
- 2.7 It would be inconsistent with the principle that sits behind section 158 of the Planning Act 2008 if the noise emissions that result from the authorised development being carried out fully in accordance with the terms of its authorisation (including the noise control measures provided for) could result in the undertaker being liable for statutory nuisance.
- 2.8 Neath Port Talbot County Borough Council (NPTCBC) has subsequently stated in paragraph 7.4.17 of its Local Impact Report (LIR), that it does not use the Control of Pollution Act in relation to projects of this type and that its preference is for effective noise controls to be set out in construction management plans and in measures to control operational noise.
- 2.9 The applicant explained in its comments on the LIR, that the defence does not require a s. 61 consent to be in place in relation to the project construction. Notwithstanding this, in view of NPT's comments, the applicant considers that further clarification could be added to article 8 to make clear that the defence would only be available where the project is constructed and operated in accordance with the specific noise management measures required under the terms of the DCO.
- 2.10 Accordingly, the applicant proposes to amend article 8 so that:
- a. 8(1)(a) refers to construction in accordance with noise management plan required under R11; and
  - b. 8(1)(b) refers to operation in accordance with measures in written scheme for noise control under R14.

- 2.11 The applicant noted that the defence would not prevent someone whose land is injuriously affected from claiming compensation under section 152 of the Act, but the defence would prevent injunction or damages being granted against the undertaker.

### **Formerly article 8 - Modifications to enactments relating to compensation for compulsory purchase**

- 2.12 The applicant confirmed that this provision (which applies Schedule 3) has been moved to Part 5 of Order (see revision 1 of the draft DCO, article 16).

### **Article 17 and 19 - Update on review of rights**

- 2.13 The applicant confirmed that details of the rights listed in Part 3 of the Book of Reference are being reviewed and plotted onto a plan overlaid onto Order limits.
- 2.14 The applicant explained the difficulty that some of the rights are historic (dating back to the 1930s) and are not plotted on plans in original deeds. The applicant hopes to be able to submit an updated Book of Reference for Deadline 4 (5 March).

### **Update on agreement with Network Rail**

- 2.15 The applicant is awaiting a draft form of an option and easement agreement from Network Rail (NR). NR has indicated that the draft will be provided in the week commencing 16 Feb 2015.
- 2.16 The agreement will require the applicant to enter into Asset Protection Agreement (APA) with Network Rail prior to any works being carried out over the railway.

---

## Article 26(2) and Schedule 5 - Discharge of Requirements

- 2.17 The applicant restated the two key issues set out at length in its response to Q. 4.19. The issues are:
- a. the principle of including a set of bespoke set of provisions in relation to the discharge of requirements; and
  - b. the content of those provisions, specifically the deemed approval mechanism under paragraph 1(2) of Schedule 5.
- 2.18 On the first issue, the applicant considers that the approach proposed in article 26 and Schedule 5 of the draft DCO is also clear and can be easily understood.
- 2.19 The applicant considers that including a bespoke regime within the DCO may be helpful to both the undertaker and the relevant planning authority. It provides a clear set of provisions on the face of the DCO which can be used by both sides to understand their respective obligations in respect of the discharge of requirements.
- 2.20 The applicant's response identifies precedents for DCOs including a bespoke set of procedures:
- a. Schedule 3 - National Grid (North London Reinforcement Project) Order 2014;
  - b. Schedule 9 - National Grid (King's Lynn B Power Station Connection); and
  - c. Schedule 14 to the Hinkley Point C (Nuclear Generating Station) Order 2013
- 2.21 On the issue of the deemed approval mechanism in paragraph 1(2), the applicant considers a deemed consent mechanism is appropriate in the context of an nationally significant infrastructure project (NSIP) to ensure there are no undue delays in obtaining post-consent approvals. It would

be contrary to the principles behind a streamlined consenting process, for implementation to be delayed by a failure to determine applications for post-consent approvals in a timely manner.

2.22 To date, NPTCBC has not made any comments on this proposal with the applicant.

2.23 At the hearing, NPTCBC stated that it considers the normal Town and Country Planning Act procedures relating to the discharge of condition should apply. The applicant confirmed that it would discuss this issue with the Council and considers that a mutually satisfactory position can be reached.

---

## 3.0 DCO Schedule 1

### Schedule 1 - Authorised development

- 3.1 The applicant's response to Q4.03 explains that all works listed in Schedule 1 are either the NSIP or form part of the project for the purposes of section 15 and 31 of the 2008 Act. (i.e. the construction or extension of a generating station).
- 3.2 The applicant's response to Q4.03 does not use term 'integral' – although it is acknowledged that this is term used in DCLG Guidance on Associated Development, which advises that development should not be treated as associated development if it is an integral part of the NSIP. The applicant noted that the list of examples of associated development in the DCLG guidance is acknowledged to be neither exhaustive nor prescriptive.
- 3.3 The applicant explained that none of works in Schedule 1 have a purpose other than the construction and/or operation of the generating station. In particular:
- a. The cycle tracks and roadways are required for staff access to the generating station. They are particular to the generating station and are required solely to provide access to the generating station.
  - b. The 66kV electrical cables are required to connect the new generating station to the existing onsite infrastructure, and the extensions of existing pipework for gas supplies etc. are essential for the operation of the generating station. Without a fuel supply the generating station is incapable of generating electricity. Without an appropriate connection into the existing on site substation, the generating station could not perform its purpose in supplying electricity to the steelworks.

- 3.4 The applicant welcomed NPTCBC's statement (made at the hearing) that NPTCBC had no concerns with the applicant's approach in this regard.

### **Schedule 1 - Additional parameters for 1A and 1C**

- 3.5 The applicant confirmed that maximum parameters have been added for the following elements of Work No.s 1A and 1C:

- a. administration and control building
- b. water treatment plant;
- c. electrical cables;
- d. cable bridge;
- e. car parking; and
- f. perimeter fencing.

- 3.6 The applicant does not consider it appropriate to provide maximum parameters for the following items of ancillary plant comprising part of Work No. 1A(e) as these are all items of ancillary plant which will be incorporated within the other elements of the authorised development.

- a. main and auxiliary transformers;
- b. electrical equipment;
- c. oil water separator;
- d. boiler feed pumps;
- e. low pressure gas boosters; and
- f. emissions monitoring system.

## Assessment of impacts of Work No 2 scenarios

- 3.7 The applicant explained that its response to Q4.07 was based on the assessment of the alternative development scenarios considered for the electrical cables connection (Work No. 2(a)) which includes options for the cables to be run underground; off existing above-ground infrastructure, and on a cable bridge between the two existing substations; or a combination of all of these options.
- 3.8 The potential impacts of Work No. 2 have been assessed within each technical chapter of the ES where relevant. The applicant's response to Q. 4.07 does not consider Work No 2(b) as there are no alternative scenarios for this work.

---

## 4.0 DCO Schedule 2

### Interpretation

- 4.1 In response to the email from the Health and Safety Executive (HSE) dated 14 January 2015, the applicant proposes to submit to the ExA a high-level assessment of the extent and severity of potential major accident hazards.
- 4.2 The applicant considers this approach removes the need for the requirement suggested by the HSE. Rather than requiring the assessment to be provided before construction commences, the assessment will be before the ExA and the SoS when preparing the recommendation and determining the application.
- 4.3 The applicant does not consider this proposal relates to the safety testing mentioned in the definition of 'commissioning' in paragraph 1 of Schedule 2. The commissioning process will include testing of the project components against relevant safety standards. This is a separate issue to the assessment of potential major accident hazards arising as a result of the project being constructed within the site of an establishment that is subject to the Control of Major Accident Hazards (COMAH) Regulations.

### Requirement 4 – Additional maximum parameters

- 4.4 The applicant confirmed that the following have been added as parameters for Phase 1 of Option 2. The parameters are set out in requirement 4(2) of revision 1 of the draft DCO.
- **Stack** - Minimum height of 80 m.
  - **Cooling Towers** – Maximum width extended from 16 to 25 meters in accordance with applicant's submissions to ExA dated 8 Dec 2014 and 15 Jan 2015 (Doc ref 10.6). Maximum volumes and areas specified in column (5) – These reflect the maximum volumes and

areas of a building built to the maximum dimensions used in ES for phase 1 of option 2 (see ES para 3.7.25) and are less than a multiplication of the maximum height, width and length listed in columns 2 - 4.

- **Turbine Hall** - Maximum volumes and areas specified have been added to column (5) – These reflect the maximum volumes and areas of a building built to the maximum dimensions used in ES for phase 1 of option 2 (see ES para 3.7.25) and are less than a multiplication of the maximum height, width and length listed in columns 2 - 4.
- **Boiler House** - Maximum volumes and areas specified in column (5) – These reflect the max volumes and areas of a building built to maximum dimensions used in ES for phase 1 of option 2 (see para 3.7.25).
- **Switchgear station** - maximum height of 20m added.

4.5 Parameters for additional elements of Work Nos 1A and 1C have also been added. These are the same as for option 1 (i.e. Administration and control building, water treatment plant, electrical cable, cable bridge, car parking, perimeter fencing).

#### **Requirement 4 - Amendments to maximum parameters**

4.6 Revision 1 of the draft DCO reflects the applicant's response to the ExA's request for further information issued on 30 Jan 2015.

4.7 The applicant has amended requirements 4 and 20 in response to the ExA's request:

- a) the maximum parameters for the turbine hall and boiler house in requirement 4 are expressed in terms of the maximum areas and volumes for those buildings. These areas and volumes reflect the parameters that were used for the purposes of the applicant's environmental impact assessment (EIA);

- 
- b) the relevant planning authority is given limited scope within requirement 4 to approve minor or immaterial amendments to the individual dimensions (length, width, height) of the turbine hall and boiler house only, provided that:
- the maximum areas and volumes of those buildings specified in requirement 4 are not exceeded; and
  - the revised dimensions are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement,
- c) the ability of the relevant planning authority to approve amendments to the maximum parameters of any other elements of the authorised development is removed.
- 4.8 The applicant's justification for this approach is set out in its response to the ExA's rule 17 request (submitted on 5 Feb. 2015).
- 4.9 The design of the authorised development is an outline design only at this stage and the final details will not be confirmed until the contractor has been appointed, which would likely be after the grant of development consent.
- 4.10 Whilst the applicant considers that the parameters for the turbine hall and boiler house are realistic and likely maximum heights, widths and lengths of the buildings, there remains a possibility that the final design produced by the contractor could involve a solution for the boiler house and turbine hall which was not considered likely or realistic at the time when the applicant was preparing the EIA and the draft DCO.
- 4.11 The applicant therefore considers it is necessary for the DCO to contain a degree of flexibility so that minor extensions to these buildings (half a meter to the width of the turbine hall, for example) would not be outside the scope of the consent. The revised drafting makes clear that such

---

extensions could only be approved if they do not result in an increase in the volume or area of the turbine hall or boiler house (as applicable) which is specified in requirement 4.

4.12 In revising the drafting the applicant has had regard, in particular, to *Advice Note 15: Drafting Development Consent Orders* (The Planning Inspectorate, October 2014). This states that tailpieces should not "allow the LPA to approve details which stray outside the parameters set for the development." The two conditions in requirement 4(3) ensure that the relevant planning authority would not be allowed to approve extensions which stray outside the scope of the maximum envelope which is set by the DCO (in terms of volume and area) and which was assessed in the applicant's EIA.

4.13 An example of why this flexibility is necessary is emerging from the discussions which the applicant is having with Neath Port Talbot County Borough Council regarding the detailed design of the boiler house and turbine hall. The Council has indicated it may wish these buildings to incorporate a curved roof to enhance their appearance. If a curved roof was to be incorporated into the design, this could potentially result in the apex of the roof extending slightly beyond the maximum height specified in the DCO.

#### **Requirement 4 - Building finishes**

4.14 The applicant confirmed that details of 'the durability of cladding' have added to list of details that must be submitted to the relevant planning authority for approval under requirement 4. This will ensure that the quality of building finishes used for the project is sustained throughout its lifespan.

#### **Requirement 4 - Design standards**

4.15 In response to the concerns raised by NPTCBC in its LIR, the applicant has agreed that a 'design principles document' will be developed jointly

with the Council. Requirement 4 will be amended to require that the details submitted under R4 must be in accordance with the design principles document.

- 4.16 The agreed design principles document will be submitted to the Examining Authority during the examination period once it is complete. The design principles document will be listed in article 24 (certification of plans). This approach was agreed in principle with NPTCBC at a meeting on 5 Feb. 2015.

### Requirement 6 - Provision of landscaping

- 4.17 Q4.05 raised the lack of parameters for some of the elements of Work No. 1 in Schedule 1. In response, the applicant commented that it does not consider it is appropriate to specify parameters for the landscaping listed in Work 1C and referred to the fact that the landscaping details must be submitted for approval by the relevant planning authority under R6.

- 4.18 The applicant's response proposed a further amendment to the requirements to ensure that the details submitted for approval are consistent with:

- *the applicant's ES and the mitigation principles identified in that document; and*
- *the Design and Access statement.*

- 4.19 These amendments do not appear in DCO revision 1 submitted on 5 Feb 2015, but will be included in the next iteration.

### Requirement 7 - Fencing

- 4.20 A maximum height of fencing (3 metres) has been added to the table in requirement 4. The applicant also confirmed that it proposes to amend requirement 7 to require the details submitted to the Council for approval

to be consistent with the applicant's ES and the mitigation principles identified in that document.

### **Requirement 8 - Archaeology**

- 4.21 As set out in the applicant's response to Q4.31, the applicant does not consider that an amendment to requirement 8(4) is required. The wording of requirement 8 reflects the position that was agreed with GGAT during pre-application discussions. GGAT indicated a specific requirement for the applicant's scheme of archaeological investigation to include palaeo-environmental sampling which has been captured in requirement 8(2)(b).
- 4.22 Subject to this sampling work being included, GGAT indicated that it was content for the scheme of archaeological investigation to be agreed with NPTCBC and then implemented in consultation with GGAT.
- 4.23 The applicant notes that GGAT is the archaeological advisor to the twelve local planning authorities in the region, including NPT and on that basis the applicant would expect GGAT to be consulted by NPT on the written scheme submitted for approval under R8 in any event.
- 4.24 The applicant has discussed the wording of requirement with GGAT and GGAT confirmed on 10 Feb 2015 that is it satisfied with the scheme of archaeological investigation to be agreed with NPTCBC and then implemented in consultation with GGAT.
- 4.25 The applicant notes the omission of the word "out" in R8(2) and will correct this in the next iteration of the draft DCO.

### **Requirement 9 - Habitat Management Plan**

- 4.26 The applicant will amend 9(2) to read "The habitat management plan must include an implementation timetable and must be carried out as approved by the relevant planning authority".

---

## **Requirement 10 - Commissioning – noise from steam purging**

- 4.27 The applicant confirmed that some steam purging will be required during the commissioning phase of the project. The duration is likely to be around 10 to 20 days during normal working hours.
- 4.28 The applicant suggested that the most appropriate mechanism to achieve this would be to amend R11(2) to require the noise management plan to contain details of the mitigation measures to be put in place to control noise from steam purging.
- 4.29 At the hearing, NRW confirmed that steam purging carried out during the commissioning phase would be subject to controls under the Environmental Permit. The applicant noted this and explained that the applicant's ES treated commissioning as part of the construction phase.
- 4.30 To ensure there is no duplication or overlapping of control measures in relation to steam purging, the applicant proposes to discuss the matter with NPTCBC to understand what measures in respect of steam purging noise it would be appropriate to include in the noise management plan under R11, given that the activity will be subject to controls under the Environmental Permit.

## **Requirement 11 - Construction Management Plans – How is this covered in the DCO?**

- 4.31 The management of environmental impacts arising during the construction phase is covered by the code of construction practice (CoCP) required under R10 and the Construction Mitigation Plans required under R11. R10 states that the CoCP submitted for approval must be substantially in accordance with the outline at Appendix 15.1 of the ES. The outline CoCP cross refers to mitigation measures identified in ES.

4.32 To ensure that the construction mitigation plans required under R11 are also consistent with the ES, the applicant proposes to amend the wording of 11(1) to require the plans submitted under that provision to be in accordance with the mitigation measures and principles set out in the ES.

### **Requirement 11 - Materials Management Plan (MMP)**

4.33 Discussions regarding the requirement for a Material Management Plan are ongoing with the applicant, NPT and NRW after the preliminary results of the site investigation (SI) works were provided to these organisations in January 2015.

4.34 Meetings have now been held with NRW (on the 5th February) and NPTCBC (on the 9th February) to discuss the results and future works including whether there may be a potential for an MMP.

4.35 It has been agreed with all parties that the final report providing the results of the SI works will be available in late March / early April 2015 and that this will include a remedial options appraisal where the potential for an MMP will be confirmed as part of an option. If an MMP is required, the outline CoCP will be amended as necessary.

### **Requirement 11 - Piling Method Statement**

4.36 In response to NPTCBC's LIR, the applicant has amended R11(2) so that the noise management plan submitted for approval must include a piling method statement.

4.37 Details about the criteria used in the selection of piling methods are set out in the ES. To ensure these principles are reflected in the piling method statement, the applicant proposed to amend R11 to require that the noise management plan submitted to the RPA must reflect the mitigation measures set out in the ES.

---

## Requirement 12 - External lighting

- 4.38 The applicant confirmed a further amendment to the R12 to ensure that the details submitted for approval are consistent with the mitigation principles identified in the ES and the Design and Access statement.
- 4.39 These amendments do not appear in DCO revision 1 submitted on 5 Feb 2015, but will be included in the next iteration.

## Requirement 13 - Construction Hours

- 4.40 In response to NPT's LIR, the applicant has amended requirement 13 as requested by the Council.

## Requirement 14 - Control of Noise During Operational Phase

- 4.41 Operational noise limits will be imposed on the authorised development by the Environmental Permit (EP) that must be obtained by the applicant before the plant begins to operate.
- 4.42 The applicant considers that the EP will be the most suitable mechanism to impose appropriate noise limits which are based on the specific details of the authorised development. It would, of course, be open to the relevant planning authority to take the EP noise limits into account when considering and approving operational noise limits to be imposed via the noise management strategy under requirement 14.
- 4.43 The applicant noted that this approach was adopted in the South Hook DCO, which is a comparable project within an existing industrial site. The South Hook DCO does not contain any requirements in respect of the control of operational noise on the basis that these impacts will be controlled through the EP.
- 4.44 To provide additional assurance in respect of other noise control measures, the applicant proposes to make an amendment to R14 to

---

provide that the scheme submitted for approval must reflect mitigation and principles set out in the ES.

### **Requirement 14 - Sourcing and securing of noise mitigation measures**

- 4.45 The applicant was unclear as to what the ExA intended in Q4.34 by "a requirement to ensure that the measures have been adequately sourced and secured ready for immediate implementation as may be necessary" but assumed the question was seeking further certainty on the deliverability of the mitigation measures proposed in relation to control of operational noise.
- 4.46 If the question was requesting the mitigation measures be confirmed now to ensure they are capable of being sourced and secured prior to commencement, the applicant considers this is unnecessary. In particular, the noise mitigation measures mentioned in the ES are principally matters of design which will be secured under R4 (detailed design) and R14 (control of operational noise).
- 4.47 On that basis, the applicant does not consider that the requirement suggested in Q. 4.34 is reasonably necessary to ensure that the mitigation measures are capable of implementation. R14 states that commissioning cannot commence until a written scheme for the management of noise has been submitted to and approved by the relevant planning authority, so there could be no risk of adverse noise effects arising before the necessary mitigation measures have been secured and implemented.

### **Requirement 17 - Air quality monitoring**

- 4.48 The applicant was unclear as to what the ExA intended in Q4.33 by "a requirement to ensure that the measures have been adequately sourced and secured ready for immediate implementation as may be necessary" but assumed the question was seeking further certainty on the

---

deliverability of the measures proposed in relation to monitoring of air quality impacts.

- 4.49 The applicant does not consider that a requirement "to ensure that the mitigation measures have been adequately sourced and secured ready for immediate implementation" is reasonably necessary to ensure that the mitigation measures to be approved under requirement 17 of the Order are effective and capable of implementation.
- 4.50 There is an existing framework of measures for monitoring the environmental effects of the steelworks in the local area, including gauges located within and outside the steelworks for monitoring air quality. The applicant already works with NPTCBC and NRW in this regard. It is therefore considered that the locations and measures to be agreed under requirement 17 could be designed to be consistent with this existing framework.
- 4.51 If the question is requesting that details of the noise monitoring measures (including locations) be confirmed now to ensure they are capable of being sourced and secured prior to commencement, the applicant considers this is unnecessary. R17 requires that the scheme for the monitoring of ambient concentrations of nitrogen dioxide in the area must be submitted to and approved by the relevant planning authority 12 months prior to commissioning, so there could be no risk of adverse air quality impacts arising before the necessary mitigation measures have been secured and implemented.

### **Requirement 18 - Water abstraction**

- 4.52 In response to NRW's position that requirement 18 is not necessary, the applicant recognises that the issues raised by the abstraction hierarchy now principally relate to ABP's concerns regarding water levels in the dock.

- 
- 4.53 The applicant and ABP are in ongoing discussions and are preparing a draft water management spreadsheet which outlines the minimum operational water levels required by ABP after all the applicant's abstractive requirements have been taken into account.
- 4.54 This spreadsheet will be used to identify what measures need to be implemented by the applicant during times of low flow to ensure ABP's operations are not adversely effected. Once the spreadsheet has been finalised, the applicant proposes to secure their implementation through protective provisions to be included in the DCO for the benefit of ABP. The applicant will endeavour to have these matters settled before the issue specific hearing on 25 Feb 2015.
- 4.55 The applicant recognises that some form of tripartite agreement between itself, ABP and NRW will be needed in respect of other measures (such as monitoring) that are to be implemented under the abstraction hierarchy.

### **Requirement 19 - Contaminated land and groundwater**

- 4.56 The applicant confirmed that site investigation (SI) works that are currently being undertaken. All intrusive SI works have been completed with ground gas and ground water monitoring currently ongoing for the next few weeks.
- 4.57 The preliminary results of the investigations were submitted to NPT, NRW and the Coal Authority for comment on 21 January 2015, and the applicant is continuing to liaise with these organisations regarding the findings.
- 4.58 A meeting was held on the 5th February with NRW and another meeting held with NPTCBC on the 9th February. The final and completed set of monitoring results will be presented in the final factual and interpretative report along with a remedial options appraisal will be available in late March / late April. This will be sent to NRW and NPTCBC for approval.

4.59 The applicant confirmed that the SI works will include a specific petroleum hydrocarbon analysis - specifically polycyclic aromatic hydrocarbons and total petroleum hydrocarbons.

4.60 The final factual and interpretative report will also be sent to the Coal Authority with a separate summary assessment on the coal resources - none have been found in the SI works to date.

### **Approval by NRW only**

4.61 The applicant noted that the ExA's written question 4.32 requested that the applicant amend requirement 19 to provide that approval under that provision would only be given by NRW rather than NRW and NPTCBC. The applicant's response indicated agreement with this suggestion, but this position now contradicts the drafting proposed by the Council in its LIR.

4.62 The revised version of requirement 19 now reflects the Council's proposal that the scheme of investigation and remedial measures must be approved by the Council, although the applicant has added that this be done in consultation with NRW.

4.63 The applicant will raise this point in its discussions with NPTCBC and NRW and will clarify which of these organisations should be the appropriate body to approve matters under requirement 19. The applicant will keep the ExA updated on the outcome of these discussions and will provide revised drafting for requirement 19 if necessary in due course.

### **Former requirement 20 - Amendment to approved details**

4.64 The original R20 has been deleted in response to the request for further information issued by the ExA on 30 January 2015.

4.65 Wording has been added to R1 to confirm that references to the authorised development being carried out in accordance with approved

schemes etc., includes any amendments to those schemes etc. subsequently approved by the RPA.

- 4.66 The wording of R20(2) which enabled the parameters in requirement 4 to be amended by the RPA has been deleted and replaced by wording at R4(3) which sets out a more limited mechanism by which the parameters may be amended.

## 5.0 DCO Schedule 3

### **Schedule 3 - Modification of enactments relating to compulsory purchase compensation**

- 5.1 The applicant confirmed that references to the imposition of restrictive covenants have been deleted from Schedule 3 as the DCO does not contain a power to impose restrictive covenants.

## 6.0 DCO Schedule 4

### Schedule 4 - Protective provisions

- 6.1 The applicant gave the following update on the status of protective provisions:
- a. **Network Rail** - The numbering error in revision 0 has been corrected.
  - b. **ABP** - See comments on Requirement 18.
  - c. **National Grid** - NG has provided a set of protective provisions which are currently being reviewed by the applicant.
  - d. **WPD** - The applicant has sent a set of draft protective provisions to WPD for approval and it awaiting WPD's response.
  - e. **Welsh Water** – the applicant has received comments from Welsh Water on draft protective provisions and these are currently being reviewed by the applicant.

## 7.0 Update on Statements of Common Ground

- 7.1 Discussions are currently ongoing with, NPTCBC, NRW and CCS regarding the SoCGs, and the applicant expects these to be finalised shortly.
- 7.2 Powys County Council – has confirmed with the PINS that an SOCG is not required and that it has no outstanding issues with the application.
- 7.3 Brecon Beacons NPA - has confirmed to the applicant that an SOCG is not required and that it has no outstanding issues with the application. The applicant will forward this confirmation to PINS.
- 7.4 Carmarthenshire County Council - has confirmed to the applicant that an SOCG is not required and that it has no outstanding issues with the application. The applicant will forward this confirmation to PINS.
- 7.5 The applicant is still awaiting confirmation from Bridgend, Rhondda, Royal Mail and the Welsh Government as to whether SoCGs are required.
- 7.6 The applicant is proposing to deal with all issues raised by Network Rail, National Grid, WPD and Welsh Water through protective provisions, and does not anticipate that SoCGs will be requested by these parties.