

Planning Act 2008

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

The Port Talbot Steelworks (Power Generation Enhancement) Order

D2LIR1.01 Applicant's comments on Local Impact Reports

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1.0 Introduction & Summary

- 1.1 This document contains the applicant's comments on the Local Impact Reports (LIRs) submitted to the Examining Authority (ExA) by Neath Port Talbot County Borough Council and the City and County of Swansea on 15 January 2015 (Deadline 1). These comments are provided to assist the ExA and interested parties in understanding the position of the applicant.
- 1.2 This document does not reiterate comments which the applicant has already made to the ExA in other documents, but provides cross references to the appropriate document where relevant. Where the applicant has not commented on any point raised in an LIR, this is either because the applicant considers either that no comments are necessary or that it has already responded to the point(s) made in separate documents that the applicant has previously submitted to the ExA.

2.0 Neath Port Talbot County Borough Council

Introduction

- 2.1 This section provides the applicant's comments on the Local Impact Report (Ref - 2014/0898) submitted to the Examining Authority by Neath Port Talbot County Borough Council (NPTCBC or the Council) .

Design of the buildings

Para 7.3.9 onwards

- 2.2 The applicant notes the Council's concerns regarding the visual appearance of the proposed development and recognises its aspirations regarding the quality of the design.
- 2.3 In developing the project to date, the applicant considers it has demonstrated its commitment to the principles of good design in terms of the functionality of the proposed development. In particular, by using the process gases which are currently flared at the site, the new generating station is designed to operate sustainably and to be efficient in its use of natural resources and energy in accordance with NPS EN-1 paragraph 4.5.1.
- 2.4 The applicant recognises that the principles of good design also require the appearance of the project to demonstrate a good aesthetic as far as possible in the context of infrastructure of this type (see NPS EN-1 paragraph 4.5.1). Although a detailed design has not been produced at this stage, the applicant has sought to show within the application documents how the appearance of the development can be designed in a way that is sensitive to the location and maintains the high standards achieved through the recent re-cladding of the strip mills and the landscaping carried out as part of the PDR (Harbour Way) scheme.

2.5 For instance, ES chapter 7 (landscape and visual) explains that the indicative layout locates the cooling towers to the south of the boiler and turbine buildings partly to mitigate some of the close range visual effects from Harbour Way to the north and east of the development. The applicant has also proposed a building finish that is consistent with existing cladding and has suggested landscaping and planting as a continuation of the existing planting along the security fence between the proposed development and Harbour Way to the north and east of the site.

2.6 Given that a detailed design will not be produced until the contractor is appointed at a later stage, the applicant has proposed that the final design of the development be controlled through requirements in the DCO which require a range of details to be submitted for approval by the Council before construction commences. These details include:

- the siting, design, external appearance, dimensions and floor levels of all permanent buildings and structures, and the colour, materials and surface finishes of all permanent buildings and structures (requirement 4); and
- all proposed hard and soft landscaping works, including details of:
 - any proposed planting;
 - hard surfacing materials;
 - vehicular and pedestrian access, parking and circulation areas; and minor structures, such as furniture, refuse or other storage units, signs and lighting (requirement 6).

2.7 In view of the stage of the design process which the project is currently at, the applicant considers it is not feasible for further details of the design to be submitted at this stage as requested by the Council. Instead, to assure the Council of its commitment to good design, the applicant has proposed to the Council that it works with the Council to agree a 'design principles' document which would set out a range of

principles regarding matters such as the design of the buildings, the use of materials and landscaping that must be reflected in the applicant's detailed design, whilst also acknowledging the functional requirements of the project.

- 2.8 The applicant proposes that the design principles set out in that document should be secured through revisions to requirement 4 of the draft DCO (detailed design) which state that the details submitted to the Council for approval must be in accordance with the design principles document.
- 2.9 The applicant considers this approach will provide the Council and the wider public with a greater degree of certainty as to the quality of the final design and will ensure that the development has an appearance which is as attractive and durable as it can be. The Applicant met the Council on 5th February 2015 to discuss the content and format of this document. It was agreed that the Applicant would prepare a draft of the design principles document for the Council's review. There is a commitment from both parties to maintain dialogue on this matter.
- 2.10 Whilst recognising the Council's "highest aspirations" for the quality of the new development, it is important to acknowledge that good design goes beyond purely aesthetic matters and also relates to functional requirements which can impose constraints on the visual appearance of energy infrastructure of this type.
- 2.11 These constraints are expressly recognised in NPS EN-1 which states:

high quality and inclusive design goes far beyond aesthetic considerations. The functionality of an object — be it a building or other type of infrastructure — including fitness for purpose and sustainability, is equally important. Applying “good design” to energy projects should produce sustainable infrastructure sensitive to place, efficient in the use of natural resources and energy used in their construction and operation, matched by an

appearance that demonstrates good aesthetic as far as possible. It is acknowledged, however that the nature of much energy infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of the area.

The IPC needs to be satisfied that energy infrastructure developments are sustainable and, having regard to regulatory and other constraints, are as attractive, durable and adaptable (including taking account of natural hazards such as flooding) as they can be. In so doing, the IPC should satisfy itself that the applicant has taken into account both functionality (including fitness for purpose and sustainability) and aesthetics (including its contribution to the quality of the area in which it would be located) as far as possible. Whilst the applicant may not have any or very limited choice in the physical appearance of some energy infrastructure, there may be opportunities for the applicant to demonstrate good design in terms of siting relative to existing landscape character, landform and vegetation.
(paragraphs 5.4.1 and 5.4.3)

- 2.12 Provided the functional constraints of the infrastructure are recognised, the applicant believes it can develop a set of design principles in partnership with the Council which will ensure the final appearance of the development meets the Council's aspirations. The applicant considers it has a shared interest with the Council in ensuring that the final appearance of the development projects an image of quality design and high standards and makes a positive contribution to the area.
- 2.13 The Council suggests in paragraph 7.3.12 that further details as to the design are required to ensure "the parameters within the draft DCO are adequate to allow for any variation (in particular in height) which may be necessary for any additional design elements". The applicant considers that the revised drafting of requirements 4 and 20 provides the degree of

flexibility that is necessary to ensure that the maximum parameters set out in the DCO would not prevent any such additional design elements from being incorporated into the main components of the authorised development. This revised drafting has been developed in response to the rule 17 request issued by the Examining Authority on 30 January 2015. See the applicant's response to this request submitted on 5 February 2015.

- 2.14 In paragraph 7.3.14 of the LIR, the Council suggests that requirement 4 of the draft DCO is likely to need amendment "to cover all aspects of infrastructure such as roads, pathways etc. associated with the development". The applicant does not consider that any amendment is necessary. Requirement 4(3) applies to all permanent buildings and structures and requires details of these elements to be submitted for approval by the Council before construction commences. Details of additional elements which may not be regarded as buildings or structures are required to be submitted for approval under requirement 6 (landscaping) which covers items including vehicular and pedestrian access, parking and circulation areas and minor structures, such as furniture, refuse or other storage units, signs and lighting.

Effects of Construction

Paragraphs 7.4.6 and 7.4.15

- 2.15 In response to the Council's comments on the outline dust management plan, the applicant has amended requirement 10 (code of construction practice) as suggested by the Council in paragraph 5 of its response to the Examining Authority's written questions (question 4.20). The revised requirement will require that the dust management plan must incorporate details of the mechanisms by which failures of dust controls will be investigated and appropriate mitigation or remedial works will be implemented. See also the applicant's comments on the Council's

response to the ExA first written question 4.20 (submitted on 15 January 2015).

- 2.16 The applicant has also made an equivalent amendment to requirement 11 (approval and implementation of construction mitigation plans) to provide that the noise management plan submitted under 11(1)(a) must incorporate details of the mechanisms by which failures of noise controls will be investigated and appropriate mitigation or remedial works will be implemented.

Operational Noise

Paragraph 7.4.10 - operational noise controls

- 2.17 The applicant notes the Council's comments at paragraph 7.4.10 regarding the relationship between requirement 14 (control of operational noise) and the controls over operational noise and vibration that will be imposed on the project by means of the Environmental Permit (EPR). The applicant acknowledges that the noise management scheme that must be submitted to and approved by the Council under requirement 14 can take into account and appropriately reflect the controls imposed by the EPR.

Paragraph 7.4.13 – construction working hours

- 2.18 The applicant has amended requirement 13 as requested by the Council. The revised wording restricts working hours to:
- 07:00 to 19:00 Monday to Friday
 - 07:00 to 13:00 Saturday
- 2.19 The revised requirement prohibits working outside these times and on public holidays except with the prior approval of the Council.

Para 7.4.14 – piling method

- 2.20 The applicant has amended requirement 11(1) as requested. The revised requirement provides that the noise management plan that must be submitted to the Council for approval must include a piling method statement, in addition to a construction vibration risk assessment.

Paragraphs 7.4.16 to 7.4.17 - defence to statutory nuisance

- 2.21 The Council states that "the proposed defence relies on the nuisance occurring under the control of s. 60, s. 61 or s. 65 of the Control of Pollution Act 1974" and explains that the Council does not, in practice, use these powers for the control of nuisance from major development. In fact, the requirement for the nuisance to occur under the controls set out in the 1974 Act is only one of two alternative conditions that must be met under article 9(1)(a) for the defence to be available to the undertaker in respect of construction noise.
- 2.22 The alternative condition is set out in article 9(1)(a)(ii) and is that the nuisance "is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided". Consequently, the fact that the Council does not propose to use the mechanisms in the 1974 Act to control construction noise from the proposed development does not render article 9 unnecessary or superfluous.
- 2.23 The applicant acknowledges the Council's preference to control construction noise through robust noise limits and comprehensive Construction Management Plans that must be approved under requirements 10 and 11. The development consent that would be granted by the Order (if made) would be subject to the terms of any controls that are imposed through these plans (see article 3). Therefore, the words 'authorised development' in article 9 mean only the development carried out in accordance with the noise management plan approved by the Council under requirement 11(1)(a). Accordingly, if the

undertaker was not complying with those controls, the defence under article 9 would not be available.

2.24 As set out in section 3.4 of the 'Statement in Respect of Statutory Nuisance' (doc. ref. 5.02), the applicant fully expects that the noise control measures provided for in the DCO will prevent noise emissions giving rise to a nuisance. Notwithstanding these measures, noise is an inevitable consequence of the construction of the authorised development. It would be inconsistent with the basic 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 applicant being liable for a statutory nuisance offence.

2.25 Article 9 is worded such that the defence is strictly limited to noise which is a direct consequence of activities carried out in accordance with the terms of the statutory authorisation and which cannot reasonably be avoided. Accordingly, the applicant considers that the terms of article 9 are sufficiently restricted that their inclusion in the DCO is justified in accordance with the terms of paragraph 5.6.8 of NPS EN-1.

2.26 For further justification please refer to the applicant's response to the ExA's first written question 4.02.

Ecology

2.27 In response to paragraph 7.5.5, the applicant can clarify that the translocation works have been undertaken for the reptiles and kidney vetch. Reports were provided to NPTCBC on 19th December 2014 detailing the translocation process, results and further recommendations. The County Ecologist from NPTCBC confirmed on 28th January 2015 that these reports were satisfactory and have documented that the

translocation has been undertaken in accordance with the Council's requirements.

Transport

Paragraph 7.6.3 – construction traffic management plan

2.28 The Council suggests that requirement 11(1)(b) be extended to cover both Options 1 and 2. The applicant considers that the drafting already covers both scenarios and therefore no amendment is necessary. The requirement states that "no stage of the authorised development may commence until the following plans to minimise the impacts of construction works have been submitted to and approved by the relevant planning authority for that stage" (emphasis added). "Stage" is defined in paragraph 1 of Schedule 2 by reference to the notification procedures set out in requirement 3.

2.29 Accordingly, if the authorised development was constructed in two phases, requirement 11(1)(b) would require the undertaker to submit a construction traffic management plan to the Council for approval prior to the commencement of each stage.

Contamination

Paragraph 7.8.3 – hydrocarbon analysis

2.30 The applicant confirms that the site investigation works that are currently being undertaken will include a specific petroleum hydrocarbon analysis. The preliminary results of the investigations were submitted to the Council (and others) for comment on 23 January 2015, and the applicant will continue to liaise with the Council regarding these findings.

Paragraph 7.8.5 – amendments to requirement 19

2.31 The applicant notes the recommendation of the Council's land contamination section that the wording of requirement 19 (contaminated

land and groundwater) be amended to provide a more comprehensive framework to address land contamination and mitigation issues. The applicant has revised the wording of this requirement to reflect the Council's recommendations (see revision 1 of the draft DCO submitted to the ExA on 5 February 2015).

- 2.32 As noted in the applicant's response to the ExA's first written question 1.06(g), the applicant is in discussions with the Council and NRW regarding appropriate remediation measures for any contaminated land identified at the site. These discussions will be informed by the results of the site investigations works which are currently being carried out at the site and will include consideration of the appropriate mechanisms to be secured in requirement 19.
- 2.33 The applicant notes that the ExA's first 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. 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.
- 2.34 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.

3.0 City & County of Swansea

Introduction

- 3.1 This section provides the applicant's comments on the Local Impact Report (Ref - 2014/0138) submitted by the City and County of Swansea (CCS).

Socio-economic Impacts

- 3.2 Paragraph 6.16 states that CCS would wish to see the adoption of a similar initiative to CCS's *Beyond Bricks and Mortar* secured "either by requirement of Development Consent Obligation". The applicant recognises the importance of such initiatives and has confirmed in paragraph 12.6.3 of the Environmental Statement that it will seek to promote this programme through the proactive tendering and procurement of companies for the construction of the proposed development.
- 3.3 The wording used by CCS in paragraph 6.16 of the LIR is unclear, but the applicant assumes it is intended to mean that the Council wishes to see this commitment secured by means of a DCO requirement or a development consent obligation under section 106 of the Town and County Planning Act 1990 (as amended by section 174 of the Planning Act 2008).
- 3.4 The applicant considers that a commitment in respect of tendering and procurement could not be properly be the subject matter of DCO requirement as it would not meet the tests set out in the National Planning Policy Framework (paragraph 206) which are restated in paragraph 4.1.7 of National Policy Statement EN-1. This provides that requirements should only be imposed where they are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects.

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- 3.5 The applicant considers a development consent obligation would be the more appropriate mechanism to secure a commitment in respect of tendering and procurement and will discuss this approach with CCS.
- 3.6 Paragraph 6.25 states that “*The Environmental Statement does not refer in its review of salient planning policy and guidance to the Swansea Bay City Region Economic Regeneration Strategy*”. The applicant notes that CCS considers however that the “Applicant’s operation and proposed development are consistent with this Strategy”.

Ecological

- 3.7 Paragraph 8.5 states that “There may though be effects caused by atmospheric pollutants particularly to Crymlyn Bog SAC. CCS also considers that a Habitats Regulations Assessment is required and that it would be useful to see a map showing predicted fall out”.
- 3.8 In response to the Council's request for a map showing the predicted fall out, the applicant refers CCS and the Examining Authority to Figures 5.19 to 5.36 of the Environmental Statement (doc. ref. 6.02.2 – 6.02.5) which present contour plots of concentrations of NO₂, NO_x, SO₂, PM₁₀ and CO.
- 3.9 The applicant also confirms that a Habitats Regulation Assessment has been carried out and that an 'HRA Screening report' (doc. ref. 5.03 Revision 2) and a 'Report to Inform an Appropriate Assessment' (doc. ref. 5.05) have been submitted to the Examining Authority. As confirmed in the applicant's response to the Examining Authority's written questions 5.19 and 6.03 (submitted on 15 January 2015), the conclusions of the HRA, which included an assessment of the impacts on on Crymlyn Bog SAC, are that there would be no adverse effects to the integrity of designated sites. This conclusion is supported by NRW.
- 3.10 Paragraph 8.6 of the LIR states that “CCS would also question whether there will be discharges of heated water into the sea which might

conceivably negatively affect its shore?" As confirmed in section 3.6.3 of the Environmental Statement, the project will use an 'open circuit' cooling system and therefore water used in the turbine condensers is cooled in cooling towers and recycled back into the system. Discharges from the proposed development will contain blow down water from the cooling tower unit(s) and the boilers, and will be mixed and treated with other steelworks' site effluent prior to discharging into Swansea Bay. Of this discharge, only the blow down water from the boilers would be heated. The total quantity of discharge into Swansea Bay is so small that the heated element of blow down water from the boilers could not conceivably have any negative effect on CCS's shore. The potential effects of these discharges are discussed in paragraphs 14.7.33 and 14.7.47 of the Environmental Statement.