

Planning Act 2008

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

The Port Talbot Steelworks (Power Generation Enhancement) Order

D2WR1.01 Applicant's comments on Written Representations

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Contents

1.0	Introduction	2
2.0	Neath Port Talbot County Borough Council (NPTCBC)	3
3.0	Natural Resources Wales	7
4.0	Network Rail	11
5.0	Health and Safety Executive (HSE)	13
6.0	National Grid Electricity Transmission Limited (NGET)	15
7.0	Associated British Ports (ABP)	16

1.0 Introduction

- 1.1 This document contains the applicant's comments on the written representations that were submitted to the Examining Authority (ExA) 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 a written representation, this is 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 submitted to the ExA.

2.0 Neath Port Talbot County Borough Council (NPTCBC)

Design

- 2.1 The applicant notes the concerns raised by NPTCBC with respect to the final design of the proposed buildings and recognises the council's aspirations regarding the quality of the design.
- 2.2 The applicant's response to these issues is set out in its comments on NPTCBC's Local Impact Report.

Ground Conditions

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

Noise

- 2.5 The applicant notes the comments made by NPTCBC with respect to construction and operational noise. The Council has raised more detailed points on these issues in its Local Impact Report (LIR) and the applicant has responded to these in its comments on the LIR.

Community Benefits

- 2.6 Paragraphs 13, 14 and 15 of NPTCBC's written representations refer to an aspiration of the Council to secure a community benefits scheme to contribute directly towards the communities affected by the proposal.

The Council acknowledges that the securing of such a scheme lies outside the planning process.

- 2.7 It is acknowledged by the applicant that the provision of community benefit schemes is often sought in connection with renewable energy developments, notably wind turbines and solar PV installations. However, it is the applicant's view that the justification for such schemes typically arises where the energy scheme in question is being developed purely for the export of power to the national grid and where the scheme would otherwise provide no, or very few, benefits to the local community in which the infrastructure is sited.
- 2.8 The applicant considers the context of this project is very different to those energy schemes for which community benefits packages are typically provided. This proposed development will be located at the largest employment site in the local area and is intended to contribute to securing the long-term future of the steelworks. The development will provide significant benefits to the local community through the creation of construction jobs (and the secondary service employment those will generate), and by helping to secure the sustainable future of the steelworks.
- 2.9 Notwithstanding this, as the largest private sector employer in the region, Tata Steel makes a significant contribution to the local community through education, health and sports initiatives. The business has a well-established heritage of engagement in the local community which can be traced back consistently to the establishment of the steelworks in its current form in the early 1950s.
- 2.10 Tata's current community relations activity is based around 4 themes, carrying out a range of projects, examples of which are listed below:-

- **Education & Learning**

- “F1 in Schools” schools engineering project
- “Crucial Crew” social awareness and citizenship project
- CareersWales personal development partnership
- School visits and partnerships

- **Health and Wellbeing**

- Aberavon Wizards RFC school engagement programme
- Tata Steel “Beast of Bryn” and Richard Burton runs
- Age Cymru local programme
- Tata Steel Multisport Triathlon
- “Kids of Steel” national triathlon network event
- Aberavon “Round the Pier” sea-swim
- Young Carers’ network

- **Environment**

- Wildlife Trust
- Keep Wales Tidy
- Local regeneration projects (eg: new Port Talbot railway station)

- **Community Support**

- Christmas parties for children
- “From Tata Steel with Love” senior citizens’ events
- Portfolio of community group & support projects

2.11 In addition to the above initiatives, Tata Steel’s Sports and Social Club in Port Talbot is open for membership for all – and it provides sports and

social facilities enjoyed by the local community – notably the playing fields for ball-sports, the golf course and the reservoir where a thriving sailing club and RYA Recognised Training Centre for sailing is based – and also a popular angling club.

- 2.12 The applicant will continue to discuss the issue of community benefits with the Council.

3.0 Natural Resources Wales

Section 1 – Habitats Regulations Assessment (HRA)

- 3.1 The applicant welcomes NRW's confirmation that it agrees with the conclusions of the applicant's 'Habitats Screening Report' (doc ref 5.03 revision 2) and the 'Report to Inform an Appropriate Assessment' (doc. 5.05), and the applicant is grateful to NRW for its valuable advice and assistance during the production of these documents.
- 3.2 The applicant considers that the draft DCO includes requirements which secure the timings and operations of the Option 1 and 2 scenario that are assessed within the 'Habitats Screening Report' (doc. 5.03 revision 2) and the 'Report to Inform an Appropriate Assessment'. In particular, requirement 2(2) secures that, if the authorised development is constructed in two phases, the second phase must be commenced within 10 years of the commencement of the first stage. Requirement 5 secures that the specified elements of the existing generating station must be decommissioned as soon as reasonably practicable after the completion of commissioning of the second stage (and in any event within 2 years of that date).

Section 2 - Flood Consequences Assessment (FCA)

- 3.3 The applicant welcomes NRW's agreement to the findings of the applicant's FCA. With regard to the additional assessment referred to in the Welsh Government's letter to Chief Planning Officers in Wales dated 09 January 2014 (enclosed as Annex C of NRW written representation), the applicant notes NRW's statement that "it is a matter for the Examining Authority to determine whether this additional assessment is required to be undertaken for this proposal.'

- 3.4 Notwithstanding this position, the applicant recognises it is prudent to carry out an additional assessment of the consequences for the generating station site of fluvial and tidal flooding events with a 0.1% probability of occurrence. The applicant submitted the results of this assessment in the form of two plans at Appendix A of the applicant's responses to the Examining Authority's first written questions (submitted on 15 January 2015). The plans show that the proposed power generation building is not at risk of flooding in these scenarios. The route of the 66kV electrical cables was not subject to this assessment as the cable route has been scoped out of the FCA – see paragraph 13.4.1 of the Environmental Statement.

Section 3 - Local Air Quality Management

- 3.5 The applicant notes NRW's comments in this section and will work with NRW going forward on the preparation of the environmental permit. In particular, the applicant notes that, if Option 2 was selected, the overall emissions from the new generating station in combination the existing plant would be considered by NRW as part of the application for the Environmental Permit.
- 3.6 The applicant recognises that any Environmental Permit issued by NRW in respect of the proposed generating station would ensure that the limits set out in the Directive on industrial emissions (integrated pollution prevention and control - 2010/75/EU) (the Industrial Emissions Directive) and the relevant European best available techniques reference (BREF) document will be complied with as appropriate, and this will control the emissions regardless of whether Option 1 or Option 2 is selected.

Section 4 - Noise

- 3.7 The applicant notes that British Standard 4142 (October 2014 version) is now the appropriate standard to use for the assessment of noise from

industrial installations. The October 2014 version post-dated the applicant's assessment, but the applicant confirms that any future noise assessments (either for the purposes of the Environmental Permit application, or for the noise monitoring scheme to be prepared under requirement 14) will be undertaken in accordance with this version of the standard, or any version which supersedes it.

- 3.8 The applicant acknowledges that the unavailability of technical data relating to the design specification of the proposed plant prevented a full analysis of operational noise from being carried out as part of the applicant's environmental impact assessment as presented in the Environmental Statement. As the detailed design of the proposed development progresses, this technical data, together with information about appropriate noise attenuation measures, will become available. This information will be submitted to NRW as part of the Environmental Permit application and will be used to establish appropriate noise limits that will be imposed by the permit (if granted) to ensure the public and the environment are protected from adverse noise effects.

Section 5 - Groundwater and Contaminated Land

- 3.9 As noted by NRW, site investigation works are currently being carried out, and the applicant submitted the interim Factual and Interpretative Report to NRW on 23 January 2015 (with copies also sent to Neath Port Talbot County Borough Council and the Coal Authority).
- 3.10 A meeting will be held with all relevant parties over the next few weeks to discuss the preliminary results of the site investigation works with a final report to be submitted in April 2015.
- 3.11 The applicant notes that NRW anticipates that its concerns should be capable of being addressed through appropriately worded DCO requirements. The applicant has revised requirement 19 (contaminated

land and groundwater) in revision 1 of the DCO that was submitted to the Examining Authority on 5 February 2015. These revisions were made in response to comments by Neath Port Talbot Council's land contamination section in paragraph 7.8.5 of the Council's Local Impact Report.

- 3.12 The revised requirement 19 is offered as a preliminary draft and, as part of its discussions with NRW and other organisations regarding the results of the site investigation works, the applicant will be discussing the appropriate form of drafting for this requirement. The applicant is meeting NRW on 5 February 2015 and NPTCBC on 9 February 2015 to discuss the preliminary results of the site investigation works

4.0 Network Rail

4.1 The applicant notes Network Rail's objection to the powers of compulsory acquisition included within the proposed DCO. As noted in paragraph 2.2 of the written representation, negotiations between the applicant and Network Rail are ongoing regarding the arrangements which Network Rail requires to be in place before it can withdraw its objection. In particular, the parties are seeking to agree:

- an option to grant an easement and the form of easement; and
- that appropriate asset protection agreements will be put in place before any works forming the authorised development are carried out in the vicinity of the Network Rail's operational land.

4.2 The applicant is grateful for the constructive approach which Network Rail has taken in response to the application. Like Network Rail, the applicant is hopeful that these matters can be agreed to enable the necessary rights over Network Rail's property to be obtained by agreement without the need to exercise the powers of compulsory acquisition.

4.3 At Network Rail's request, the applicant has already constrained the exercise of these powers by including within the draft DCO the protective provisions in Part 1 of Schedule 5 which provide, amongst other things, that the undertaker must not under the powers of the order acquire or use, or acquire new rights over, any railway property without the consent of Network Rail (paragraph 4(4)).

4.4 The applicant anticipates that the grant of the necessary rights will be agreed with Network Rail together with appropriate asset protection arrangements. However, to provide for the unlikely scenario in which these matters cannot be agreed, the applicant submits that the inclusion of the compulsory purchase powers in the draft order is justified and that

the rights sought over Network Rail's property are necessary and proportionate having regard to the benefits that the proposed development would bring.

- 4.5 The applicant's justification for the powers of compulsory acquisition that it is seeking is set out in section 4 of the Statement of Reasons (Doc. ref. 4.01) which explains how the proposals meet the tests set out in 122 of the Planning Act 2008. The extent of land over which these powers would apply is explained in the applicant's response to the Examining Authority's written question 2.02.
- 4.6 The applicant also notes Network Rail's objection to the power to extinguish rights over land within the draft DCO. The powers to extinguish rights over Network Rail's property in articles 19 and 20 of the draft order, together with the powers in sections 271 and 272 of the Town and Country Planning Act 1990, are constrained by paragraph 4(1) and 4(3) of the protective provisions in Part 1 of Schedule 4 which provide that these powers must not be exercised without the consent of Network Rail. The applicant will discuss these powers with Network Rail as part of the negotiations mentioned above and will seek to ensure that appropriate arrangements are entered into to enable Network Rail to withdraw its objection in relation to this point.

5.0 Health and Safety Executive (HSE)

Risk assessment

5.1 As a result of the presence of 'hazardous substances'¹ at installations within the steelworks site, Tata is already obliged to hold and maintain a 'safety report' for the site under the terms of the Control of Major Accident Hazards Regulations 1999 ("the COMAH Regulations").

5.2 The Overarching National Policy Statement for Energy (EN-1) states at paragraph 4.11.4 that:

Applicants seeking to develop infrastructure subject to the COMAH regulations should make early contact with the Competent Authority². If a safety report is required it is important to discuss with the Competent Authority the type of information that should be provided at the design and development stage, and what form this should take. This will enable the Competent Authority to review as much information as possible before construction begins, in order to assess whether the inherent features of the design are sufficient to prevent, control and mitigate major accidents. The IPC should be satisfied that an assessment has been done where required and that the Competent Authority has assessed that it meets the safety objectives described above.

5.3 Although the proposed development would not itself necessitate the provision of a safety report, the location of the proposed development within an already regulated 'establishment'³ means that it may be necessary for Tata to review and revise the existing safety report in place for the site. Such a review may be required under regulation 8(1) and/or 8(4) of the COMAH Regulations which require operators to review safety reports 'where necessary because of new facts...'(8(1)) or 'where an

1 As defined in regulation 2 of the Control of Major Accident Hazards Regulations 1999.

2 For the proposed development the 'Competent Authority' would be the HSE and NRW acting jointly. See regulation 2 of the COMAH Regulations.

3 As defined in regulation 2 of the COMAH Regulations.

operator proposes to modify the establishment or installation in it...and that modification could have significant repercussions with respect to the prevention of major accidents or the limitation of consequences of major accidents to persons and the environment' and then notify the competent authority of any revisions.

- 5.4 In response to the HSE's comments, Tata proposes to submit to the Examining Authority (ExA) a high-level assessment of the extent and severity of potential major accident hazards. The applicant proposes to carry out this high-level assessment in accordance with the relevant stage of its published risk assessment procedures and expects to be able to provide its report to the ExA by Deadline 6 (23 April 2015) at the latest. This proposal has been welcomed by the HSE, although the HSE has advised the applicant that it is ultimately a matter for the Examining Authority and the Secretary of State to satisfy themselves as to the extent and severity of potential major accident hazards and the suitability of the proposed location.

6.0 National Grid Electricity Transmission Limited (NGET)

- 6.1 NGET has provided the applicant with a draft set of protective provisions and the applicant is currently reviewing these. The applicant is hopeful that it will be able to agree the inclusion of appropriate provisions within the Order to enable NGET to withdraw its objection. The applicant will keep the Examining Authority updated in this respect.

7.0 Associated British Ports (ABP)

Introduction

- 7.1 The applicant notes ABP's concerns regarding the potential impacts of the proposed development on the operational efficiency of the port, and in particular, the water supplies to the dock and the quantity and quality of water abstraction that may be required for the proposed development.
- 7.2 The applicant recognises ABP's statutory functions as owner and operator of the Port of Port Talbot. The applicant has been in discussions with ABP throughout the pre-application process and it has maintained this dialogue through the pre-examination and now examination phases. The most recent meeting between the applicant and ABP was held on 30th January 2015 to discuss the required water abstraction and the potential operational effects on the dock.
- 7.3 These comments on ABP's written representation explain additional modelling which ABP and the applicant are currently developing. The results of this model will be used to identify the appropriate measures which will be taken to ensure the water abstraction requirements of the proposed development will not affect ABP's ability to maintain satisfactory operational water levels within the dock. Once confirmed, it is proposed that these measures will be secured through protective provisions for the benefit of ABP that will be included within the DCO.

Environmental Statement

- 7.4 *Paragraph 5.4* - The applicant regrets that ABP considers Table 14.1 is "perhaps a little disingenuous" as to the project's abstraction and discharge requirements. The note that is included in the table was added to make clear that abstraction and discharges would continue to be required from and to the dock in connection with the existing onsite process. There was no intention to mislead on the part of the applicant,

and the applicant considers that chapter 14 of the ES is clear about the project's abstraction and discharge requirements.

- 7.5 *Paragraph 5.7* – The applicant notes ABP's concern regarding the 'anomalous results' produced by the water balance model that was provided by Natural Resources Wales (NRW). As set out in the ES (paragraph 14.4.17), these anomalies were discussed with ABP and NRW at a meeting on 9 April 2014 (minutes at Appendix 1.8 of the ES).
- 7.6 As outlined in section 14.4.17 of the ES, in the meeting of 9th April 2014 NRW provided advice to the applicant with ABP present on how to address these anomalies and further modelling was undertaken in accordance with this advice. Appendix 14.2 of the ES outlines in section 4 that the anomalies only relate to scenarios using an uncapped flow over the fish pass and therefore additional scenario runs (12-17) were undertaken using capped flows at Q85, as advised by NRW. There was little change in the predicted dock level suggesting that there was some other factor responsible for the anomalies.
- 7.7 The amended model and additional scenario runs were provided to NRW for validation on 29th May 2014 along with the draft chapter and appendices. NRW provided its response on the 25th June 2014 noting that it considered the anomalies presented a low risk (NRW's response is provided in Appendix 1.8 of the ES).
- 7.8 In any event, the applicant considers any uncertainty created by the modelling anomalies will be resolved by the additional modelling that is currently being carried out by the applicant and ABP. This will provide further detail about the impacts of the project's abstraction requirements on the water levels within the dock, and will be used to identify appropriate measures to be implemented by the applicant during times of low flow to ensure the ABP's operations within the dock are not affected.

Abstraction licences

- 7.9 *Paragraph 7.6* – Paragraph 4.7.18 of the ES refers to a potential additional abstraction requirement of approximately 5,000,000 m³/yr on top of the 10,000,000 m³/yr already taken. It is noted that this is slightly above the current abstraction limit of 14,933,610 m³/yr. The applicant notes that this figure represents the outcome of the worst case assumptions that were used for the purposes of the ES. In practice, there will be no exceedance of the allowable limit of 14,933,610 m³/yr as this limit will be imposed through the terms of the environmental permit.
- 7.10 *Paragraph 7.11* - The applicant wishes to provide the following clarification to the points raised by ABP.
- 7.11 The high-level principles of the hierarchy were agreed in principle with NRW, but not the details of how it would be implemented. It was proposed that these measures would be formalised at a later stage and secured by means of a DCO requirement. NRW has now indicated in its response to the Examining Authority's written question 5.48 that it considers a requirement in respect of the water abstraction hierarchy is not required. The applicant will be discussing this issue with NRW, but believes NRW is adopting this position because it considers the existing regulatory framework is the most appropriate means to control abstraction.
- 7.12 If the water abstraction hierarchy is not to be secured by means of a DCO requirement, the applicant considers that the hierarchy (or an equivalent framework or set of principles) should nevertheless be agreed with ABP and other members of the Afan Management Group together with appropriate mechanisms to ensure the water management objectives are achieved and that ABP's operations within the dock are not affected.
- 7.13 Under the hierarchy that has been agreed in principle with NRW, the River Afan is the primary abstraction source, as per the existing

environmental permit. The secondary source may either be the Port Talbot Dock or Nant Ffwrddyllt (rather than the Port Talbot Dock and then the Nant Ffwrddyllt as suggested by ABP in paragraph 7.11 of its written representation).

- 7.14 As noted by ABP, the dock has significantly worse water quality than the Nant Ffwrddyllt. The dock water is very saline and prolonged use of this water source by the proposed development would require an increase the amount of water treatment required prior to use as the increase in salinity would cause salt to crystallise within the condenser of the power station which would ultimately reduce its operational efficiency. For this reason, the applicant would only propose to abstract water from the dock as a last resort and only then for short periods of time.
- 7.15 This position will be recognised in the measures which the applicant is seeking to agree with ABP, which will place greater emphasis on seeking improvements within the proposed development and onsite water use efficiency, as an alternative to abstracting water from the dock.

Abstraction agreements

- 7.16 *Paragraph 8.1* - The applicant acknowledges that it has an existing agreement with ABP regarding abstraction from the dock and that the applicant's pumping station is on land leased from ABP. The applicant's ES does not refer to these agreements because it considers they are not relevant to the powers which are sought in the proposed DCO, as indeed ABP's written representation appears to acknowledge when it states that these details "are not directly relevant to the examination".

Conclusion

- 7.17 Paragraphs 9.1 to 9.9 – The applicant notes the protective provisions and requirements which ABP is suggesting may be appropriate in the DCO to ensure operational water levels are maintained at all times within the dock.

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- 7.18 As noted above, 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. The water management spreadsheet takes account of the maximum abstractive limits the applicant is entitled to within the existing environmental permit and also makes conservative assumptions regarding the outcome of potential improvement works at Greenpark Weir and to the dock gates (which have now been completed).
- 7.19 Once finalised, the spreadsheet will use a number of different low nflow scenarios (Q80, Q85, Q90 and Q95) to clearly outline the potential for improvements within the system either at Greenpark Weir or through efficiency measures within the applicant's steelmaking operations, and also where there may need to be improvements to the water impounding mechanisms used by the applicant. The spreadsheet also recognises the assumption that it is likely that the applicant's actual abstraction requirements will be less than those assessed in the ES due to increases in technological efficiency.
- 7.20 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. The measures being considered include impoundment of water by the applicant, and greater water efficiency and utilisation measures, which must be implemented before water is abstracted from the alternative sources (i.e. the dock and the Nant Ffrwdwyllt). The spreadsheet recognises that, as the dock feeder channel requires water from the River Afan, alternative measures will have to be implemented during times of extremely low flow.
- 7.21 Once the spreasheet has been finalised, the assumption agreed, and the appropriate mitigation measures identified, the applicant proposes to secure their implementation through protective provisions to be included in the DCO for the benefit of ABP. These measures have yet to be

developed through discussions with ABP, but the applicant expects these measures to address the specific issues raised by ABP in the conclusion to its written representation. In particular, it is expected that the measures will include:

- a) ABP's agreement to the principles of an abstraction hierarchy and how it is to be communicated and implemented;
- b) measures to be implemented by the applicant before water is abstracted from the dock and the Nant Ffrwdwyllt;
- c) notification and consultation requirements in respect of changes to abstraction rates and sources; and
- d) a requirement to provide detailed abstraction records to ABP on a regular basis.

7.22 ABP had indicated its approval in principle to this approach to securing the appropriate mitigation measures, and the applicant will develop the protective provisions in dialogue with ABP once the results of the modelling are confirmed. The applicant will keep the Examining Authority updated.