

The Proposed Port Talbot Steelworks (Power Generation Enhancement) Order

**Request issued by the Examining Authority under rule 8(3) and rule 17 on
15 May 2015**

Applicant's Response

Development Consent Order - Question 3.4.1

ARTICLE 26 and SCHEDULE 5 – PROCEDURES AND DEADLINES

The current drafting within DCO Rev 4 imposes procedures and deadlines on the Local Planning Authority (NPTCBC) and the Secretary of State (SoS) that are more onerous than those under the Town and Country Planning Act (TCPA).

Can the applicant provide evidence to justify, in the case of the proposed development, why such drafting is considered necessary and why it has been adopted in favour of the TCPA approach.

1. Applicant's response

1.1 Please note that in revision 4 of the draft DCO the relevant provisions are contained in Schedule 4. However, in light of the ExA's request to amend the Protective Schedules (see item 3 below), the applicant will rearrange the sequence of the DCO and the relevant schedule (procedure for the discharge of requirements) will be reinstated as Schedule 5.

1.2 Article 26 and Schedule 5 (Procedure for discharge of requirements) set out procedures and deadlines for:

1.2.1 the determination by Neath Port Talbot County Borough Council (NPTCBC) of applications for the discharge of the requirements set out at Schedule 2 to the DCO by NPTCBC; and

1.2.2 the determination of appeals in the event that NPTCBC refuses an application to discharge a requirement.

1.3 The applicant has set out below why the proposed drafting is considered necessary in each case, and why it has been adopted in favour of the TCPA approach.

Procedures and deadlines for the relevant planning authority (paragraphs 1 and 2 of Schedule 5)

1.4 The applicant considers it is necessary for the DCO to impose procedures and deadlines for the discharge of requirements because

no provision is made in the Planning Act 2008 and its related secondary legislation as to how requirements should be discharged. Some DCO applicants have done this by applying the procedures and timescales that apply under the TCPA to the discharge of planning conditions (see, for example, article 4 of the Brechfa Forest West Wind Farm Order 2013).

- 1.5 As the ExA will be aware, there is nothing within the 2008 Act, CLG Guidance or PINS Advice Notes which requires the TCPA procedures to be applied. Development consents granted under the 2008 Act are outside the TCPA regime and there is no presumption that elements of the TCPA regime should be applied.
- 1.6 The applicant has not adopted the TCPA approach because it considers that including a bespoke set of provisions within the DCO provides greater certainty and allows for the procedures and timescales to be drafted to reflect the specific nature of the proposed development and the extent and complexity of the requirements in Schedule 2. As previously noted in our response to the ExA's question 2.4.1, the same approach has been adopted in a number of made DCOs including the National Grid (North London Reinforcement Project) Order 2014 and the Thames Tideway Water Utilities (Thames Tideway Tunnel) Order 2014.
- 1.7 In the applicant's case, the procedures and timescales imposed on NPTCBC by paragraphs 1 and 2 are not, in fact, more onerous than those imposed under the TCPA in respect of the discharge of planning conditions. The relevant TCPA procedures are contained within the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 ("the DMP Order"). Article 23 of the DMP Order provides that:

where an application has been made to a local planning authority for any consent, agreement or approval required by a condition or limitation attached to a grant of planning permission... the authority must give notice to the applicant of their decision on the application within a period of 8 weeks beginning with the date on which the application was received by the authority, or such longer period as may be agreed by the applicant and the authority in writing.

- 1.8 This 8 week period is mirrored by paragraph 1(b) of Schedule 5 in relation to the discharge of all requirements with the exception of requirement 4. For requirement 4, a longer period of 12 weeks was originally provided. Following further discussions with NPTCBC regarding the arrangements for the discharge of requirements, the parties have agreed that this period should be extended to 16 weeks.
- 1.9 This extended period reflects the extent and complexity of requirement 4 which will require NPTCBC to consider and approve the detailed design of the major elements of the authorised development. The 16

week period for determining an application in respect of requirement 4 is the same period that applies to applications to discharge reserved matters in respect of EIA development under the TCPA regime.

- 1.10 A revised version of Schedule 5 which reflects this amendment is appended to this response. A comparison against the wording of Schedule 5 to revision 4 of the DCO is also appended.
- 1.11 The principal time limit of 8 weeks which applies under Schedule 5 is consistent with the National Planning Practice Guidance on discharging conditions which states (paragraph 034¹):

Development that is ready to proceed should not be held back by delays in discharging planning conditions. In most cases where the approval is straightforward it is expected that the local planning authority should respond to requests to discharge conditions without delay, and in any event within 21 days. Where the views of a third party such as a statutory consultee are required to discharge a condition, every effort should be made to ensure that the 21 day requirement can still be met.

The local planning authority must give notice to the applicant of its decision within a period of 8 weeks from the date the request was received, or any longer period agreed in writing between the applicant and local planning authority. If no extension of time is agreed for discharging the condition after 12 weeks, the local planning authority must return the fee to the applicant without further delay along with a decision on the request.

- 1.12 Paragraph 2 (further information) of Schedule 5 includes a process covering requests by NPTCBC to the applicant for further information. The applicant considers these provisions are more suitable than the TCPA provisions and, where additional information is required, provide the local planning authority with more time than would be the case under the TCPA regime.
- 1.13 Paragraphs 1(2)(a)(ii) and 1(2)(b)(ii) of Schedule 5 recognise that the receipt of additional information may necessitate additional time for review by NPTCBC. Under Schedule 5, in the event that further information is requested by NPTCBC the 8 (or 16) week determination period is extended by up to 21 days, an additional period of time not provided for within the DMP Order.
- 1.14 Under the TCPA, the local planning authority are obliged to determine the application within 8 weeks, notwithstanding that additional information may have been requested and without regard for the date on which that information is ultimately received (which may be sometime after it is requested). In contrast, Schedule 5 ensures that the specified time limit (8 or 16 weeks depending on the requirement in

¹ Reference Code 21a-034-20140306

question) does not commence until the additional information has been received by NPTCBC.

- 1.15 The applicant considers that the 21 day deadline (from receipt of the application) for *requests* for further information is therefore reasonable, to ensure that the time limit for determination of the application is not overly extended. This 21 day deadline will also require the local planning authority to undertake an initial review of the application within the first 21 days, ensuring that issues are identified early, supporting an efficient and streamlined approvals process. Should the local planning authority require additional time to request further information, this can be agreed with the applicant under paragraph 2(4) of Schedule 5.
- 1.16 This approach is consistent with the first paragraph of the National Planning Practice Guidance on the discharge of conditions (copied above) which indicates that local authorities "*should respond to requests to discharge conditions without delay, and in any event within 21 days*", even when third parties are also involved.
- 1.17 The approach adopted by the applicant is consistent with the advice issued by PINS. Paragraph 21.2 of Advice Note 15 (drafting Development Consent Orders) states that applicants should engage with LPAs and other key stakeholders to "agree the best approach to discharging the requirements, for example to agree a proportionate timescale for discharging depending on the extent or complexity of detail reserved for subsequent approval."
- 1.18 The applicant has held discussions with NPTCBC and the parties have now agreed the timescales set out in Schedule 5 (as described above) and other arrangements for the discharge of requirements. The applicant and NPTCBC will be entering into a Planning Performance Agreement that will confirm the arrangements that will apply to the discharge of the requirements (including the fees payable). The procedures and timescales set out in Schedule 5 are consistent with the terms of the agreement. The agreement will also make provision for the applicant and NPTCBC to engage in dialogue prior to the submission of applications to discharge requirements. This dialogue will help to ensure that applications are properly developed prior to formal submission and will assist in ensuring the agreed timescales for determination are met.
- 1.19 Accordingly, in the context of the proposed development, the applicant considers that paragraphs 1 and 2 of Schedule 5 (as revised) are appropriate and proportionate and do not impose procedures or timescales on NPTCBC which are more onerous than those which apply under the TCPA regime.

Procedures and Deadlines for appeals to the Secretary of State (paragraph 3)

- 1.20 As set out in the applicant's response to the ExA's question 2.4.1, the applicant has not applied the TCPA appeal provisions principally because of the uncertainty as to the procedure and timescales by which any such appeal would be determined.
- 1.21 Appeals under the TCPA may be determined by written representations, a hearing or a local inquiry. The timescales for each procedure vary but, in the case of a hearing or a local inquiry, it typically takes between 22 to 30 weeks for the appeal to be determined. The applicant considers this uncertainty as to procedures and timescales is inconsistent with the streamlined consenting regime established by the Planning Act and could result in significant delays to the implementation of the authorised development following the making of the DCO.
- 1.22 Accordingly, to provide greater certainty, Schedule 5 sets out a clear procedure by which appeals relating to the requirements would be determined through written representations. This approach is consistent with the 'good practice point' made in PINS Advice Note 15 which recommends that "a mechanism for dealing with any disagreement between the applicant and the discharging authority is defined and incorporated in a DCO schedule".
- 1.23 The appeal process provided for by Schedule 5 is broadly similar to the written representations appeal process for non-householder appeals set out in the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009.
- 1.24 The applicant acknowledges, however, that the deadlines imposed on the Secretary of State by:
- 1.24.1 paragraph 3(2)(b) (deadline for appointment of person to determine the appeal (20 days)); and
- 1.24.2 paragraph 3(2)(e) (deadline for determination following receipt of counter submissions (30 days),
- are more onerous than apply under the TCPA regime.
- 1.25 In light of the ExA's rule 17 request, the applicant has reviewed these provisions and has replaced the more onerous deadlines with wording which requires these obligations to be discharged 'as soon as reasonably practicable'. The amended wording is included in a revised version of Schedule 5 to the DCO which is appended to this response.
- 1.26 The applicant also considers that two further amendments to paragraph 3 are necessary.

- 1.27 The applicant has also amended paragraph 3(1) to provide the undertaker with a right to appeal where the application has not been determined by the relevant planning authority within the time periods set out in paragraph 1.
- 1.28 This additional provision is considered necessary to support the imposition of those time periods and to provide a mechanism to ensure that a failure to determine an application does not unduly delay the implementation of the authorised development. The drafting used is consistent with the approach taken in The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (see paragraph 4(1)(a) of Schedule 17). As noted above, the time limits imposed on the relevant planning authority in Schedule 5 have been agreed with NPTCBC.
- 1.29 An additional provision has been added as a new paragraph 3(2)(a) which imposes a 42 day time period in which the undertaker may appeal. This provision is necessary to limit and provide certainty over the period in which a decision is subject to challenge. Again, the drafting used follows the approach taken in The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (see paragraph 3(2)(a) of Schedule 17).
- 1.30 The above amendments are included in a revised version of Schedule 5 to the DCO which is appended to this response.

Development Consent Order - Question 3.4.2

SCHEDULE 2 – REQUIREMENT 4: DETAILED DESIGN - MAXIMUM DIMENSIONS

In order to provide the Secretary of State with certainty over the scale of the works included within the DCO, should it be granted, can the applicant confirm, as stated in paragraph 2.4.2.6 of the applicant's response to ExA's second round of written questions (Doc Ref: ExAWQ2.01) there is no intention to increase the overall height of the cooling tower unit, turbine hall or boiler house elements, whether Requirement 4 (3) could be amended to only allow variations to columns (3): Maximum Width and column (4) Maximum Length.

2. Applicant's response

Cooling Tower Unit

- 2.1 Requirement 4(3) only provides ability for the relevant planning authority to approve minor or immaterial amendments to the dimensions of the turbine hall and the boiler house. There is no ability under the draft DCO to amend any of the parameters (including the height) of the cooling tower unit.

Boiler House and Turbine Hall

- 2.2 Paragraph 2.4.2.6 of the applicant's response to ExA's second round of written questions is referring to the document submitted to the ExA on 8 December 2014 (doc. ref. 10.6 – "the December document") which explained the applicant's proposals to extend the maximum permitted widths of the cooling tower unit and the turbine hall from the figures set out in version 0 of the draft DCO.
- 2.3 In explaining those proposals, the December document explained that the increased dimensions only related to the width of those buildings and that "no revision is needed to the maximum height or length of the buildings".
- 2.4 The increase to the maximum permitted width of the cooling tower and turbine hall which was set out in the December document is a separate point from the ability under the requirement 4(3) of the draft DCO for the local planning authority to approve minor or immaterial amendments to the maximum height, width or length of the turbine hall and boiler house.
- 2.5 The current drafting of requirement 4(3) reflects the applicant's preferred position, which is that the relevant planning authority should be able to approve minor or immaterial amendments to the maximum length, width or height of the boiler house or the turbine hall. This mechanism is regarded as necessary to ensure that so that minor extensions to these buildings which emerge as part of the detailed design (half a meter to the width of the turbine hall, for example) would not be outside the scope of the consent.
- 2.6 Any such approval would be subject to the two conditions set out at requirement 4(3) which is that the amendments:
- 2.6.1 will not result in the parameters set out in column (5) of the tables being exceeded for the relevant building; and
- 2.6.2 have been demonstrated to the satisfaction of the relevant planning authority as being unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.
- 2.7 The applicant considers therefore that the drafting of requirement 4(3) should not be amended. The applicant considers that the current drafting is consistent with Advice Note 15 by providing the relevant planning authority with some ability to approve final details but without allowing it to *'stray outside the parameters set for the development as part of the examination process'*² (i.e. the maximum areas and volumes set out in column (5) of the tables).

² see paragraph 19.4 of Advice Note 15: Drafting Development Consent Orders

- 2.8 If the Examining Authority and Secretary of State do not find this approach acceptable, the applicant has provided alternative drafting at Appendix J to the applicant's answers to ExA's second written questions (doc. ref. ExAWQ2.01). This alternative wording would prevent any of the maximum individual dimensions of any of the project components from being exceeded.

Development Consent Order – Question 3.4.2

GENERAL FORMAT AND DRAFTING

Can the applicant provide a version of the draft DCO in the correct statutory instrument format (See paragraph 1 of Advice note fifteen: Drafting Development Consent Orders). In particular, the current version uses nonstandard article numbering (by, for example, carrying the numbering through between the main body and the schedules). This will need to be corrected, along with all affected cross references within the DCO.

Can the applicant combine articles 21-25 into a single article in order to remove superfluous text, with the relevant protective provisions set out as parts of a single schedule. As an example of the usual drafting approach, see article 53 and schedule 16 of the Thames Tideway DCO.

3. Applicant's response

- 3.1 Revision 4 of the draft DCO submitted at Deadline 7 was prepared on the SI template and the applicant considers the numbering is standard and in accordance with the relevant guidance.
- 3.2 The numbering of articles and paragraphs in revision 4 is not continuous between the main body of the Order and the Schedules. The paragraphs in each Schedule re-commence at 1. We have noted, however, that the numbering of Schedule 4 contained an error and included paragraph numbering which is continuous with Schedule 3. This error was caused by a technical fault in the SI template and will be corrected in a further draft of the draft DCO which will be submitted to the EXA next week (revision 5).
- 3.3 As the ExA has now issued a further rule 17 request (dated 20 May 2015) which also asks for a final preferred draft DCO to be submitted by 28 May, the applicant will submit revision 5 of the DCO at that deadline rather than with this response.
- 3.4 Draft DCO revisions 1 to 3 contained a single Schedule for the protective provisions (Schedule 4) which was separated into Parts for each protected party. As set out in the explanatory notes to Revision 4 of the DCO (doc. ref. EN-3.01Rev.4), the applicant chose to revise the draft DCO to create a number of separate Schedules (one for each

protected party). The applicant considers this structure is clearer and makes the document more user-friendly.

- 3.5 However, in response to the ExA's request, the applicant will revert to the original approach and revise the draft DCO as requested. All protection provisions will be included in a single schedule 4 which is separated into parts. The changes will be included in revision 5 of the draft DCO which will be submitted to the ExA by 28 May.

Book of Reference - Question 3.4.3

PART 4 - CROWN LAND

Can the applicant provide evidence of the Welsh Government's response with respect to the Crown's consent to the inclusion of the provision as described in paragraph 17 of the explanatory document (Doc Ref: EN-4.03Rev1).

4. Applicant's response

- 4.1 A letter from the Welsh Government dated 21 May 2015 is submitted to the ExA with this response.
- 4.2 The applicant will review the letter and will include any necessary amendments within revision 5 of the draft DCO to be submitted to the ExA by 28 May 2015.

22 May 2015

APPENDIX

Revised drafting for Schedule 5 to the draft DCO

Procedure for discharge of requirements

Applications made under requirements

1.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement (including agreement or approval in respect of part of a requirement) included in this Order the relevant planning authority must give notice to the undertaker of its decision on the application before the end of the decision period.

(2) For the purposes of sub-paragraph (1), the decision period is—

(a) in the case of requirement 4—

- (i) where no further information is requested under paragraph 2, 16 weeks from the day immediately following that on which the application is received by the relevant planning authority;
- (ii) where further information is requested under paragraph 2, 16 weeks from the day immediately following that on which the further information is received by the relevant planning authority; or
- (iii) such longer period as may be agreed by the undertaker and the relevant planning authority in writing before the end of the period in sub-paragraph (b)(i) or (b)(ii); and

(b) in the case of any other requirement—

- (i) where no further information is requested under paragraph 2, 8 weeks from the day immediately following that on which the application is received by the relevant planning authority;
- (ii) where further information is requested under paragraph 2, 8 weeks from the day immediately following that on which the further information is received by the relevant planning authority; or
- (iii) such longer period as may be agreed by the undertaker and the relevant planning authority in writing before the end of the period in sub-paragraph (i) or (ii).

Further information

2.—(1) In relation to any application to which this Schedule applies, the relevant planning authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) If the relevant planning authority considers such further information is necessary and the requirement does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates.

(3) If the requirement specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within 2 business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within 1 business day of receipt of such a request and in any event within 21 business days of receipt of the application.

(4) In the event that the relevant planning authority does not give a notification under sub-paragraph (2) or (3) within 21 business days of receipt of the application it shall be deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

(5) Where further information is requested under this paragraph 2 in relation to part only of an application, that part must be treated as separate from the remainder of the application for the purposes of calculating the time periods mentioned in paragraph 1(2) and paragraph 2.

Appeals

3.—(1) The undertaker may appeal in the event that—

- (a) the relevant planning authority—
 - (i) refuses an application for any consent, agreement or approval required by a requirement included in this Order;
 - (ii) does not determine such an application within the time period set out in paragraph 1; or
 - (iii) grants it subject to conditions;
- (b) on receipt of a request for further information pursuant to paragraph 2 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (c) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) expiry of the time period set out in paragraph 1;
- (b) the undertaker must submit the appeal documentation to the Secretary of State and on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultee (if applicable);
- (c) as soon as reasonably practicable after receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person’s attention should be sent;
- (d) the relevant planning authority and the requirement consultee (if applicable) may submit written representations in respect of the appeal to the appointed person within 20 business days beginning with the day immediately following the date on which the appeal parties are notified of the appointment of the appointed person and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties may make any counter-submissions to the appointed person within 20 business days of receipt of written representations made under sub-paragraph (d); and
- (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) The appointment of a person under paragraph (2)(c) may be made by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) If the appointed person considers that further information is necessary to consider the appeal the appointed person must as soon as is practicable notify the appeal parties in writing specifying the further information required.

(5) Any further information specified under sub-paragraph (4) must be provided by the undertaker to the appointed person, the relevant planning authority and the requirement consultee (if applicable) on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the specified date but must otherwise be in accordance with the process and time limits set out in sub-paragraph (2)(d) to (f).

(6) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal, or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(7) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(8) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears that there is sufficient material to enable a decision to be made on the merits of the case.

(9) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(10) If an approval is given by the appointed person pursuant to this Schedule, it shall be deemed to be an approval for the purpose of Schedule 2 to this Order as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the appointed person's determination.

(11) The appointed person may or may not be a member of the Planning Inspectorate but shall be a qualified town planner of at least 10 years' experience.

(12) Except where a direction is given under sub-paragraph (13) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(13) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it shall be made, the appointed person must have regard to Welsh Government Circular NAFWC 07/2003 Planning (and analogous) Appeals and Call-in Procedures or any circular or guidance which may from time to time replace it.

COMPARISON AGAINST REVISION 4

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

1.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement (including agreement or approval in respect of part of a requirement) included in this Order the relevant planning authority must give notice to the undertaker of its decision on the application before the end of the decision period.

(2) For the purposes of sub-paragraph (1), the decision period is—

(a) in the case of requirement 4—

(i) where no further information is requested under paragraph 2, ~~12~~ 16 weeks from the day immediately following that on which the application is received by the relevant planning authority;

(ii) where further information is requested under paragraph 2, ~~12~~ 16 weeks from the day immediately following that on which the further information is received by the relevant planning authority; or

(iii) such longer period as may be agreed by the undertaker and the relevant planning authority in writing before the end of the period in sub-paragraph (i) or (ii); and

(b) in the case of any other requirement—

(i) where no further information is requested under paragraph 2, 8 weeks from the day immediately following that on which the application is received by the relevant planning authority;

(ii) where further information is requested under paragraph 2, 8 weeks from the day immediately following that on which the further information is received by the relevant planning authority; or

(iii) such longer period as may be agreed by the undertaker and the relevant planning authority in writing before the end of the period in sub-paragraph (i) or (ii).

Further information

2.—(1) In relation to any application to which this Schedule applies, the relevant planning authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) If the relevant planning authority considers such further information is necessary and the requirement does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates.

(3) If the requirement specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within 1 business day of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within 1 business day of receipt of such a request and in any event within 21 business days of receipt of the application.

(4) In the event that the relevant planning authority does not give a notification under sub-paragraph (2) or (3) within 21 business days of receipt of the application it shall be deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

(5) Where further information is requested under this paragraph 2 in relation to part only of an application, that part must be treated as separate from the remainder of the application for the purposes of calculating the time periods mentioned in paragraph 1(2) and paragraph 2.

Appeals

3.—(1) The undertaker may appeal in the event that—

(a) the relevant planning authority -

(i) refuses an application for any consent, agreement or approval required by a requirement included in this Order;

(ii) does not determine such an application within the time period set out in paragraph 1; or

(iii) grants it subject to conditions,

(b) on receipt of a request for further information pursuant to paragraph 2 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or

(c) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

(a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) expiry of the time period set out in paragraph 1;

~~(a)~~ (b) the undertaker must submit the appeal documentation to the Secretary of State and on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultee (if applicable);

~~(b)~~ (c) ~~within 20 business days of~~ As soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal (“the appointed person”) and must ~~as soon as practicable~~ notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person’s attention should be sent;

~~(c)~~ (d) the relevant planning authority and the requirement consultee (if applicable) may submit written representations in respect of the appeal to the appointed person within 20 business days beginning with the day immediately following the date on which the appeal parties are notified of the appointment of the appointed person and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

~~(d)~~ (e) the appeal parties may make any counter-submissions to the appointed person within 20 business days of receipt of written representations made under sub-paragraph (c); and

~~(e)~~ (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable ~~and in any event within 30 business days of the deadline for the receipt of counter-submissions made under sub-paragraph (d).~~

(3) The appointment of a person under paragraph (2)(b) may be made by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) If the appointed person considers that further information is necessary to consider the appeal the appointed person must as soon as is practicable notify the appeal parties in writing specifying the further information required.

(5) Any further information specified under sub-paragraph (4) must be provided by the undertaker to the appointed person, the relevant planning authority and the requirement consultee (if applicable) on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the specified date but must otherwise be in accordance with the process and time limits set out in sub-paragraph (2)(c) to (e).

(6) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal, or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to the appointed person in the first instance.

(7) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(8) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears that there is sufficient material to enable a decision to be made on the merits of the case.

(9) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(10) If an approval is given by the appointed person pursuant to this Schedule, it shall be deemed to be an approval for the purpose of Schedule 2 to this Order as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the appointed person’s determination.

(11) The appointed person may or may not be a member of the Planning Inspectorate but shall be a qualified town planner of at least 10 years’ experience.

(12) Except where a direction is given under sub-paragraph (13) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(13) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it

shall be made, the appointed person must have regard to Welsh Government Circular NAFWC 07/2003 Planning (and analogous) Appeals and Call-in Procedures or any circular or guidance which may from time to time replace it.



21 May 2015

3/18 Eagle Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Dear Sirs

**THE PROPOSED PORT TALBOT STEELWORKS (POWER GENERATING
ENHANCEMENT) ORDER
PLANNING INSPECTORATE REFERENCE NUMBER: EN010062**

The Welsh Ministers confirm that, for the purposes of section 135 of the Planning Act 2008 ("PA 2008"), The Welsh Ministers consent to the making of the Order, subject to the inclusion of an Article , materially in the form below, in the Order:
Crown rights

[] —(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular nothing in this Order authorises the undertaker or any licensee to—

- (a) take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—
 - (i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners; or
 - (ii) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
 - (iii) belonging to a government department or the Welsh Government or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions, and is deemed to have been given in writing where it is sent electronically.



In relation to the provisions in the Order regarding compulsory purchase powers which Tata Steel UK Limited may be seeking in relation to interests in The Welsh Ministers' land falling within Section 135(1) PA 2008, The Welsh Ministers consent to their inclusion in the Order, The Welsh Ministers however reserve their rights as regards the consent of The Welsh Ministers to the exercise of such compulsory purchase powers, as provided for in section 135(1)(b) PA 2008 and expressly confirmed by Part 5 of the draft Order. The grant of consent to exercise such compulsory purchase powers, which remains at the discretion of The Welsh Ministers will be conditional upon:-

1. Tata Steel UK Limited, the relevant holder of an interest in Crown land (as defined in Section 135(1) PA 2008 and The Welsh Ministers having first worked to find a solution which avoids the use of such compulsory purchase powers; and
2. Welsh Ministers require early and ongoing engagement in relation to addressing the interests of The Welsh Ministers and any relevant interests falling within Section 135(1) PA 2008 (as defined).

The approvals provided in this letter are conditional upon the draft Article being included in the Order and any other provisions of the draft Order which are subject to Sections 135(1) and 135(2) PA 2008 remaining materially as stated in the draft Order (Version 3.01 Rev 2 March 2015) The Welsh Ministers will require further consultation with it if any variation to the draft Order is proposed during the examination period which could affect such provisions.

The Welsh Ministers have a range of functions which will continue to accrue and be amended and the decisions in relation to each such function are obliged to be taken in the light of all relevant and to the exclusion of all irrelevant considerations. Nothing contained or implied in or arising under or in connection with this letter shall in any way prejudice fetter or affect the functions of The Welsh Ministers or any of them nor oblige The Welsh Ministers or any of them to exercise or refrain from exercising any of their functions in any particular way.

This request falls within the portfolio of the Minister for Economy, Science and Transport. This letter is approval issued in accordance with Section 135(2) PA 2008, subject to the conditions referred to above.

Yours faithfully

A large black rectangular redaction box covering the signature area of the letter.

Gwenllian Roberts
Deputy Director Energy & Environment Sector