



Department  
of Energy &  
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8 December 2015

Dear Mr Simms

**PLANNING ACT 2008**

**APPLICATION FOR THE PORT TALBOT STEELWORKS GENERATING  
STATION ORDER**

**1. Introduction**

- 1.1 I am directed by the Secretary of State for Energy and Climate Change ("the Secretary of State") to advise you that consideration has been given to the Report dated 9 September 2015 of the Examining Authority, Roger Eyre ("the ExA"), who conducted an examination into the application ("the Application") dated 7 August 2014 by Tata Steel UK Limited ("the Applicant") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("the Act") for the Internal Power Generation Enhancement for Port Talbot Steelworks ("the Development").
- 1.2 The Application was accepted for examination on 2 September 2014. The Preliminary Meeting was held on 9 December 2014, with the examination beginning the following day. A number of hearings to consider aspects of the Application were held during the examination before it was completed on 9 June 2015.
- 1.3 The Order as applied for would grant development consent for the construction and operation of an electricity generating station with a proposed installed capacity of up to 150MW which would largely utilise waste gases from the Port Talbot Steelworks to generate electricity for use within the steelworks plant (with any surplus being transmitted to the local electrical grid infrastructure). The Development would be located within the site of the Port Talbot Steelworks which is owned by the Applicant.
- 1.4 The Development, as applied for, would comprise the following principal elements:

- up to two steam boilers and their associated stacks (maximum 80 metres in height), annexe bay and boiler house;
- a turbine hall housing turbine sets and associated condensers;
- cooling tower units;
- an electrical switchgear station building;
- a condensate storage tank and additional condensate polishing units;
- water treatment plant and chemical dosing system skids;
- administration, workshop, pump house, gas booster house, control buildings and ancillary infrastructure;
- the extension of existing pipe work connections (for water, nitrogen, process gases, natural gas and compressed air) from the existing on site utilities pipe work infrastructure to the generating station. All the extended pipe work will be contained within the Order limits (as defined in the Order);
- a 66 kilovolt electrical connection either underground or supported off existing structures, approximately 2.8 kilometres in length to connect the generating station to the existing on-site substations on the southeast of the site;
- security infrastructure, including perimeter fencing and site lighting infrastructure;
- connections to the existing internal road layout for the provision of site vehicular access(es), roads, pedestrian network, parking and cycle storage;
- temporary construction compounds; and
- connection to site drainage systems.

1.5 The Applicant proposes that the Order should include provisions which would permit the construction of the Development in two phases if needed: option 1 would involve the construction of the Development in one phase, while option 2 would see construction in two phases, with the commencement of the second phase occurring up to 10 years after the commencement of the first phase. Further consideration of this matter can be found at paragraphs 4.12 – 4.14 below.

1.6. Published alongside this letter on the Planning Inspectorate's web-site is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the ExA's Report"). The ExA's findings and conclusions are set out in chapters 4, 5, and 6 of the

ExA's Report and the Summary of Findings and Conclusions is at chapter 8. Also published alongside this letter is the Secretary of State's Habitats Regulations Assessment.

## **2. Summary of the ExA's Report and Recommendation**

2.1 The main issues considered during the examination on which the ExA reached conclusions on the case for development consent were:

- a) air quality and emissions;
- b) biodiversity, biological environment, ecology and geological conservation;
- c) civil and military aviation and defence interests;
- d) climate change mitigation and adaptation;
- e) commercial impacts;
- f) common law nuisance and statutory nuisance;
- g) dust and other potential nuisance;
- h) flood risk;
- i) historic environment;
- j) land use;
- k) landscape and visual impacts;
- l) noise and vibration;
- m) pollution control and other environmental regulatory regimes;
- n) safety;
- o) security considerations;
- p) socio-economic impacts;
- q) traffic and transport;
- r) waste management;
- s) water quality and resources; and
- t) compliance with the Water Framework Directive.

2.2 The ExA also considered the terms of the draft Order sought. For the reasons set out in the ExA's Report, the ExA recommends [ER 8.1.12] that the Order should be made, as set out in Appendix A to the Report. (All numbered references, unless otherwise stated, are to paragraphs of the ExA's Report (specified in the form, ER X.XX.XX).)

## **3. Summary of the Secretary of State's Decision**

3.1 The Secretary of State has decided under section 114 of the Act to make, with modifications, an Order granting development consent for the proposals in the Application. This letter is a statement of reasons for the Secretary of State's decision for the purposes of section 116 of the Act and the notice and statement required by regulations 23(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("the 2009 Regulations").

#### **4. The Secretary of State's Consideration of the Application**

- 4.1 The Secretary of State has considered the ExA's Report and all other material considerations. The Secretary of State's consideration of the ExA's Report is set out in the following paragraphs.
- 4.2 In making her decision, the Secretary of State has had regard to the National Policy Statements referred to in paragraph 4.4 below, the Local Impact Reports submitted by Neath Port Talbot County Borough Council ("NPTCBC") and the City and County of Swansea Council, the NPTCBC Development Plan [ER 4.4] and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the Act. The Secretary of State also confirms for the purposes of regulation 3(2) of the 2009 Regulations that she has taken into consideration the environmental information as defined in regulation 2(1) of those Regulations. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.
- 4.3 Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the ExA's Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of its conclusions and recommendations.

#### Need for the Proposed Development

- 4.4 The ExA sets out [ER 8.1.1] that Development is in line with, and supports, the Government's policy objectives as set out in: the Overarching National Policy Statement for Energy (EN-1), the National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2), the National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4), the National Policy Statement for Electricity Networks (EN-5) and the National Planning Policy Statement for Ports.
- 4.5 The ExA also concludes [ER 8.1.9] that the Development conforms to, and supports, Welsh and local planning policy.
- 4.6 In addition, the ExA [ER 8.1.2] considers that the Development would contribute to meeting the requirement for energy capacity by reducing the need for electricity imports from the national grid system. The ExA also highlights the economic benefits of the Development's contribution to reducing costs at the steelworks thus helping to make it more competitive. The Secretary of State agrees with the ExA's conclusions in these matters.

#### Water Framework Directive

- 4.7 The Secretary of State notes that the proposed abstraction of water from water bodies for use in the Development has the potential to have impacts on those bodies. The Secretary of State also notes that the

ExA considered whether that abstraction would have any adverse effects on the achievement of the environmental objectives established under the Water Framework Directive ("WFD") in respect of water bodies in and around Swansea Bay in the Western Wales River Basin District. Natural Resources Wales ("NRW") also considered the impacts on WFD requirements and indicated [ER 4.37.15] that it had "no concerns regarding the estimated abstraction volumes during the construction period or longer term, as the proposed volumes do not exceed the existing licensed quantities".

- 4.8 However, in reading the ExA's and NRW's views on the matter, the Secretary of State was unclear whether a derogation under Article 4(7) of the WFD was needed in respect of the Development. In light of the duty in regulation 17 of the Water Environment (Water Framework Directive)(England and Wales) Regulations 2003 to have regard when exercising her functions to the River Basin Management Plan for the Western Wales River Basin District; and in the light of the UK's obligations under the WFD, the Secretary of State decided to consult with NRW on 29 October 2015 to seek further information on WFD issues in relation to the River Afan and any other potentially affected water body.
- 4.9 In response to the consultation, NRW stated in its letter of 5 November 2015 that the proposed Development was not predicted to result in a deterioration in the current WFD status of the River Afan nor to prevent the River Afan from achieving future WFD objectives. NRW did not indicate that there were any other water bodies in respect of which the environmental objectives of the WFD would be adversely affected by the Development and gave no indication that a derogation from the WFD under Article 4(7) was necessary. In the light of NRW's comments and the position set out by the ExA in its Report, the Secretary of State concludes that that the Development would not lead to a deterioration in the current WFD status of any relevant water bodies within the Western Wales River Basin District and would not prevent such bodies from achieving future WFD objectives; and that no derogation from the WFD is, therefore, needed.

#### Protective Provisions for Associated British Ports ("ABP")

- 4.10 The Secretary of State is aware that the proposed Development has the potential to impact upon the operation of the Port Talbot docks facility which is owned and operated by ABP through the abstraction of water from the docks for use in the generation of electricity. ABP, which supports the Development in principle, and the Applicant have been seeking to agree terms that would provide the former with a suitable level of comfort that its operations would not be compromised by abstraction lowering water levels to a point that would preclude some port operations from taking place. At the time the examination of the application closed, ABP and the Applicant had not agreed protective provisions that would offer the sought-after comfort, and the Order recommended by the ExA included protective provisions that the ExA thought suitable (in Part 5 of Schedule 4 to the ExA's recommended Order).



- 4.11 The Secretary of State wrote to ABP and the Applicant following the receipt of the ExA's Report to ask whether agreement had been reached on the protective provisions. In response, ABP and the Applicant stated that they had considered the need for protective provisions to be included in the Order and concluded that the matters could be resolved by means of separate agreements outside the terms of the Order. The two parties considered, therefore, that there was no need for protective provision to be included in the Order. The Secretary of State notes the views of the parties and agrees with them. She has, therefore, removed the provisions in respect of ABP from the Order as made.

#### Phased Approach

- 4.12 The Applicant proposes that the Order should permit the construction of the Development in two phases if current and predicted market forces relating to steel as a commodity indicate that that would be a more favourable option from an economic point of view. Option 1 would involve the construction of the Development in a single phase: this is the Applicant's preferred outcome. Option 2 would see construction take place in two phases, with the second phase – covering the remaining half of the plant – commencing within 10 years of the commencement of the first stage of the project. Whichever option is chosen, the Development must be commenced within 5 years of the grant of consent.
- 4.13 Option 2 potentially spreads the construction of the whole Development over a longer period which would spread impacts over a prolonged period of time. However, each of the options was considered in the Applicant's Environmental Statement and the ExA's Report does not record any objections to the proposed phased approach being raised during the examination of the Application.
- 4.14 The ExA concludes [at ER 7.4.19] that the importance of the socio-economic benefits of sustaining steelmaking at the Port Talbot plant justifies the inclusion of the two options for construction within the Order. In the absence of any objections, in the light of the fact that the proposed Development lies wholly within the steelworks plant (rather than on a site within the broader community of Port Talbot) and in the absence of any significant issues about the timing of compulsory acquisition, the Secretary of State agrees with the ExA's conclusion.

#### Associated Development

- 4.15 The Secretary of State is not able to grant 'associated development' (as defined in section 115 of the Act) in relation to the Application. She notes that for projects in Wales, the only works that can be classified as associated development are: surface works, boreholes or pipes associated with facilities for the underground storage of gas by a gas transporter in natural porous strata.
- 4.16 The Application included a number of items of infrastructure on the Applicant's site that are not strictly necessary for the generation of

electricity but which are necessary for the construction and operation of the generating station, for example, the natural gas and grid connections that would allow the import and export of small quantities of natural gas and electricity respectively and modifications to the existing internal road layout, parking and cycle storage. The Secretary of State has considered whether such infrastructure should be considered as 'associated development' and therefore fall outside the Planning Act regime for national significant infrastructure projects in Wales. The conclusion of the Secretary of State, which is in line with those of the ExA [ER 7.4.12 and 8.1.10], is that the numbered works listed in Schedule 1 to the Order are an integral part of the generating station and that these connections are fully internal to the existing steelworks site, are on land owned by the Applicant and are fundamental to the proposed Development. Accordingly, provision for these works has been made in the Order made by the Secretary of State.

## **5. Biodiversity and Habitats**

- 5.1 Regulation 61 of the Conservation of Habitats and Species Regulations 2010 ("the Habitats Regulations") requires the Secretary of State to consider whether the proposed Development is likely, either alone or in-combination with other plans and projects, to have a significant effect on a European site as defined in the Habitats Regulations.
- 5.2 If likely significant effects cannot be ruled out, then the Secretary of State must undertake an Appropriate Assessment ("AA") addressing the implications of the European site in view of its conservation objectives. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in-combination with other plans and projects, adversely affect the integrity of such a site, unless there are alternative solutions and imperative reasons of overriding public interest apply.
- 5.3 The Secretary of State notes that the Applicant identified a total of four European sites within 10km of the proposed Development: Kenfig Special Area of Conservation (SAC), Cefn Cribwr Grasslands SAC, Crymlyn Bog SAC and Crymlyn Bog Ramsar site. NRW and NPTCBC did not identify any other UK European site features that could be affected by the project.
- 5.4 The Secretary of State has considered the potential for Likely Significant Effects ("LSEs") on these four European sites from both the project alone and in-combination with other plans and projects.
- 5.5 The Secretary of State considers that the Project has the potential to have a LSE on the Crymlyn Bog SAC and Ramsar sites. This is due to the potential effects of increased nitrogen deposition from the Project (Option 2, Phase 1 only) (including the existing capacity) on the Transition Mires and Quaking Bog feature of the sites when considered in-combination with emissions from other power plants in the vicinity of the Development.

- 5.6 The Secretary of State concludes that there are no LSEs on any of the four sites identified in paragraph 5.3 above associated with the following potential effects:
- Water pollution from surface run-off;
  - Construction vehicle movements;
  - Noise;
  - Vibration;
  - Dust blanketing;
  - Direct habitat loss or fragmentation;
  - Direct disturbance to species;
  - Alteration of management;
  - Increase in lighting, and
  - The spread of invasive species.
- 5.7 The Applicant and NRW agreed that the increase in the deposition of nutrient nitrogen from the Development's emissions, in-combination with emissions from other power plants, would not lead to an adverse effect on site integrity for a number of reasons, principally that the increase in emissions would be extremely small and would not lead to the conservation objectives of the site being undermined. The ExA agreed with this conclusion [ER 5.11.3].
- 5.8 The Secretary of State, as the Competent Authority, has concluded that an AA is, therefore, required and has undertaken a Habitats Regulations Assessment of the effects of aerial emissions from the Development, in-combination with other plans and projects, on the Transition Mires and Quaking Bog features of the Crymlyn Bog SAC and Ramsar sites. The AA considers the implications for site integrity in view of the site's conservation objectives.
- 5.9 The Secretary of State agrees with the advice of NRW and the recommendations of the ExA and has determined that adverse effects on the Crymlyn Bog SAC and Ramsar sites due to the potential effects of increased nitrogen deposition from the Development (Option 2, Phase 1 only) (including the existing capacity) on the Transition Mires and Quaking Bog feature of the sites when considered in-combination with emissions from other power plants in the vicinity, can be excluded. The Secretary of State is confident that there will be no adverse effects on integrity at these sites as the increase would be extremely small (1.14% of critical load), based upon conservative estimates, and would not lead to the conservation objectives of the site being undermined.
- 5.10 The Secretary of State's conclusions are supported by Requirement 17 of the Order which states that a scheme for monitoring ambient concentrations of nitrogen dioxide must be submitted to and approved by the relevant planning authority (NPTCBC) prior to commissioning of any stage of the Development.



## 6. Other Matters

### Transboundary Impacts

- 6.1 A screening exercise for transboundary impacts was undertaken by the Secretary of State for Communities and Local Government ("SoSCLG") under regulation 24 of the 2009 Regulations. SoSCLG applied the precautionary approach set out in the Planning Inspectorate's "Advice Note 12: Transboundary Impacts Consultation and took the view that the Development was not likely to have a significant effect on the environment in another EEA state. The Secretary of State agrees with this assessment.

### Human Rights Act 1998

- 6.2 The ExA considered that the compulsory acquisition provisions in the recommended Order for the Development proposal engage a number of provisions of the European Convention on Human Rights identified as:
- Article 6 (which entitles those affected by compulsory acquisition powers sought for the project in question to a fair and public hearing of their objections);
  - Article 8 (which protects private and family life, home and correspondence. These interests cannot be interfered with by a public authority except if in accordance with the law and is necessary in the interests of inter alia national security, public safety or the economic well-being of the country);
  - Article 1 of the First Protocol (in respect of the rights of those whose property is to be compulsorily acquired and whose peaceful enjoyment of their property is to be interfered with).
- 6.3 The ExA concludes [ER 6.9.4 – 6.9.6] that the interference with rights under Article 1 of the First Protocol is justified, that there will be no interference with Article 8 rights and that the requirements of Article 6 have been complied with by the examination process. The Secretary of State agrees with the ExA's conclusions in this matter.

### Compulsory Acquisition etc

- 6.4 The Secretary of State notes that the Order as recommended by the ExA grants compulsory acquisition powers to acquire new rights over two plots of land belonging to Network Rail Infrastructure Limited ("Network Rail") for the purpose of the gas and electrical connections and powers to suspend and extinguish private rights over the Order land as defined in the Order. The ExA sets out its consideration of compulsory acquisition and related issues in chapter 6 of the ExA's Report.
- 6.5 Section 122 of the Act provides that an order granting development consent may include provision authorising the compulsory acquisition of

land only if the land is required for the development to which the development consent relates or is required to facilitate or is incidental to that development and there is a compelling case in the public interest for the land to be acquired compulsorily. The ExA was satisfied [ER 6.10.3 and 6.10.7] that the statutory tests in section 122 are met. The Secretary of State agrees with the ExA's conclusions.

- 6.6 As Network Rail is a statutory undertaker and has made representations for the purpose of section 127 of the Act that have not been withdrawn, the Order may not include provision authorising the compulsory acquisition of a right over its land unless the Secretary of State is satisfied that the nature and situation of the land is such that inter alia the right can be purchased without serious detriment to the carrying on of the undertaking (see section 127(6) of the Act). The ExA states [ER 6.6.8] that it is unable to determine any detriment that would result from the gas and electrical connections provided that they are constructed to standards to be agreed with Network Rail through the protective provisions that have been included in Part 1 of Schedule 4 to the Order in agreement with Network Rail. The Secretary of State agrees with the ExA's conclusions and is satisfied that the compulsory acquisition powers may be included in the Order.
- 6.7 The ExA's Report states [ER 6.7.3] that the Applicant does not anticipate that the Development will interfere with rights or apparatus of statutory undertakers. However, the Order provides for the extinguishment of rights of and the removal of apparatus, subject to protective provisions in Schedule 4 for Network Rail, National Grid Electricity Transmission plc, Western Power Distribution (South Wales) plc and Dwr Cymru Cyfyngedig. The ExA was satisfied [ER 6.7.4] that the rights sought by the Applicant are necessary to enable the Development [to proceed] and that without them it would not be possible for the Development to be constructed or to function as intended. The Secretary of State agrees with the ExA's conclusions and accepts, therefore, that the statutory test in section 138(4) of the Act for the inclusion of such provision in the Order is met.
- 6.8 The ExA agreed with the Applicant that there was no Crown Land affected by the compulsory acquisition proposals that were being proposed. In any case, the Welsh Government had proposed suitable wording for inclusion in the Order which was accepted by the Applicant and the ExA.
- 6.9 The Applicant did not identify any special category land as being affected by compulsory acquisition provisions or Order Land.
- 6.10 The Secretary of State is satisfied that there are no issues relating to the matters set out in paragraphs 6.4 – 6.9 above that weigh against development consent being granted.

## Natural Environment and Rural Communities Act 2006

- 6.11 The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when making a decision on whether to grant development consent. The Secretary of State is of the view that the Report considers biodiversity sufficiently to allow the duty in section 40(1) to be discharged.

## Equality Act 2010

- 6.12 The Equality Act 2010 includes a public sector “general equality duty”. This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following “protected characteristics”: age; gender; gender reassignment; disability; marriage and civil partnerships<sup>1</sup>; pregnancy and maternity; religion and belief; and race. The Secretary of State does not consider that her decision to grant or refuse consent would have significant differential impacts on any of the protected characteristics.

## **7. The Secretary of State’s Conclusion and Decision**

- 7.1 For the reasons set out in this letter, the Secretary of State agrees with the ExA that there are strong grounds for granting consent for the Development given that it supports Government policy objectives for energy as set out in relevant National Policy Statements and Welsh and local planning policy. In addition, the Secretary of State notes that the benefits of the projects are not outweighed by the potential local adverse impacts as mitigated by the terms of the Order.
- 7.2 The Secretary of State has therefore decided to accept the ExA’s recommendation at ER 8.1.12 to make the Order granting development consent on the basis of the draft Order recommended by the ExA in Appendix A to the Report, but subject to the modifications set out in section 8 below.

## **8. Modifications to the Order**

- 8.1 The Secretary of State has decided to make modifications to the Order recommended to her by the ExA. The key modifications are:
- the removal of article 17 of the Order recommended by the ExA (Statutory authority to override easements and other rights) as the

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<sup>1</sup> In respect of the first statutory objective (eliminating unlawful discrimination etc.) only

article is unnecessary given the effect of sections 152 and 158 of the Act.

- the removal of the words “..and such other works as may be necessary or expedient for the purposes of or in connection with the construction of the above works” from the final paragraph of Schedule 1 to the Order as they introduce an element of uncertainty as to the development for which consent is being granted by the Order;
- the removal of the words “..and the requirement does not specify that consultation with a requirement consultee is required” from what was paragraph 2(2) of Schedule 5 to the Order (paragraph 3(2) of the as made Order). This amendment is deemed necessary so that the obligation of the relevant planning authority to make a request for further information within 21 days applies whether or not consultation with another body is required before approval, etc is granted; and
- the removal of the recommended protective provisions in Part 5 of Schedule 4 to the Order (For the protection of Associated British Ports) given agreement between ABP and the Applicant that such protective provisions are not needed.

8.2 In addition to the above changes, the Secretary of State has made a number of other modifications to the recommended Order which do not materially alter its effect, including changes to conform with the current practice for drafting statutory instruments (for example, modernisation of language); the removal of unnecessary material; changes in the interests of clarity and consistency; and changes to ensure that the Order has the intended effect.

## **9. Challenge to decision**

9.1 The circumstances under which the Secretary of State’s decision may be challenged are set out in the note in the Annex to this letter.

Yours sincerely



GILES SCOTT

Head of National Infrastructure Consents and Coal Liabilities

## **ANNEX**

### **LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published (or, if later, the day after the day on which the Secretary of State's Statement of Reasons (the decision letter) is published). The Order and the decision letter are being published on the Planning Inspectorate's website at the following address:

<http://infrastructure.planninginspectorate.gov.uk/projects/wales/internal-power-generation-enhancement-for-port-talbot-steelworks/>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to refuse the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).**



