



# The Abergelli Power Gas Fired Generating Station Order

## 4.1 Statement of Reasons

Planning Act 2008  
The Infrastructure Planning  
(Applications: Prescribed Forms and Procedure) Regulations 2009

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**1. SUMMARY**

- 1.1 This Statement of Reasons (Statement) relates to the Application by Abergelli Power Limited (APL) to the Secretary of State under the PA 2008 for powers to construct, operate and maintain the Power Generation Plant, and compulsory acquisition powers for the Power Generation Plant, Gas Connection and Electrical Connection, on land at Abergelli farm, north of Swansea.
- 1.2 A Development Consent Order (DCO) is required as the Power Generation Plant constitutes an NSIP pursuant to section 14 and section 15 of the PA 2008 (as it is an onshore generating station in England or Wales of more than 50MWe capacity). The DCO, if made, would be known as the Abergelli Power Gas Fired Generating Station Order 201\* (the Order).
- 1.3 The Power Generation Plant is an Open Cycle Gas Turbine (OCGT) peaking power generating station, fuelled by natural gas and capable of providing a rated electrical output of up to 299 Megawatts (MW).
- 1.4 The Power Generation Plant is part of the Project. The Project contains development that is considered by APL to be Associated Development. Associated Development is development that supports the NSIP, but which is not part of the NSIP. Section 115(4) of the PA 2008 limits the associated development for which development consent may be sought in Wales to very limited circumstances (which are not applicable to the Project). The application for development consent does not seek consent for any Associated Development.
- 1.5 The Project includes a Gas Connection which will consist of a new above ground installation (AGI) and underground gas connection (the Gas Pipeline). This is to bring natural gas to the Generating Equipment from the National Gas Transmission System. The Gas Pipeline will follow an approximate north-south route corridor, between the National Gas Transmission System south of Rhyd-y-pandy Road and the Generating Equipment Site.
- 1.6 The Project also includes an Electrical Connection which will consist of an underground electrical cable to export power from the Generating Equipment to the National Electricity Transmission System (NETS).
- 1.7 The Gas Connection and the Electrical Connection are considered by APL to be Associated Development and are therefore not part of the application for a DCO. This approach is consistent with paragraph 3.23 of the decision letter for The Hirwaun Generating Station Order 2015 where the Secretary of State determined that the gas connection and the electrical connection were not part of the generating station and it

was not therefore appropriate to include the gas connection and electrical connection in the DCO.

- 1.8 APL will submit a separate planning application for the Gas Connection to the local planning authority, City and County of Swansea Council (CCS), under the Town and Country Planning Act 1990 (TCPA 1990).
- 1.9 The Electrical Connection will be consented either through Permitted Development rights or a planning application to CCS under the TCPA 1990.
- 1.10 It is anticipated that planning permission for the Gas Connection will have been granted prior to the end of the DCO Examination. It is also anticipated that either planning permission or confirmation from CCS that permitted development rights are considered to be available (following the grant of a generation licence under the Electricity Act 1989 and EIA screening) for the Electrical Connection will have been issued prior to the end of the DCO Examination. APL is in pre-application discussions with CCS in relation to the Gas Connection and Electrical Connection, and the relevant planning application(s) are expected to be submitted prior to the commencement of the DCO Examination.
- 1.11 Whilst the Application does not apply for development consent in respect of the Gas Connection or the Electrical Connection, the draft Order does include, pursuant to section 122(2)(b) of the PA 2008, powers for the compulsory acquisition of the necessary land and rights over land required for the Gas Connection and Electrical Connection.
- 1.12 This is also consistent with the Secretary of State's decision for The Hirwaun Generating Station Order 2015. At paragraph 3.26 of the decision letter for the Hirwaun Generating Station, the Secretary of State confirmed that compulsory acquisition powers for Associated Development could be included if the land is required to "facilitate" or is "incidental to" the NSIP. APL considers that the land rights required to construct, operate, maintain and protect the Gas Connection and Electrical Connection are required to facilitate the Power Generation Plant (which constitutes a NSIP).
- 1.13 Where compulsory acquisition powers are being sought (as here), the applicant is required by Regulation 5(2)(h) of the APFP Regulations to submit a statement of reasons (i.e. this Statement) with its application.
- 1.14 This Statement explains why it is necessary, proportionate and justifiable for the Order to contain compulsory acquisition powers, and why there is a compelling case in the public interest for APL to be granted these powers.

- 1.15 The matters addressed in this Statement are summarised in the remainder of this Section (Section 1). This Statement should be read alongside the following:
- 1.15.1 the **Land Plans** (Document Reference 2.2);
  - 1.15.2 the **Order** (Document Reference 3.1);
  - 1.15.3 the **Explanatory Memorandum** (Document Reference 3.2);
  - 1.15.4 the **Book of Reference** (Document Reference 4.3);
  - 1.15.5 the **Funding Statement** (Document Reference 4.2); and
  - 1.15.6 the **Project Glossary** (Document Reference 1.4).

### **Powers of Compulsory Acquisition under the Planning Act 2008 (Section 3)**

- 1.16 Section 120 of the PA 2008 provides that a DCO may make provision relating to, or to matters ancillary to, the development for which consent is granted. Schedule 5 to the PA 2008 lists the matters ancillary to the development, which includes the acquisition of land, compulsorily or by agreement, and the creation, suspension or extinguishment of, or interference with, interests in or rights over land, compulsorily or by agreement.
- 1.17 Under Section 122 of the PA 2008 a DCO may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the land is required for the development to which the DCO relates or that the land is required to facilitate or is incidental to that development (and one further criteria not relevant to the Project).
- 1.18 It is also necessary for the Secretary of State to be satisfied that there is a compelling case in the public interest for the inclusion of such powers in the DCO.

### **Project Details (Section 4)**

- 1.19 The Power Generation Plant would operate as an Open Cycle Gas Turbine ("OCGT") peaking plant designed to provide an electrical output of up to 299 Megawatts ("MW"). As a peaking plant, the Power Generation Plant would be required to operate when there is a surge in demand for electricity associated with a particular event or where there is a sudden drop in power being generated from other plants that are designed to be constantly operational (e.g. a sudden outage) (known as a 'stress event'). The Power Generation Plant would also help to 'balance out' the grid at times when other technologies (e.g. renewable energy sources such as wind and solar farms) cannot generate

electricity due to their intermittent operation and reliance on weather conditions. The Power Generation Plant is expected to operate for up to 2,250 hours per year and 1,500 running hours rolling average over 5 years.

- 1.20 The location of the Power Generation Plant is shown on the Land Plans (Document Reference 2.2) and the various components that comprise the Power Generation Plant are shown on the Works Plans (Document Reference 2.3).
- 1.21 The Gas Connection consists of the AGI (with new permanent access) and the Pipeline. The Pipeline would follow an approximate north-south route corridor of approximately 1.4 km in length, to bring natural gas from the existing high pressure National Transmission System gas network adjacent to Rhyd-y-pandy Road (in the north of the Project Site) to the Generating Equipment Site.
- 1.22 The Electrical Connection would follow an east-west route corridor of approximately 900 metres in length, to connect the Generating Equipment to the National Electricity Transmission System at the Swansea North Substation via a 400kV underground cable.
- 1.23 More detail on these elements that comprise the Project can be found in Section 4 below and in Chapter 3 of the ES (Document Reference 6.1.0).

#### **Location and Description of the Order Land (Section 5)**

- 1.24 The Project is located on open agricultural land approximately 2 km north of Junction 46 on the M4, approximately 3 km to the north of the city of Swansea, approximately 1 km southeast of Felindre and 1.4 km north of Llangyfelach. The Project Site is within the administrative boundaries of CCS.
- 1.25 The Order Land comprises the land required for the Power Generation Plant, Gas Connection and Electrical Connection. The Order Land is shown coloured pink, blue and yellow on the Land Plans (Document Reference 2.2) and covers an area of approximately 35.52 hectares. This includes land temporarily required during construction. The final permanent land-take will be around 10.83 hectares.
- 1.26 The area required for, or to facilitate construction of, the Power Generation Plant extends to 5.68 hectares.
- 1.27 The area required for, or to facilitate construction of, the AGI extends to 1.32 hectares. National Grid has advised that as the AGI will be part of the National Gas Transmission System, its requirement is for freehold land. The final siting and design of the AGI is not yet approved, pending the grant of planning permission. National Grid will require not

only permanent ownership of the direct footprint of the AGI, but sufficient land for access, landscaping and drainage associated with the AGI to be maintained. Powers of compulsory acquisition are therefore sought over the whole 1.32 hectares. Discussions are in progress with the landowner in relation to the voluntary acquisition of this land by APL for the purpose of the AGI.

- 1.28 The route of the Pipeline and its width varies to account for natural and man made features, but generally provides a temporary working width of 50 to 320 metres for construction. Within this working width, the Pipeline will be laid in a corridor of approximately 30 metres. The final permanent easement width will generally be 10 metres. APL is therefore seeking powers to create new rights over the land required for the Gas Connection in the draft DCO.
- 1.29 The Electrical Connection will be constructed adjacent to the Access Road within a 5 m working width.
- 1.30 APL is seeking compulsory acquisition powers to secure certain lands, rights and interests within the Order Limits in order to facilitate the Project.
- 1.30.1 The land over which compulsory acquisition powers are sought in respect of the **freehold** is shown edged red and shaded **pink** on the Land Plans (Document Reference 2.2). This land is described in more detail in the Book of Reference (Document Reference 4.3). A summary of the status of negotiations, together with the reason for the acquisition, is set out in Table 2, at section 6. Article 19 of the DCO is relied upon in respect of this land.
- 1.30.2 The land over which **new rights (including restrictive covenants)** are being compulsorily sought is shown edged red and shaded **blue** on the Land Plans (Document Reference 2.2). This land is described in more detail in the Book of Reference (Document Reference 4.3). A summary of the status of negotiations, together with the reason for the acquisition, is set out in Table 2, at section 6. Article 23 of the DCO is relied upon in respect of this land.
- 1.30.3 The land over which **temporary use** only is sought, pursuant to Articles 29 and 30 of the Order, is shown edged red and shaded **yellow** on the Land Plans (Document Reference 2.2). This land is described in more detail in the Book of Reference (Document Reference 4.3). A summary of the status of negotiations, together with the reason for the acquisition, is set out in Table 2, at section 6. Articles 29 and 30 of the DCO are relied upon in respect of this land.



- 1.31 Where APL is seeking either land or new rights over land, then temporary use of such land pursuant to Articles 29 and 30 is also sought. The reason for seeking temporary use powers over this land is that it allows the Applicant to enter on to land for particular purposes (including site preparation works) in advance of any vesting of the relevant land/rights. It should be noted that there are other Articles within the DCO that allow the Applicant to enter onto or otherwise affect land (see paragraph 5.5.2).
- 1.32 Article 21 of the Order gives APL the authority to use the Power Generation Plant and do anything authorised by the Order notwithstanding it involves the interference with an interest or right or a breach of a restrictive covenant. In this case, the interest, right or restrictive covenant would be overridden.
- 1.33 Pursuant to Article 24 of the Order, all private rights (excluding Statutory Undertaker rights which are addressed in Article 31 and are subject to 'Protective Provisions'):
- 1.33.1 over land the freehold to which is subject to compulsory acquisition are to be extinguished;
  - 1.33.2 over land subject to the compulsory acquisition of rights are to be suspended and unenforceable or, where so notified by APL, extinguished in so far as in either case their continuance would be inconsistent with the exercise of that right;
  - 1.33.3 over land of which APL takes temporary possession are to be suspended and unenforceable for so long as APL remains in possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.
- 1.34 Part 3 of the Book of Reference identifies those plots where rights may be suspended or extinguished under Article 24 and where interests, rights and restrictive covenants may need to be overridden under Article 21.
- 1.35 Article 31 gives APL the authority to acquire land and rights from Statutory Undertakers, and to extinguish or suspend their rights, and to remove or reposition their apparatus, subject to Protective Provisions in Schedule 11 to the Order.
- 1.36 The Project will also interfere temporarily with short sections of the following publically adopted highways during construction (APL is in active discussions with the Highways Authority in this regard):

- 1.36.1 The **B4489**, from which the Access Road is to be formed to serve the Project; and
- 1.36.2 **Rhyd-y-pandy Road**, from which a new permanent access is to be constructed to serve the AGI only.
- 1.37 APL is relying on Articles 8, 9, 10, 11, 12, 13, 14, 15, 28 and 32 of the Order in order to enter onto streets and to lay and maintain apparatus in them, to construct new means of access and create temporary prohibitions and restrictions of the use of streets to carry out works. Where (as is the case with the B4489 and Rhyd-y-pandy Road) no compulsory acquisition of rights is required on, under or over streets, then the street is not shaded on the Land Plans (i.e. it remains white) as the aforementioned Articles will be relied upon.
- 1.38 Any interference with rights restrictions etc. over the Order Land arising from the exercise of any Articles in the Order which provide statutory access and/or use of land within the Order Limits are captured in Part 3 of the Book of Reference.

**Need for the Compulsory Acquisition of Land and Rights (Section 6.2)**

- 1.39 APL has completed an option agreement over certain areas of the Order Land (plots 2, 3, 3A, 3B, 4, 4A, 5, 5A, 5B, 6, 6A, 7, 7A, 7B, 7C, 8, 9, 11, 11A, 11B and 12) required for the Power Generation Plant and part of the Gas Connection and Electrical Connection.
- 1.40 However, APL is including this land within the Order Land to ensure that land assembly and title to it can be secured with certainty. In addition, there may be unknown rights, restrictions, easements or servitudes affecting that land which also need to be overridden, removed and/or extinguished in order to facilitate the construction and operation of the Project without hindrance.
- 1.41 APL is actively seeking to acquire the remaining land, new rights (including restrictive covenants) over land and temporary possession of land (shown edged red and shaded pink, blue and yellow respectively on Land Plans) by private treaty, in order to ensure implementation of the Project. However, it has not yet been possible to acquire all of the land, the temporary use of land and the rights required by private treaty.
- 1.42 It is necessary to seek compulsory acquisition powers is to secure land, the new rights (including restrictive covenants) over land and other interests and the temporary use of land to enable APL to construct, operate and maintain the Project within a reasonable commercial timeframe. The inclusion of powers of compulsory acquisition in the Order is sought to ensure this can be achieved. In addition, APL requires certain rights and restrictions to be suspended, overridden or

extinguished within the Order Land so as to ensure there are no impediments to the construction, operation and maintenance of the Project.

- 1.43 Plots 8, 9 and 12 are permanently required (freehold) for the Power Generation Plant. Plot 10 is permanently required (freehold) for the ecological mitigation land. Plots 7A, 7B, 7C, 11A and 11B are temporarily required to construct the Power Generation Plant.
- 1.44 Plots 11, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23 and 24 are permanently required (acquisition of new rights) to access the Power Generation Plant and for services. Plots 13A, 13B, 18A, 18B and 19A are temporarily required to construct the access road to the Power Generation Plant.
- 1.45 Plots 1 and 2 are permanently required (freehold) for AGI which forms part of the Gas Connection. Plots 3, 3A, 3B, 4, 5, 6 and 7 are permanently required (acquisition of new rights) for the Pipeline (also forming part of the Gas Connection). The permanent easement width would generally be 10m. The micro siting for the Pipeline will be subject to detailed engineering assessments. APL will only compulsorily acquire rights and impose restrictions over the minimum amount of land necessary to construct, use and maintain the Pipeline. Plots 4A, 5A, 5B, 6A, 6B, 7A, 7B and 7C are temporarily required to construct the Gas Connection.
- 1.46 Plots 11, 13, 14, and 16 are permanently required (acquisition of new rights) for the Electrical Connection. The permanent easement width would generally be 5m. The micro siting for the Electrical Connection will be subject to detailed engineering assessments. APL will only compulsorily acquire rights and impose restrictions over the minimum amount of land necessary to construct, use and maintain the Electrical Connection. Plots 7C, 11A, 11B, 13A, 13B and 16A are temporarily required to construct the Electrical Connection.
- 1.47 In the absence of powers of compulsory acquisition, the Order Land may not be assembled, uncertainty will continue to prevail and APL considers that its objectives and Government policy objectives would not be achieved.
- 1.48 APL's justification for seeking compulsory acquisition powers, in accordance with the provisions of the PA 2008, is to secure land, the temporary use of land, the new rights (including restrictive covenants) and other interests required to enable APL to construct, operate and maintain the Project within a reasonable commercial timeframe. The inclusion of powers of compulsory acquisition in the DCO is sought in order to ensure that this can be achieved. The land and rights together with the land required for temporary use is no more than that is required for or to facilitate the Project, its construction and future maintenance.

### **Alternatives to Compulsory Acquisition (Section 6.6)**

- 1.49 As part of a detailed feasibility assessment, APL looked at a range of sites around the UK to support power generation plants of the Project's nature. This search for potential power generation plant sites across the UK was focused on areas that were capable of meeting APL's strategic project development criteria.
- 1.50 In terms of technical constraints, the size of the site (i.e. large enough to support a power generation plant of up to 299 MW) and the proximity of a site to appropriate gas and electrical connection points were both key considerations.
- 1.51 From an environmental perspective, the site selection process had due regard to proximity to sensitive receptors, the current make up of the surrounding area, previous site uses and land quality and proximity to sensitive ecological habitats.
- 1.52 Based on the following factors, the Project Site was considered suitable for the siting of the Power Generation Plant:
- 1.52.1 sufficient land available to accommodate a project with a capacity of up to 299 MW;
  - 1.52.2 close proximity to the National Transmission System (i.e. feeder 28) to ensure a gas supply;
  - 1.52.3 close proximity to a suitable point for electrical connection to the National Grid Electricity Transmission System (i.e. Swansea North Substation);
  - 1.52.4 good accessibility;
  - 1.52.5 adjacent to land already developed for use in connection with the production, storage and transmission of energy (e.g. Swansea North Substation and Felindre Gas Compressor Station) land; and
  - 1.52.6 it avoids international and other designated environmentally sensitive sites.

### **Justification for the Use of Powers of Compulsory Acquisition (Section 7)**

- 1.53 The urgent need for energy generation, including gas fired generating stations and gas and peaking plants, are established in NPS EN-1, the Gas Generation Strategy (DECC, 2012), Energy Wales – a low carbon Transition (Welsh Government, 2012) and the National Infrastructure

Plan (HM Treasury, 2014). The Project would contribute materially to meeting this need.

- 1.54 Besides this considerable general public benefit, there would be local benefits arising from the Project. In particular, the economic benefit to the local area through the creation of the equivalent of 9 full time construction jobs (with a peak of 122 construction works predicted on site during construction) and up to 10 FTE permanent jobs during the operational phase, as well as other contracts during construction and operation (e.g. maintenance) which would be offered locally where possible.
- 1.55 Due regard has been paid to all relevant and important considerations. These include the findings of community and statutory consultation which have influenced considerations as to the design and siting of the Project, as documented in the Consultation Report (Document Reference 5.1.0). Local economic development and environmental policy designations have been considered in the design, siting and mitigation proposals within the Project.
- 1.56 The Project is in line with the relevant National Policy Statements, in particular NPS EN-1 and NPS EN-2. Considerations as to siting, Habitats and Species Regulations, alternatives, Good Design, consideration of CHP, grid connection, safety, health, nuisance and security have been given due consideration as demonstrated in the ES and its appendices (Document References 6.1.0 and 6.2.0), the Design Principles Statement (Document Reference 10.2.0), the Planning Statement (Document Reference 10.1.0) and the Grid Connection Statement and Gas Connection Statement (Document References 9.1 and 9.2).
- 1.57 The ES has assessed all likely significant environmental effects and has proposed appropriate mitigation wherever feasible. These mitigation measures are to be secured through compliance with various submitted documents and further approvals regulated under the proposed requirements (similar to planning conditions) attached to the Order (see Schedule 2 to the Order).
- 1.58 As such, it is considered that there are no relevant matters that give rise to adverse impacts sufficient to outweigh the identified benefits of the Project.
- 1.59 In conclusion, and in line with the factors set out in Section 104 of the PA 2008, there is a compelling case in the public interest for the Order to be made in the terms proposed and in the absence of sufficient indications to the contrary.

## **Special Considerations (Section 8)**

### **Special Category Land – Crown Land**

1.59.1 No Crown interests are included in or affected by the Order Land.

### **Special Category Land – Open Space**

1.59.2 No open space, common land, fuel or field garden allotment is included in or affected by the Order Land.

### **National Trust land**

1.59.3 No National Trust land is included in or affected by the Order Land.

### **Statutory Undertakers Land/Apparatus**

1.59.4 There are various assets belonging to Statutory Undertakers and other pipeline and cable owners that lie within the Order Land, namely National Grid Electricity Transmission plc, National Grid Gas plc, Dwr Cymru Cyfyngedig (Welsh Water), Western Power Distribution (South Wales) plc, British Telecommunications, Wales and West Utilities plc, and Abergelli Solar Farm.

1.59.5 APL is in discussions with all the Statutory Undertakers and apparatus owners identified above regarding the Protective Provisions that they may wish to see included in the Order, and/or other agreements that they may require to protect their interests, and is seeking confirmation there are no other assets belonging to them within the Order Land beyond those identified to date.

1.59.6 In relation to British Telecommunications, APL will make contact immediately post-submission of the Application to enter into discussions in relation to British Telecommunications' position. The draft Order includes protective provisions for the benefit of Electronic Communications Code Networks in Schedule 11.

1.59.7 In relation to the decommissioned oil pipeline owned by BP International Limited, it is not understood by APL that the pipeline is part of the undertaking of a statutory undertaker, therefore no protective provisions have been included in the draft DCO for the benefit of BP International Limited.

### **Other Consents & Licences**

- 1.60 Other statutory consents, licences and permits will be required to construct and operate the Project. The document Details of Other Consents and Licences (Document Reference 5.4) lists those additional consents likely to be required.
- 1.61 APL considers that there is no impediment to these and other consents required being granted.

### **Human Rights (Section 9)**

- 1.62 The Order has the potential to infringe the human rights of persons who own property or have rights in the land proposed to be acquired pursuant to the Order.
- 1.63 APL considers that there would be very significant public benefit arising from the making of the Order for the Project. That benefit can only be realised if the Order includes compulsory acquisition powers.
- 1.64 APL considers that there is a compelling case in the public interest for the exercise of such powers of compulsory acquisition. APL considers that it would, therefore, be appropriate and proportionate for the Secretary of State to make the Order, including the grant of compulsory acquisition powers.

### **Further Information (Section 10)**

- 1.65 Owners and occupiers of property affected by the Order who wish to negotiate a sale or discuss matters of compensation should contact Susannah Crawford of APL (Tel - 0131 550 3380; email - [scrawford@stagenenergy.com](mailto:scrawford@stagenenergy.com)).
- 1.66 Provision is made by statute with regard to compensation for the compulsory acquisition of land and the depreciation value of properties. Further helpful information is given in the series of booklets published by the Department for Communities and Local Government entitled "Compulsory Purchase and Compensation". Copies of these booklets are obtainable, free of charge, from: <https://www.gov.uk/government/collections/compulsory-purchase-system-guidance>.

2. INTRODUCTION

2.1 This Statement of Reasons accompanies an application made by Abergelli Power Limited ("**APL**") to the Secretary of State for development consent ("**Application**") under the Planning Act 2008 ("**PA 2008**") for the Abergelli Power gas fired generating station project (the "**Project**") on land at Abergelli Farm, north of Swansea in Wales.

2.2 The Project is a generating station with an electrical output which will exceed 50 MW. The Project is therefore a nationally significant infrastructure project ("**NSIP**") under section 14(1)(a) and 15 of the PA 2008 and it is necessary for APL to apply to the Secretary of State for development consent to construct, operate and maintain the Project under Section 31 of the PA 2008.

2.3 The Application seeks the making of the proposed Abergelli Power Gas Fired Generating Station Order 201\* (the "**Order**"). The Order is necessary so that APL has the requisite powers to construct, operate and maintain the Project, which is an NSIP for which there is a pressing national need. The Project itself has been the subject of an extensive consultation exercise. It is in line with national and local policy in respect of planning and energy generation.

2.4 The Power Generation Plant is an Open Cycle Gas Turbine (OCGT) peaking power generating station, fuelled by natural gas and capable of providing a rated electrical output of up to 299 Megawatts (MW).

2.5 The Power Generation Plant comprises:

2.5.1 Generating Equipment including one Gas Turbine Generator with one exhaust gas flue stack and Balance of Plant (BOP) (together referred to as the 'Generating Equipment') which are located within the 'Generating Equipment Site';

2.5.2 An Access Road to the Generating Equipment Site from the B4489 which lies to the west, formed by upgrading an existing access road between the B4489 junction and the Swansea North Substation (the Substation) and constructing a new section of access road from the Substation to the Generating Equipment Site;

2.5.3 A temporary construction compound for the storage of materials, plant and equipment as well as containing site accommodation and welfare facilities, temporary car parking and temporary fencing (the Laydown Area). A small area within the Laydown Area will be retained permanently (the Maintenance Compound);



- 2.5.4 An Ecological Mitigation Area being an area for ecological enhancement within the Project Site; and
  - 2.5.5 Permanent parking and drainage to include a site foul, oily water and surface water drainage system.
- 2.6 The Power Generation Plant is part of the Project. The Project contains development that is considered by APL to be Associated Development. Associated Development is development that supports the NSIP, but which is not part of the NSIP. Section 115(4) of the PA 2008 limits the associated development for which development consent may be sought in Wales to very limited circumstances (which are not applicable to the Project). The application for development consent does not seek consent for any Associated Development.
- 2.7 The Project includes a Gas Connection which will consist of a new above ground installation (AGI) and underground gas connection (the Gas Pipeline). This is to bring natural gas to the Generating Equipment from the National Gas Transmission System. The Gas Pipeline will follow an approximate north-south route corridor, between the National Gas Transmission System south of Rhyd-y-pandy Road and the Generating Equipment Site.
- 2.8 The Project also includes an Electrical Connection which will consist of an underground electrical cable to export power from the Generating Equipment to the National Electricity Transmission System (NETS).
- 2.9 The Gas Connection and the Electrical Connection are considered by APL to be Associated Development and are therefore not part of the application for a DCO. This approach is consistent with paragraph 3.23 of the decision letter for The Hirwaun Generating Station Order 2015 where the Secretary of State determined that the gas connection and the electrical connection were not part of the generating station and it was not therefore appropriate to include the gas connection and electrical connection in the DCO.
- 2.10 APL will submit a separate planning application for the Gas Connection to the local planning authority, City and County of Swansea Council (CCS), under the Town and Country Planning Act 1990 (TCPA 1990).
- 2.11 The Electrical Connection will be consented either through Permitted Development rights or a planning application to CCS under the TCPA 1990.
- 2.12 It is anticipated that planning permission for the Gas Connection will have been granted prior to the end of the DCO Examination. It is also anticipated that either planning permission or confirmation from CCS that permitted development rights are considered to be available (following the grant of a generation licence under the Electricity Act

1989 and EIA screening) for the Electrical Connection will have been issued prior to the end of the DCO Examination. APL is in pre-application discussions with CCS in relation to the Gas Connection and Electrical Connection, and the relevant planning application(s) are expected to be submitted prior to the commencement of the DCO Examination.

- 2.13 Whilst the Application does not apply for development consent in respect of the Gas Connection or the Electrical Connection, the draft Order does include, pursuant to section 122(2)(b) of the PA 2008, powers for the compulsory acquisition of the necessary land and rights over land required for the Gas Connection and Electrical Connection.
- 2.14 This is also consistent with the Secretary of State's decision for The Hirwaun Generating Station Order 2015. At paragraph 3.26 of the decision letter for the Hirwaun Generating Station, the Secretary of State confirmed that compulsory acquisition powers for Associated Development could be included if the land is required to "facilitate" or is "incidental to" the NSIP. APL considers that the land rights required to construct, operate, maintain and protect the Gas Connection and Electrical Connection are required to facilitate the Power Generation Plant (which constitutes a NSIP).
- 2.15 The Power Generation Plant will use Open Cycle Gas Turbine (OCGT) technology. It is designed to operate as a gas-fired 'peaking' plant and would operate when there is a surge in demand for electricity associated with a particular 'stress event' or where there is a sudden drop in power being generated from other plants that are designed to be constantly operational (e.g. a sudden outage). The Power Generation Plant would help to 'balance out' the grid during such times and when other technologies (such as wind and solar farms) cannot generate electricity due to their reliance on weather conditions. Further details on the Project are provided in **Section 4** of this Statement.
- 2.16 Where compulsory acquisition powers are sought (as here), the applicant is required by Regulation 5(2)(h) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the "**APFP Regulations**") to submit a statement of reasons (this Statement) with its application.
- 2.17 This Statement is therefore produced pursuant to Regulation 5(2)(h) of the APFP Regulations and explains why it is necessary to acquire land, acquire and/or create rights in, on and over land, to extinguish or suspend rights in, on and over land and to temporarily use land for the purposes of the Project, if necessary by compulsion.
- 2.18 APL has had regard to the provisions of the PA 2008 and advice and guidance issued in relation to the PA 2008 in promoting its Application for Development Consent. Accordingly, this Statement takes account of,

and refers to, the Department of Communities and Local Government guidance ("**DCLG**"), 'Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land' (September 2013) (the "**Guidance**").

2.19 This Statement forms part of a suite of documents which accompany the Application for Development Consent. In particular, this Statement should be read alongside the following:

2.19.1 the **Land Plans** (Document Reference 2.2);

2.19.2 the **Order** (Document Reference 3.1);

2.19.3 the **Explanatory Memorandum** (Document Reference 3.2);

2.19.4 the **Book of Reference** (Document Reference 4.3);

2.19.5 the **Funding Statement** (Document Reference 4.2); and

2.19.6 the **Project Glossary** (Document Reference 1.4).

2.20 As described in **Section 6** below, APL has a contract in place to secure some of the land required for the Project (this includes parts of the land required for the Generating Equipment and the Gas Connection). Negotiations are in progress with regard to the purchase of land, the acquisition of and/or creation of new rights and imposition of restrictions required over the remainder of the land required for or to facilitate the Power Generation Plant, the Gas Connection and Electrical Connection. **Table 2 in Section 6 sets out the current status of those negotiations.**

2.21 Although negotiations for the purchase of land, rights and interests are ongoing in respect of the remaining land and new rights required for the Power Generation Plant, Gas Connection and Electrical Connection, it is necessary for APL to seek compulsory acquisition powers to secure such land, rights and interests and to ensure that any third party interests or encumbrances affecting such land, rights and interests are acquired, overridden or extinguished pursuant to the Order, thereby ensuring that the Project can be constructed, operated and maintained in accordance with the powers sought under the Order.

2.22 For the reasons set out in **Section 7** of this Statement, APL considers that there is a compelling case in the public interest, in accordance with section 122(3) of the PA 2008, for the making of the Order and the inclusion of powers of compulsory acquisition to enable the Project to be constructed, operated and maintained.

### 3. **POWERS OF COMPULSORY ACQUISITION UNDER THE PLANNING ACT 2008**

#### 3.1 **Powers**

3.1.1 Section 120 of the PA 2008 provides that an order granting development consent (a "**DCO**") may make provision relating to, or to matters ancillary to, the development for which consent is granted. Schedule 5 to the PA 2008 lists the matters ancillary to the development. These include:

- (a) the acquisition of land, compulsorily or by agreement (paragraph 1);
- (b) the creation, suspension or extinguishment of, or interference with, interests in or rights over land, compulsorily or by agreement (paragraph 2);
- (c) the abrogation or modification of agreements relating to land (paragraph 3);
- (d) the payment of compensation (paragraph 36).

3.1.2 Section 122 of the PA 2008 provides that a DCO may include provision authorising the compulsory acquisition of land only if the Secretary of State, in respect of the application, is satisfied that:

- (a) the land is required for the development to which the DCO relates;
- (b) the land is required to facilitate or is incidental to that development; or
- (c) the land is replacement land for commons, open spaces, etc.<sup>1</sup>

3.1.3 Further, it is also necessary for the Secretary of State to be satisfied, in relation to the application, that there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition in the DCO. This is required by section 122(3) of the PA 2008.

3.1.4 In accordance with section 123(1) of the PA 2008, the Application includes a request for compulsory acquisition of the land to be authorised.

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<sup>1</sup> The provision referred to in this sub-paragraph is not relevant in respect of the Project.

### 3.2 Powers of compulsory acquisition in the Order for the Project

- 3.2.1 Under environmental impact assessment legislation applicable to the Project, there is no general requirement to consider alternatives, only a requirement to outline the main alternatives studied by the applicant and an indication of the main reason for the applicant's choice. Furthermore, National Policy Statement EN-1 (NPS EN-1) advises at paragraph 4.4.1 that "from a policy perspective this NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option." However, NPS EN-1 makes it clear at paragraph 4.4.3 that where there is a policy or legal requirement to consider alternatives the applicant should describe the alternatives considered in compliance with these requirements.
- 3.2.2 As explained in **Sections 6 and 7** of this Statement, APL has given careful consideration to the suitability of the Order Land for the Project. Chapter 5 of the ES (Document Reference 6.1.0) sets out the main alternative options studied by APL. The Design Principles Statement (Document Reference 10.2.0) considers the alternatives in the design of the Project. Alternatives are also summarised in Section 6.6 below.
- 3.2.3 Having finalised the location for the Project, APL completed an option agreement for the following parts of the Order Land as shown on the Land Plans (Document Reference 2.2):
- (a) land for the Generating Equipment (plots 8 and 9 shown on Sheet 1 of the Land Plans);
  - (b) land required for the Laydown Area (Plots 7B, 7C and 12 shown on Sheet 1 of the Land Plans);
  - (c) part of the Gas Connection (Plots 1, 2, 3, 3A, 3B, 4, 4A, 5, 5A, 5B, 6, 6A, 6B, 7, 7A, 7B, shown on Sheet 1 of the Land Plans).
- 3.2.4 However, APL is seeking compulsory acquisition powers to secure this land or new rights (including restrictive covenants) over it, to ensure that land assembly and title to all of the Order Land can be secured with certainty. In addition, there may be unknown rights, restrictions, easements or servitudes affecting that land which also need to be overridden, removed and/or extinguished in order to facilitate the construction and operation of the Project without hindrance.
- 3.2.5 In addition, APL requires the remaining land, legal interests and rights (including restrictive covenants) as shown on the Land

Plans (Document Reference 2.2) to construct and operate the Project (including the Gas Connection and the Electrical Connection), in a reasonable timeframe to enable the Project to be constructed and contribute to the need for energy supply.

3.2.6 Whilst land, rights and interests will be secured by agreement wherever possible, and negotiations continue with all identified owners, it is essential that compulsory acquisition powers are available to APL to enable the Project to be constructed at the earliest opportunity.

3.2.7 Powers are also sought to enable the use of the Order Land for the purposes of the Project and to ensure that any, for example, rights, restrictions, easements or servitudes are over-ridden, removed and/or extinguished.

#### **4. PROJECT DETAILS**

4.1 APL is the Special Purpose Vehicle (SPV) set up to develop the Project. APL is a wholly owned subsidiary of Drax Group plc.

4.2 It is intended that the Power Generation Plant would operate within the framework established by government under the Capacity Market. This is a key part of the government's Electricity Market Reform and seeks to ensure that the UK has enough reliable electricity capacity to meet current and future electricity demand. Operation under the Capacity Market is subject to bidding into a competitive auction and it would be necessary for a DCO to be made in order to participate in this auction. Accordingly the design of the scheme and the terms of the DCO have paid regard to the need for a competitive bid. However, participating in, or being successful in, the Capacity Market is not a pre-requisite for APL to construct and operate the Project.

4.3 The main elements of the Project are described in Section 2 above. More detail on the elements that comprise the Project can be found in Chapter 3 of the ES (Document Reference 6.1.0).

#### **5. LOCATION AND DESCRIPTION OF THE ORDER LIMITS/ORDER LAND**

##### **5.1 Location**

5.1.1 The Project is located on land at Abergelli Farm, Felindre, approximately 2 km north of Junction 46 on the M4, to the north of Swansea, Wales.

5.1.2 The Order Land is approximately 1 km south-east of Felindre, and 1.4 km north of Llangyfelach. There are no residential dwellings located within the Order Land.

- 5.1.3 The Order Land and Order limits are identified on the Land Plans and Works Plans (Document References 2.2 and 2.3).
- 5.1.4 All of the land within the Order Land lies within the administrative boundary of the City and County of Swansea (CCS). APL commenced discussions with CCS in January 2014 and since then has consulted with CCS on a range of matters, as documented in the Consultation Report (Document Reference 5.1.0).

## 5.2 Description of the Order Land

- 5.2.1 The Order Land (referred to as the Project Site in the ES and other application documents), covers a total area of approximately 35.52 hectares and encompasses all the land required for the construction, operation and maintenance of the Power Generation Plant, the Electrical Connection and the Gas Connection.
- 5.2.2 The Order Land is generally open land, parts of which are or have recently been used for agricultural purposes (e.g. sheep grazing) and horse rearing. The western extent is adjacent to National Grid's Swansea North Substation (comprising a 400kV and 132kV substation) and encompasses part of the existing access road to the substation and the adjacent Felindre Gas Compressor Station.

### Power Generation Plant

- 5.2.3 The Power Generation Plant consists of the land required for the Generating Equipment, the Laydown Area, the Access Road and Ecological Mitigation Area required to facilitate the Power Generation Plant.
- 5.2.4 The total area of land required for or to facilitate the Power Generation Plant extends to approximately 20.39 hectares (being approximately 3.44 ha for the Generating Equipment, 5.13 ha for the Laydown Area, 3.83 ha for the Ecological Mitigation Area and 7.99 ha for the Access Road).
- 5.2.5 Plots 8 , 9 and 12 on the Land Plans (Document Reference 2.2) are permanently required (freehold acquisition) for the Power Generation Plant. Plot 10 is permanently required (freehold acquisition) for ecological mitigation land. Plots 7A, 7B, 7C, 11B and 11A are temporarily required to construct the Power Generation Plant.

- 5.2.6 Plots 11, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23 and 24 are permanently required (acquisition of new rights) for the Access Road and for services.
- 5.2.7 Plots 13A, 13B, 16A, 17B, 18A, 18B and 19A are temporarily required to construct the access road to the Power Generation Plant.

### **Gas Connection**

- 5.2.8 The area of land within the limits of deviation for the AGI extends to approximately 1.32 hectares, being plots 1 and 2 on the Land Plans (Document reference 2.2). National Grid has advised that as the AGI will be part of the National Gas Transmission System, its requirement is for freehold land. The final siting and design of the AGI is not yet approved, pending the grant of planning permission. National Grid will require not only permanent ownership of the direct footprint of the AGI, but sufficient land for access, landscaping and drainage associated with the AGI to be maintained. Powers of compulsory acquisition are therefore sought over the whole 1.32ha. Discussions are in progress with the landowner in relation to the voluntary acquisition of this land by APL for the purpose of the AGI.
- 5.2.9 The Pipeline begins at the AGI, which is located in the far north of the Order Limits, on the southern side of Rhyd-y-pandy Road. The working corridor for the Pipeline during construction would vary between 50 and 320 metres in width depending upon the working area required.
- 5.2.10 The approximate length of the Pipeline from the AGI to the Generating Equipment is 1.2 km. The route of the working corridor during, and its direction and width, varies to account for man-made and natural features, but generally provides for a working width during construction of 50 – 320 metres.
- 5.2.11 The Pipeline itself will be laid within a 30 metre wide corridor. The Pipeline corridor runs north to south from the AGI to the Generating Equipment Site to the south. The final easement required for the Pipeline will generally be 10 metres in width.
- 5.2.12 The route for the Pipeline crosses grazing fields bounded by one section of poor quality hedgerow (with gaps) (shown on the Hedgerow Plan (Document reference 2.9) and/or fence lines, one Public Right of Way ("**PRoW**") (LC35B) and two private farm tracks, as well as drainage ditches. The Pipeline will also cross the existing National Gas Transmission System in two locations.



5.2.13 Plots 3, 3A, 3B, 4, 5, 6 and 7 are permanently required (acquisition of new rights) for the Pipeline.

5.2.14 Plots 4A, 5A, 5B, 6A, 6B, 7A, 7B and 7C are temporarily required to construct the Gas Connection.

### **Electrical Connection**

5.2.15 The Electrical Connection will be laid within a route corridor of approximately 30 m in width during construction. The Electrical Connection will be approximately 900m in length.

5.2.16 The route for the Electrical Connection coincides with the Access Road for approximately 500 m of the route length before it turns north towards the Substation. The maximum site area for the Electrical Connection during construction is 3 hectares. The final easement will be up to 15 metres where the Electrical Connection and Access Road coincide and 6 metres otherwise.

5.2.17 It will be located to the southwest of the Generating Equipment Site passing through grass fields and following the southern boundary of the Felindre Gas Compressor Station, crossing a PRoW (LC117) before entering National Grid's Swansea North Substation. The route passes twice under one 400 kV overhead lattice tower mounted transmission line and once under one wooden pole mounted 11kV overhead distribution line.

5.2.18 The route crosses into National Grid land to the east of tower 4YW251 heading towards the Swansea North Substation. Once within National Grid's land, the Electrical Connection turns to the north-west to run alongside the substation and parallel with the substation fence line.

5.2.19 The route crosses a Local Transmission Service gas pipeline within the field to the east of tower 4YW251.

5.2.20 Plots 11, 13, and 16 are permanently required for the Electrical Connection. Plots 11B, 11A, 13A, 13B, 16A, 17A and 18A are temporarily required to construct the Electrical Connection.

## **5.3 Description of the compulsory acquisition powers**

5.3.1 APL is seeking compulsory acquisition powers to secure certain lands and new rights over land (including restrictions) within the Order Land to facilitate the Project.

5.3.2 The land over which compulsory acquisition powers are sought in respect of the **freehold** is shown edged red and shaded **pink** on the Land Plans (Document Reference 2.2).

This land is described in detail in the Book of Reference (Document Reference 4.3). Article 19 of the Order is relied upon in respect of this land.

5.3.3 The land over which **new rights (including restrictive covenants)** are being compulsory sought is shown edged red and shaded **blue** on the Land Plans (Document Reference 2.2). This land is described in detail in the Book of Reference (Document Reference 4.3). Article 23 of the Order is relied upon in respect of these rights.

5.3.4 The rights and restrictive covenants are set out in **Table 1** below.

5.3.5 The land over which **temporary use** is sought pursuant to Articles 29 and 30 is shown edged red and shaded **yellow** on the Land Plans (Document Reference 2.2). This land is described in detail in the Book of Reference (Document Reference 4.3). Articles 29 and 30 of the Order are relied upon in respect of this land and, as such, no compulsory acquisition of rights is sought over this land.

5.3.6 Where APL is seeking either land or new rights over land, then temporary use of such land pursuant to Articles 29 and 30 is also sought. As such, although these parcels are shown as either pink or blue, in accordance with the above conventions, this land is also subject to Articles 29 and 30 of the Order.

5.3.7 This approach (of seeking temporary use powers over such land) allows APL to enter on to land for particular purposes (such as site investigations and preparation works) in advance of any vesting of the relevant land/rights. This should ensure that the land/ rights ultimately vested is/are the minimum necessary for the Project.

#### 5.4 **Private rights, interests, other rights and restrictive covenants affecting the Order Land to be extinguished, suspended or overridden**

5.4.1 Article 21 of the Order, which is based on Section 237 of the Town and Country Planning Act 1990, gives APL the authority to carry out or use the authorised development and do anything else authorised by the Order notwithstanding that it involves the interference with an interest or right (meaning any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land including any natural right to support) or a breach of a restrictive

covenant. In this case, the interest, right or restrictive covenant would be overridden.

5.4.2 Pursuant to Article 24 of the Order:

- (a) all private rights over **land** subject to compulsory acquisition under the Order are to be **extinguished**;
- (b) all private rights over land subject to the compulsory acquisition of **new rights** under the Order are to be **suspended and unenforceable** or, where so notified by APL, **extinguished** in so far as in either case their continuance would be inconsistent with the exercise of that right;
- (c) all private rights over land of which APL takes **temporary possession** under the Order are to be **suspended and unenforceable** for so long as APL remains in possession of the land and so far their continuance would be inconsistent with the exercise of the temporary possession of that land.

5.4.3 Part 3 of the Book of Reference (Document Reference 4.3) identifies those plots where rights may be overridden, suspended or extinguished under Articles 21 and 24.

## 5.5 Public Highways

5.5.1 Within the Order Land, there are two publically adopted highways which will be affected during construction of the Project:

- (a) The **B4489**, from which the Access Road is to be formed to serve the Project; and
- (b) **Rhyd-y-pandy Road**, from which a new permanent access road is to be constructed to serve the AGI.

5.5.2 In respect of these public highways, APL is relying on Articles 8, 9, 10, 11, 12, 13, 14, 15, 28 and 31 of the Order in relation to street works to enter onto streets and to construct means of access and to create temporary prohibitions and restrictions of the use of streets to carry out works. Schedules 3 to 7 to the Order provide details of the works (including the location and extent) to the streets with reference to the Rights of Way, Streets and Access Plans (Document Reference 2.4). Where no compulsory acquisition of rights is required on, under or over streets, then the street is not shaded on the Land Plans (i.e. it

remains white) as the aforementioned Articles will be relied upon.

5.5.3 Any interference with rights restrictions etc. over the Order Land arising from the exercise of any Articles in the Order which provide statutory access and/or use of land within the Order Limits are captured in Part 3 of the Book of Reference (Document Reference 4.3).

5.5.4 Access along these two public highways affected by the Project will be maintained at all times during the execution and operation of the works and will not be materially affected by the construction of the Project.

## 5.6 **Utility Rights**

5.6.1 Article 31 gives APL the authority to acquire land and rights from Statutory Undertakers, and to extinguish or suspend their rights, and to remove or reposition their apparatus, subject to the provisions of Schedule 11 which contains protective provisions for their benefit.

5.6.2 Where the rights of utilities, in relation to their apparatus, are interfered with, steps will be taken to remove or reposition their apparatus so that utility services can be reinstated, maintained and operated. Articles 31 and 32 of the Order will be relied upon in this respect.

5.6.3 APL has contacted the applicable Statutory Undertakers and has sought comments on the draft Protective Provisions in the Order. Discussions are ongoing in this regard, however draft Protective Provisions have been included in the Order submitted with the Application.

## 5.7 **Other powers which may constitute an interference with land and/or rights over land**

5.7.1 The Order contains the following additional powers which may constitute an interference with land and/or rights over land and as such are captured in Part 3 of the Book of Reference (Document Reference 4.3):

- (a) Article 16 – Discharge of water;
- (b) Article 17 - Authority to survey and investigate the land; and
- (c) Article 35 – Felling or lopping of trees and removal of hedgerows.

6. **NEED FOR THE COMPULSORY ACQUISITION OF LAND AND RIGHTS**

6.1 **The matters to which the Secretary of State must have regard**

6.1.1 Under Section 122 of the PA 2008, a DCO which includes compulsory acquisition powers may be granted only if the conditions in Sections 122(2) and 122(3) of the PA 2008 are met. The conditions to be met are:

- (a) at Section 122(2), that the land is required for the development to which the DCO relates, or is required to facilitate or is incidental to the development; and
- (b) at Section 122(3), there is a compelling case in the public interest for inclusion of powers of compulsory acquisition in the DCO. The Secretary of State must be persuaded that the public benefits from the compulsory acquisitions will outweigh the private loss suffered by those whose land is to be acquired.

6.1.2 In respect of the Section 122(2) condition, the Guidance (at paragraph 11) states that the applicant should be able to demonstrate to the satisfaction of the Secretary of State that the land in question is needed for the development for which consent is sought and that the Secretary of State will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development.

6.1.3 In respect of the Section 122(3) condition, the Guidance (at paragraph 13) states that the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired. At paragraph 14, the Guidance states that in determining where the balance of public interest lies, the Secretary of State will weigh up the public benefits that a scheme will bring against any private loss to those affected by compulsory acquisition.

6.1.4 Further, paragraphs 8 to 10 of the Guidance also sets out a number of general considerations that the applicant must demonstrate to the satisfaction of the Secretary of State when justifying an order authorising compulsory acquisition. These are as follows:

- (a) that all reasonable alternatives to compulsory acquisition (including modifications to the Project) have been explored (see **paragraph 6.6** below);

- (b) that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose and is necessary and proportionate (see paragraphs 6.2-6.5 below);
- (c) that APL has a clear idea of how it intends to use the land which it is proposed to acquire (see paragraphs 6.2-6.5 below);
- (d) that there is a reasonable prospect of the requisite funds for the acquisition becoming available (see the Funding Statement (Document Reference 4.2); and
- (e) that the purposes for which compulsory acquisition of land powers are included in the Order are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected (see paragraphs 6.2-6.5 and Sections 7 and 9 below).

6.1.5 This Statement sets out the factors that APL considers demonstrate that the conditions in Section 122 of the PA 2008, and the considerations set out in the Guidance, are satisfied.

## 6.2 **Need for Compulsory Acquisition (Sections 122(2) and (3) of the PA 2008)**

6.2.1 As stated in Section 3 above, APL has completed an option agreement over the part of the Order Land. However APL is including this land within the Order Land in order to ensure that land assembly and title to the Order Land can be secured with certainty. APL is also including this land within the Order Land so as to ensure that certain easements and other private rights identified as affecting that land are extinguished, so as to facilitate the construction and operation of the Project without hindrance (see the Book of Reference (Document Reference 4.3)). In addition, there may be unknown rights, restrictions, easements or servitudes affecting that land which also need to be overridden, removed and/or extinguished in order to facilitate the construction and operation of the Project without hindrance.

6.2.2 In addition, to ensure that the Project can be facilitated, and the Government's policy in relation to the timely provision of new generating capacity is met within a reasonable timescale, APL requires the acquisition of a number of property interests in third party ownership and the grant of powers to facilitate acquisition and/or creation of rights (including restrictive covenants) and interests and to suspend or extinguish rights and other interests in or over land.

- 6.2.3 APL has been seeking to acquire the remaining land, rights (and restrictions), and temporary use of land (shown edged red and shaded pink, blue and yellow respectively on the Land Plans (Document Reference 2.2) by private treaty, in order to ensure implementation of the Project. However, it has not yet been possible to acquire all of the land, the temporary use of land and the rights required by private treaty. In addition, APL requires certain matters to be suspended, overridden or extinguished within the Order Land so as to ensure there are no impediments to the construction, operation and maintenance of the Project.
- 6.2.4 APL will continue to endeavour to purchase the land, the rights (and restrictions) and the temporary use of land, as well as secure the removal of matters affecting the Order Land that may impede the Project, by agreement wherever possible. This approach of making the application for powers of compulsory acquisition in the Application for the DCO and, in parallel, conducting negotiations to acquire land by agreement, accords with paragraph 26 of the Guidance.
- 6.2.5 APL's justification for seeking compulsory acquisition powers, in accordance with the provisions of the PA 2008, is to secure land, new rights over land (and restrictions) and the temporary use of land required to enable APL to construct, operate and maintain the Project within a reasonable commercial timeframe. The inclusion of powers of compulsory acquisition in the Order is sought in order to ensure that this can be achieved.
- 6.2.6 The land and rights (including restrictions) sought, together with the land required for temporary use, is no more than that is reasonably necessary to facilitate the Project, its construction and future maintenance, and is proportionate. The necessary powers, together with powers to suspend, override and extinguish rights and other interests in or over land, are contained in Part 3 and Part 5 of the draft Order which accompanies the Application.

### 6.3 **Compulsory Acquisition of freehold**

- 6.3.1 The intended purpose for which land is subject to proposed powers of compulsory acquisition in Article 19 of the DCO is summarised in **Table 2**. This is described by reference to the numbered works set out in Schedule 1 to the Order and shown on the Works Plan (Document Reference 2.3) and by plot number as referenced in the Book of Reference and Land Plans (Document References 4.3 and 2.2). **Table 2** should be read together with those documents.

**6.4 Compulsory Acquisition of / Creation of New Rights (including restrictive covenants)**

6.4.1 A number of new rights (including restrictive covenants) are sought to facilitate APL and all persons authorised on its behalf to construct, use and maintain at all times both, during and post construction periods, the Power Generation Plant, the Gas Connection and the Electrical Connection. Such rights are described in the Book of Reference (Document Reference 4.3). The rights and restrictive covenants are set out in Table 1. Routes have been chosen to minimise adverse impacts on third party land.

Table 1

Class 1 Compulsory acquisition and the creation of rights, and the imposition of restrictions, for the installation and use of the authorised development	Means all rights and restrictions necessary for the undertaker and / or those authorised by the undertaker:
a)	to enter on foot, with or without vehicles, plant and machinery for all purposes in connection with the construction, use and maintenance of a drainage ditch together with the right to construct, connect to, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve a drainage ditch
b)	to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the construction, use and maintenance of the authorised development
c)	to construct, use, maintain and improve a permanent means of access and to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve sewers, drains, pipes, ducts, mains, wires, cables, conduits, flues, fibre optic cables and other conducting media of whatsoever nature under and/or adjacent to the permanent means of access
d)	to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the construction, use and maintenance of a safety barrier(s) together with the right to construct, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace and improve a



Class 1 Compulsory acquisition and the creation of rights, and the imposition of restrictions, for the installation and use of the authorised development	Means all rights and restrictions necessary for the undertaker and / or those authorised by the undertaker:
	safety barrier(s)
e)	to install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs and landscaping and the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works
f)	to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve 400kV electricity cables up to 120mm in diameter, telecommunications and other ancillary apparatus and any other works as necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telecommunications and other ancillary apparatus
g)	to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve a high pressure gas pipeline of up to 250mm nominal bore, telecommunications and other ancillary apparatus and any other works as necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said pipeline, telecommunications and other ancillary apparatus
h)	to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection installation, use and maintenance of a high pressure gas pipeline of up to 250mm nominal bore, telecommunications and other ancillary apparatus and any other works as necessary
i)	to maintain and improve the access track and to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve sewers, drains, pipes, ducts, mains, wires, cables, conduits, flues, fibre optic cables and other conducting media of whatsoever nature under and/or adjacent to the access track

Class 1 Compulsory acquisition and the creation of rights, and the imposition of restrictions, for the installation and use of the authorised development	1	Means all rights and restrictions necessary for the undertaker and / or those authorised by the undertaker:
	j)	Restrictions on erecting buildings or structures, altering ground levels, planting trees or carrying out operations or actions which may obstruct, interrupt, or interfere with the exercise of the rights

6.4.2 The intended purpose, for which new rights are sought under Article 23 of the Order, is summarised in **Table 2** below. This is described by reference to the numbered works set out in Schedule 1 to the Order and shown on the Works Plans (Document Reference 2.3) and by plot number as referenced in the Book of Reference and Land Plans (Document References 4.3 and 2.2). **Table 6.2** should be read together with those documents.

6.4.3 There is a need to impose restrictive covenants in relation to new rights required in connection with the Project.

6.4.4 Planning Inspectorate advice in Advice Note 15 (October 2014, Version 1) concerning the drafting of DCOs (paragraphs 26.1-26.3) advises that it may be appropriate to include a power to impose restrictive covenants over part of the land which is subject to compulsory acquisition or use under the DCO. The Advice Note states that before deciding whether or not such a power is justified, the Secretary of State will need to consider issues such as proportionality; the risk that use of land above or below a structure could be sterilised if it has to be acquired outright in the absence of a power to impose restrictive covenants; or whether there is for example a policy of establishing a continuous protection zone for the infrastructure network which could be secured more efficiently with the benefit of this power.

6.4.5 The Advice Note states that the power to impose restrictive covenants over land above a buried cable or pipe, or where a slope contains artificial reinforcement has been granted in DCOs, and cites article 20 of the M1 Junction 10A (Grade

Separation) Order 2013 and article 22 of the Network Rail (Norton Bridge Area Improvements) Order 2014 as examples. It also advises that in order to enable the Secretary of State to consider whether the imposition of restrictive covenants is necessary for the purposes of implementing an NSIP and appropriate in human rights terms, applicants should be prepared to fully explain and justify the need for including such powers.

- 6.4.6 APL has had regard to this guidance in preparing its Order. Article 2(2) includes power to impose restrictive covenants in relation to land over which new rights are acquired. APL considers the imposition of such a power to be justified and proportionate in the circumstances of this case, in order to protect and preserve the integrity of the Electrical Connection and Gas Connection, which require the installation of pipes and cables below ground; to protect the apparatus from becoming exposed, damaged or built over; preventing operations which may obstruct, interrupt or interfere with apparatus and the exercise of new rights required; ensure that access for future maintenance can be facilitated; in the interests of safety of persons using or present on the subject land; and to ensure that land requirements are minimised so far as possible. Use of the land would be sterilised if the land above the pipes or cables had to be acquired. In the absence of such a power it is submitted that this is justifiable to protect the Project and its operation. Similar powers have been granted in the context of NSIP gas fired power stations including the Meaford Gas Fired Generating Station Order 2016 (article 18) and the Wrexham Gas Fired Generating Station Order 2017 (article 18).

## 6.5 Temporary possession of land pursuant to Article 29 of the Order

- 6.5.1 The intended purpose for which temporary use of land is sought pursuant to Article 29 of the Order is set out in **Table 2** in respect of the "yellow" land shown on the Land Plans (Document Reference 2.2). This is described by reference to the numbered works set out in Schedule 1 to the Order and shown on the Works Plan (Document Reference 2.3) and by plot number as referenced in the Book of Reference and Land Plans (Document References 4.3 and 2.2). **Table 2** should be read together with those documents.
- 6.5.2 The yellow land referred to in **Table 2** is identified in Schedule 9 to the Order as land which is subject to temporary use pursuant to Article 29.

Table 2

Land in respect of which powers of compulsory acquisition or temporary possession are sought					
Plot No.	Work No.	Reason for acquisition or possession	Category of rights sought	Owner / occupier	Status of negotiations
1	-	Freehold acquisition of land for the AGI	Not applicable – freehold acquisition sought (pink land)	Sarah Ann Marina Llewellyn	An option agreement was concluded on 26 June 2014 with the owner (the “Option Agreement”) for the acquisition of the AGI area by way of long term lease agreement. A meeting was held with the owners and their representatives on 11 <sup>th</sup> May 2018 to update the owners on the project design and to commence discussion for freehold acquisition of Plot 1 by way of variation to the Option Agreement.
2	-	Freehold acquisition of land for the AGI	Not applicable – freehold acquisition sought (pink land)	Sarah Ann Marina Llewellyn Bryan Emyr Llewellyn Alaine Francis Paul Marsh Meidwen May Thomas	An option agreement was concluded on 26 June 2014 with the owners (the “Option Agreement”) for the acquisition of the AGI area by way of long term lease agreement. A meeting was held with the owners and their representatives on 11 <sup>th</sup> May 2018 to update the owners on the project design and to commence discussion for freehold acquisition of Plot 2 by way of variation to the Option

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<b>Land in respect of which powers of compulsory acquisition or temporary possession are sought</b>					
<b>Plot No.</b>	<b>Work No.</b>	<b>Reason for acquisition or possession</b>	<b>Category of rights sought</b>	<b>Owner / occupier</b>	<b>Status of negotiations</b>
				Teifion Henry Thomas	Agreement.
3	-	Acquisition of new rights (and imposition of restrictions) for the Pipeline	(a), (g), (h) and (j)	Sarah Ann Marina Llewellyn Bryan Emyr Llewellyn Alaine Francis Paul Marsh Meidwen May Thomas Teifion Henry Thomas	The rights have been secured by agreement between the owners and the Applicant by option agreement dated 26 June 2014 (the "Option Agreement"). The Option Agreement provides permanent and temporary rights over the owners' land in respect of the Pipeline.
3A	-	Acquisition of new rights (and imposition of restrictions) for drainage and landscaping in relation to the Gas Connection	(a), (e) and (g)	Sarah Ann Marina Llewellyn Bryan Emyr Llewellyn Alaine Francis Paul Marsh	The rights have been secured by agreement between the owners and the Applicant by option agreement dated 26 June 2014 (the "Option Agreement"). The Option Agreement provides permanent and temporary rights over the owners' land in respect of the Gas Connection.

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<b>Land in respect of which powers of compulsory acquisition or temporary possession are sought</b>					
<b>Plot No.</b>	<b>Work No.</b>	<b>Reason for acquisition or possession</b>	<b>Category of rights sought</b>	<b>Owner / occupier</b>	<b>Status of negotiations</b>
				Meidwen May Thomas Teifion Henry Thomas	
3B	-	Acquisition of new rights (and imposition of restrictions) for drainage and landscaping in relation to the Gas Connection	(a) and (e)	Sarah Ann Marina Llewellyn Bryan Emyr Llewellyn Alaine Francis Paul Marsh Meidwen May Thomas Teifion Henry Thomas	The rights have been secured by agreement between the owners and the Applicant by option agreement dated 26 June 2014 (the "Option Agreement"). The Option Agreement provides full rights to permanent and temporary rights over the owners' land in respect of the Gas Connection.
4	-	Acquisition of new rights (and imposition of restrictions) for the Pipeline	(a), (g), (h) and (j)	Sarah Ann Marina Llewellyn Eric Davies Bryan Emyr Llewellyn	The rights have been secured by agreement between the owners and the Applicant by option agreement dated 26 June 2014 (the "Option Agreement"). The Option Agreement provides permanent and temporary rights over the owners' land in respect

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Land in respect of which powers of compulsory acquisition or temporary possession are sought					
Plot No.	Work No.	Reason for acquisition or possession	Category of rights sought	Owner / occupier	Status of negotiations
				Alaine Francis Paul Marsh Meidwen May Thomas Teifion Henry Thomas	of the Pipeline.
4A	-	Temporary use to facilitate construction of the Gas Connection	Not applicable - temporary possession powers sought	Sarah Ann Marina Llewellyn Eric Davies Bryan Emyr Llewellyn Alaine Francis Paul Marsh Meidwen May Thomas Teifion Henry Thomas	The rights have been secured by agreement between the owners and the Applicant by option agreement dated 26 June 2014 (the "Option Agreement"). The Option Agreement provides permanent and temporary rights over the owners' land in respect of the Gas Connection.
5	-	Acquisition of new rights (and imposition	(a), (g), (h) and (j)	Sarah Ann Marina	The rights have been secured by agreement between the owners and

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Land in respect of which powers of compulsory acquisition or temporary possession are sought					
Plot No.	Work No.	Reason for acquisition or possession	Category of rights sought	Owner / occupier	Status of negotiations
		of restrictions) for the Pipeline		Llewellyn Eric Davies Bryan Emyr Llewellyn Alaine Francis Paul Marsh Meidwen May Thomas Teifion Henry Thomas	the Applicant by option agreement dated 26 June 2014 (the "Option Agreement"). The Option Agreement provides permanent and temporary rights over the owners' land in respect of the Pipeline.
5A	-	Temporary use to facilitate construction of the Gas Connection	Not applicable - temporary possession powers sought	Sarah Ann Marina Llewellyn Eric Davies Bryan Emyr Llewellyn Alaine Francis Paul Marsh	The rights have been secured by agreement between the owners and the Applicant by option agreement dated 26 June 2014 (the "Option Agreement"). The Option Agreement provides permanent and temporary rights over the owners' land in respect of the Gas Connection.



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Land in respect of which powers of compulsory acquisition or temporary possession are sought					
Plot No.	Work No.	Reason for acquisition or possession	Category of rights sought	Owner / occupier	Status of negotiations
				Meidwen May Thomas Teifion Henry Thomas	
5B	-	Temporary use to facilitate construction of the Gas Connection	Not applicable - temporary possession powers sought	Sarah Ann Marina Llewellyn Eric Davies Bryan Emyr Llewellyn Alaine Francis Paul Marsh Meidwen May Thomas Teifion Henry Thomas	The rights have been secured by agreement between the owners and the Applicant by option agreement dated 26 June 2014 (the "Option Agreement"). The Option Agreement provides permanent and temporary rights over the owners' land in respect of the Gas Connection.
6	-	Acquisition of new rights (and imposition of restrictions) for the Pipeline	(a), (g), (h) and (j)	Sarah Ann Marina Llewellyn Bryan Emyr Llewellyn	The rights have been secured by agreement between the owners and the Applicant by option agreement dated 26 June 2014 (the "Option Agreement"). The Option Agreement provides permanent and temporary

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Land in respect of which powers of compulsory acquisition or temporary possession are sought					
Plot No.	Work No.	Reason for acquisition or possession	Category of rights sought	Owner / occupier	Status of negotiations
				Alaine Francis Paul Marsh Meidwen May Thomas Teifion Henry Thomas	rights over the owners' land in respect of the Pipeline.
6A	-	Temporary use to facilitate construction of the Gas Connection	Not applicable - temporary possession powers sought	Sarah Ann Marina Llewellyn Bryan Emyr Llewellyn Alaine Francis Paul Marsh Meidwen May Thomas Teifion Henry Thomas	The rights have been secured by agreement between the owners and the Applicant by option agreement dated 26 June 2014 (the "Option Agreement"). The Option Agreement provides permanent and temporary rights over the owner's land in respect of the Gas Connection.
6B	-	Temporary use to facilitate construction of the Gas Connection	Not applicable - temporary possession powers	Sarah Ann Marina Llewellyn	The rights have been secured by agreement between the owners and the Applicant by option agreement dated 26 June 2014 (the "Option

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Land in respect of which powers of compulsory acquisition or temporary possession are sought					
Plot No.	Work No.	Reason for acquisition or possession	Category of rights sought	Owner / occupier	Status of negotiations
			sought	Bryan Emyr Llewellyn Alaine Francis Paul Marsh Meidwen May Thomas Teifion Henry Thomas	Agreement”). The Option Agreement provides permanent and temporary rights over the owners’ land in respect of the Gas Connection.
7	3	Acquisition of new rights (and imposition of restrictions) for the Pipeline	(a), (g), (h) and (j)	Sarah Ann Marina Llewellyn Eric Davies Bryan Emyr Llewellyn Alaine Francis Paul Marsh Meidwen May Thomas Teifion Henry Thomas	The rights have been secured by agreement between the owners and the Applicant by option agreement dated 26 June 2014 (the “Option Agreement”). The Option Agreement provides permanent and temporary rights over the owners’ land in respect of the Pipeline.

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<b>Land in respect of which powers of compulsory acquisition or temporary possession are sought</b>					
<b>Plot No.</b>	<b>Work No.</b>	<b>Reason for acquisition or possession</b>	<b>Category of rights sought</b>	<b>Owner / occupier</b>	<b>Status of negotiations</b>
7A	3	Temporary use to facilitate construction of the Power Generation Plant and the Pipeline	Not applicable - temporary possession powers sought	Sarah Ann Marina Llewellyn Eric Davies Bryan Emyr Llewellyn Alaine Francis Paul Marsh Meidwen May Thomas Teifion Henry Thomas	The rights have been secured by agreement between the owners and the Applicant by option agreement dated 26 June 2014 (the "Option Agreement"). The Option Agreement provides to permanent and temporary rights over the owners' land in respect of the Pipeline and a temporary construction lease over Plot 7A.
7B	2, 3	Temporary use to facilitate construction of the Power Generation Plant and the Pipeline	Not applicable - temporary possession powers sought	Sarah Ann Marina Llewellyn Eric Davies Bryan Emyr Llewellyn Alaine Francis	The rights have been secured by agreement between the owners and the Applicant by option agreement dated 26 June 2014 (the "Option Agreement"). The Option Agreement provides to permanent and temporary rights over the owners' land in respect of the Pipeline and a temporary construction lease over Plot 7B.

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Land in respect of which powers of compulsory acquisition or temporary possession are sought					
Plot No.	Work No.	Reason for acquisition or possession	Category of rights sought	Owner / occupier	Status of negotiations
				Paul Marsh Meidwen May Thomas Teifion Henry Thomas	
7C	3	Temporary use to facilitate construction of the Power Generation Plant and the Pipeline	Not applicable - temporary possession powers sought	Sarah Ann Marina Llewellyn Bryan Emyr Llewellyn Alaine Francis Paul Marsh Meidwen May Thomas Teifion Henry Thomas	The rights have been secured by agreement between the owners and the Applicant by option agreement dated 26 June 2014 (the "Option Agreement"). The Option Agreement provides to permanent and temporary rights over the owners' land in respect of the Pipeline and a temporary construction lease over Plot 7C.
8	1A, 1B, 1C, 1D, 1E, 1F 2,	Freehold acquisition of land for the Power Generation Plant	Not applicable – freehold acquisition sought (pink land)	Sarah Ann Marina Llewellyn Eric Davies	The option for the Applicant to acquire a 50 year lease over Plot 8 has been secured by agreement between the owners and the Applicant by option agreement dated 26 June 2014 (the

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Land in respect of which powers of compulsory acquisition or temporary possession are sought					
Plot No.	Work No.	Reason for acquisition or possession	Category of rights sought	Owner / occupier	Status of negotiations
	3 and 5A			Bryan Emyr Llewellyn Alaine Francis Paul Marsh Meidwen May Thomas Teifion Henry Thomas	“Option Agreement”).
9	1A, 1B, 1C, 1D, 1E, 1F, 2, 3 and 5A	Freehold acquisition of land for the Power Generation Plant	Not applicable – freehold acquisition sought (pink land)	Sarah Ann Marina Llewellyn Eric Davies Bryan Emyr Llewellyn Alaine Francis Paul Marsh Meidwen May Thomas Teifion Henry Thomas	The option for the Applicant to acquire a 50 year lease over Plot 9 has been secured by agreement between the owners and the Applicant by option agreement dated 26 June 2014 (the “Option Agreement”).

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<b>Land in respect of which powers of compulsory acquisition or temporary possession are sought</b>					
<b>Plot No.</b>	<b>Work No.</b>	<b>Reason for acquisition or possession</b>	<b>Category of rights sought</b>	<b>Owner / occupier</b>	<b>Status of negotiations</b>
10	1B, 1E, 4 and 5A	Freehold acquisition of land for the Ecological Mitigation Area	Not applicable – freehold acquisition sought (pink land)	Sarah Ann Marina Llewellyn Bryan Emyr Llewellyn Alaine Francis Paul Marsh Meidwen May Thomas Teifion Henry Thomas	Discussion for acquisition of Plot 10 was commenced formally by meeting held on 11 <sup>th</sup> May 2018 with the owners and their representatives. The initial views and opinions of the owners were sought and a discussion over valuation will continue immediately between the appointed land agents.
11	2, 3 and 5B	Acquisition of new rights (and imposition of restrictions) for the Access Road and the Electrical Connection	(b), (c) and (f)	Sarah Ann Marina Llewellyn Eric Davies Bryan Emyr Llewellyn	The option for the Applicant to acquire a 50 year lease over Plot 11 has been secured by agreement between the owners and the Applicant by option agreement dated 26 June 2014 (the “Option Agreement”).

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Land in respect of which powers of compulsory acquisition or temporary possession are sought					
Plot No.	Work No.	Reason for acquisition or possession	Category of rights sought	Owner / occupier	Status of negotiations
				Alaine Francis Paul Marsh Meidwen May Thomas Teifion Henry Thomas	
11A	2, 3 and 5B	Acquisition of new rights (and imposition of restrictions) for the Access Road and the Electrical Connection and for access to the Ecological Mitigation Area.	(b) and (e)	Sarah Ann Marina Llewellyn Eric Davies Bryan Emyr Llewellyn Alaine Francis Paul Marsh Meidwen May Thomas Teifion Henry Thomas	The option for the Applicant to acquire a 50 year lease over Plot 11A has been secured by agreement between the owners and the Applicant by option agreement dated 26 June 2014 (the "Option Agreement").



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Land in respect of which powers of compulsory acquisition or temporary possession are sought					
Plot No.	Work No.	Reason for acquisition or possession	Category of rights sought	Owner / occupier	Status of negotiations
11B	2, 3 and 5B	Temporary use to facilitate construction of the Power Generation Plant and the Electrical Connection	Not applicable - temporary possession powers sought	Sarah Ann Marina Llewellyn Eric Davies Bryan Emyr Llewellyn Alaine Francis Paul Marsh Meidwen May Thomas Teifion Henry Thomas	The option for the Applicant to acquire a 50 year lease over Plot 11B has been secured by agreement between the owners and the Applicant by option agreement dated 26 June 2014 (the "Option Agreement").
12	1F, 2, 3 and 5B	Acquisition of freehold land (and imposition of restrictions) for Laydown Area, Maintenance Compound, Access	Not applicable – freehold acquisition sought (pink land)	Sarah Ann Marina Llewellyn Eric Davies	The option for the Applicant to acquire a 50 year lease over Plot 12 has been secured by agreement between the owners and the Applicant by option agreement dated 26 June 2014 (the

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<b>Land in respect of which powers of compulsory acquisition or temporary possession are sought</b>					
<b>Plot No.</b>	<b>Work No.</b>	<b>Reason for acquisition or possession</b>	<b>Category of rights sought</b>	<b>Owner / occupier</b>	<b>Status of negotiations</b>
		Road and Electrical Connection		Bryan Emyr Llewellyn Alaine Francis Paul Marsh Meidwen May Thomas Teifion Henry Thomas	“Option Agreement”).
13	2 and 5B	Acquisition of new rights (and imposition of restrictions) for the Electrical Connection and the Access Road	(b), (c) and (f)	Michael Edwards	A meeting was held with Mr Edwards and his land agent on 27 <sup>th</sup> April 2018 to commence discussion for acquisition of rights over Plot 13. Further dialogue has been held between land agents to review principles of valuation to acquire the rights by negotiation. A fully termed written offer was made to Mr Edwards on or around 18 <sup>th</sup> May 2018.
13A	2 and	Temporary use to facilitate construction	Not applicable - temporary	Michael Edwards	A meeting was held with Mr Edwards and his land agent on 27 <sup>th</sup> April 2018

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<b>Land in respect of which powers of compulsory acquisition or temporary possession are sought</b>					
<b>Plot No.</b>	<b>Work No.</b>	<b>Reason for acquisition or possession</b>	<b>Category of rights sought</b>	<b>Owner / occupier</b>	<b>Status of negotiations</b>
	5B	of the Access Road and the Electrical Connection	possession powers sought		to commence discussion for acquisition of rights over Plot 13A. Further dialogue has been held between land agents to review principles of valuation to acquire the rights by negotiation. A fully termed written offer was made to Mr Edwards on or around 18 <sup>th</sup> May 2018.
13B	2 and 5B	Temporary use to facilitate construction of the Access Road and the Electrical Connection	Not applicable - temporary possession powers sought	Michael Edwards	A meeting was held with Mr Edwards and his land agent on 27 <sup>th</sup> April 2018 to commence discussion for acquisition of rights over Plot 13B. Further dialogue has been held between land agents to review principles of valuation to acquire the rights by negotiation. A fully termed written offer was made to Mr Edwards on or around 18 <sup>th</sup> May 2018.
14	2 and 5B	Acquisition of new rights (and imposition of restrictions) for the Access Road and the Electrical Connection	(b), (c) and (f)	Michael Edwards	A meeting was held with Mr Edwards and his land agent on 27 <sup>th</sup> April 2018 to commence discussion for acquisition of rights over Plot 14.

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<b>Land in respect of which powers of compulsory acquisition or temporary possession are sought</b>					
<b>Plot No.</b>	<b>Work No.</b>	<b>Reason for acquisition or possession</b>	<b>Category of rights sought</b>	<b>Owner / occupier</b>	<b>Status of negotiations</b>
					Further dialogue has been held between land agents to review principles of valuation to acquire the rights by negotiation. A fully termed written offer was made to Mr Edwards on or around 18 <sup>th</sup> May 2018.
15	2 and 5B	Acquisition of new rights (and imposition of restrictions) for the Access Road	(b) and (c)	Michael Edwards	A meeting was held with Mr Edwards and his land agent on 27 <sup>th</sup> April 2018 to commence discussion for acquisition of rights over Plot 15. Further dialogue has been held between land agents to review principles of valuation to acquire the rights by negotiation. A fully termed written offer was made to Mr Edwards on or around 18 <sup>th</sup> May 2018.
16	-	Acquisition of new rights (and imposition of restrictions) for the Electrical Connection	(b), (d) and (f)	National Grid Electricity Transmission plc	Ongoing dialogue with NG ET plc has continued over the connection, access and construction arrangements for the Project over the previous 12 calendar months. A fully termed offer for acquisition of the

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<b>Land in respect of which powers of compulsory acquisition or temporary possession are sought</b>					
<b>Plot No.</b>	<b>Work No.</b>	<b>Reason for acquisition or possession</b>	<b>Category of rights sought</b>	<b>Owner / occupier</b>	<b>Status of negotiations</b>
					rights over Plot 16 was made on or around 18 <sup>th</sup> May 2018.
16A	-	Temporary use to facilitate construction the Electrical Connection and the Access Road	Not applicable - temporary possession powers sought	National Grid Electricity Transmission plc	Ongoing dialogue with NG ET plc has continued over the connection, access and construction arrangements for the Project over the previous 12 calendar months. A fully termed offer for acquisition of the rights over Plot 16A was made on or around 18 <sup>th</sup> May 2018.
17	2 and 5B	Acquisition of new rights (and imposition of restrictions) for the Access Road	(b) and (c)	Michael Edwards	A meeting was held with Mr Edwards and his land agent on 27 <sup>th</sup> April 2018 to commence discussion for acquisition of rights over Plot 17. Further dialogue has been held between land agents to review principles of valuation to acquire the rights by negotiation. A fully termed written offer was made to Mr Edwards on or around 18 <sup>th</sup> May 2018.

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<b>Land in respect of which powers of compulsory acquisition or temporary possession are sought</b>					
<b>Plot No.</b>	<b>Work No.</b>	<b>Reason for acquisition or possession</b>	<b>Category of rights sought</b>	<b>Owner / occupier</b>	<b>Status of negotiations</b>
17A	2 and 5B	Temporary use to facilitate construction of the Access Road and the Electrical Connection	Not applicable - temporary possession powers sought	Michael Edwards	A meeting was held with Mr Edwards and his land agent on 27 <sup>th</sup> April 2018 to commence discussion for acquisition of rights over Plot 17A. Further dialogue has been held between land agents to review principles of valuation to acquire the rights by negotiation. A fully termed written offer was made to Mr Edwards on or around 18 <sup>th</sup> May 2018.
17B	2 and 5B	Temporary use to facilitate construction of the Access Road and the Electrical Connection	Not applicable - temporary possession powers sought	Michael Edwards	A meeting was held with Mr Edwards and his land agent on 27 <sup>th</sup> April 2018 to commence discussion for acquisition of rights over Plot 17B. Further dialogue has been held between land agents to review principles of valuation to acquire the rights by negotiation. A fully termed written offer was made to Mr Edwards on or around 18 <sup>th</sup> May 2018.
18	2 and	Acquisition of new rights (and imposition	(b), (c) and (d)	Wynne Watkins	A meeting was held with Mr Watkins and his land agent on 27 <sup>th</sup> April 2018

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<b>Land in respect of which powers of compulsory acquisition or temporary possession are sought</b>					
<b>Plot No.</b>	<b>Work No.</b>	<b>Reason for acquisition or possession</b>	<b>Category of rights sought</b>	<b>Owner / occupier</b>	<b>Status of negotiations</b>
	5B	of restrictions) for the Access Road			to commence discussion for acquisition of rights over Plot 18. A fully termed written offer was made to Mr Watkins on or around 18 <sup>th</sup> May 2018.
18A	2 and 5B	Temporary use to facilitate construction of the Access Road and the Electrical Connection	Not applicable - temporary possession powers sought	Wynne Watkins	A meeting was held with Mr Watkins and his land agent on 27 <sup>th</sup> April 2018 to commence discussion for acquisition of rights over Plot 18A. A fully termed written offer was made to Mr Watkins on or around 18 <sup>th</sup> May 2018.
18B	2 and 5B	Temporary use to facilitate construction of the Access Road	Not applicable - temporary possession powers sought	Wynne Watkins	A meeting was held with Mr Watkins and his land agent on 27 <sup>th</sup> April 2018 to commence discussion for acquisition of rights over Plot 18B. A fully termed written offer was made to Mr Watkins on or around 18 <sup>th</sup> May 2018.
19	2 and	Acquisition of new rights (and imposition	(b), (c), (d) and (j)	National Grid Electricity	Ongoing dialogue with NG ET plc has continued over the connection,

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<b>Land in respect of which powers of compulsory acquisition or temporary possession are sought</b>					
<b>Plot No.</b>	<b>Work No.</b>	<b>Reason for acquisition or possession</b>	<b>Category of rights sought</b>	<b>Owner / occupier</b>	<b>Status of negotiations</b>
	5B	of restrictions) for the Access Road		Transmission plc	access and construction arrangements for the Project over the previous 12 calendar months. A fully termed offer for acquisition of the rights over Plot 19 was made on or around 18 <sup>th</sup> May 2018.
19A	2 and 5B	Temporary use to facilitate construction of the Access Road	Not applicable - temporary possession powers sought	National Grid Electricity Transmission plc	Ongoing dialogue with NG ET plc has continued over the connection, access and construction arrangements for the Project over the previous 12 calendar months. A fully termed offer for acquisition of the rights over Plot 19A was made on or around 18 <sup>th</sup> May 2018.
20	2	Acquisition of new rights (and imposition of restrictions) for the Access Road	(b), (c) and (j)	Claire Louise Smith Ferelith Joan Smith Malcolm Richard Christie Smith Robert Malcolm Christie	Confirmation of the appointed agent for the owners was received during the week of 7 <sup>th</sup> May 2018 and a telephone meeting held with the land agent on 10 <sup>th</sup> May 2018 to review and discuss the rights to be acquired over Plot 20. A fully termed offer for acquisition of the rights over Plot 20



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<b>Land in respect of which powers of compulsory acquisition or temporary possession are sought</b>					
<b>Plot No.</b>	<b>Work No.</b>	<b>Reason for acquisition or possession</b>	<b>Category of rights sought</b>	<b>Owner / occupier</b>	<b>Status of negotiations</b>
				Smith Kirsty Ann Dando-Thomas Jeffrey Charles Jones Garry William Thomas	was issued to the land agent on or around 18 <sup>th</sup> May 2018.
21	2	Acquisition of new rights (and imposition of restrictions) for the Access Road	(b), (c) and (j)	Wynne Watkins Good Energy Brynwhilach	A meeting was held with Mr Watkins and his land agent on 27 <sup>th</sup> April 2018 to commence discussion for acquisition of rights over Plot 21. A fully termed written offer was made to Mr Watkins on or around 18 <sup>th</sup> May 2018.
22	2	Acquisition of new rights (and imposition of restrictions) for the Access Road	(b), (c) and (j)	Redisplay Limited Teamforce UK Limited	A meeting was held with Mr Watkins and his land agent on 27 <sup>th</sup> April 2018 to commence discussion for acquisition of rights over Plot 22. A fully termed written offer was made to Mr Watkins on or around 18 <sup>th</sup> May 2018.

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<b>Land in respect of which powers of compulsory acquisition or temporary possession are sought</b>					
<b>Plot No.</b>	<b>Work No.</b>	<b>Reason for acquisition or possession</b>	<b>Category of rights sought</b>	<b>Owner / occupier</b>	<b>Status of negotiations</b>
23	2	Acquisition of new rights (and imposition of restrictions) for the Access Road	(b), (c) and (j)	National Grid Gas plc	A fully termed written offer was made to NG Gas plc on or around 18 <sup>th</sup> May 2018.
24	2	Acquisition of new rights (and imposition of restrictions) for the Access Road	(b), (c) and (j)	Wynne Watkins	A meeting was held with Mr Watkins and his land agent on 27 <sup>th</sup> April 2018 to commence discussion for acquisition of rights over Plot 24. A fully termed written offer was made to Mr Watkins on or around 18 <sup>th</sup> May 2018.
Plots 9, 10, 11, 11A, 11B, 12, 13, 13A, 13B, 14, 15, 16, 16A, 19, 19A, 20, in respect of	1A, 1B, 1C, 1D, 1E, 1F, 2, 3, 4, 5A and 5B	Freehold acquisition of land for the Power Generation Plant, Ecological mitigation area, Laydown Area, Maintenance Compound, Access Road and Electrical Connection.  Temporary use to facilitate construction	(b), (c), (d), (e), (f) and (j)	Lord Richard Anthony Hussey	Assessment of potential for interference with minerals rights is in progress, and negotiations with the owner of the minerals rights are expected to begin shortly.

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Land in respect of which powers of compulsory acquisition or temporary possession are sought					
Plot No.	Work No.	Reason for acquisition or possession	Category of rights sought	Owner / occupier	Status of negotiations
minerals rights only		<p>of the Power Generation Plant, the Electrical Connection and the Access Road.</p> <p>Acquisition of new rights (and imposition of restrictions) for the Access Road and the Electrical Connection.</p>			

## 6.6 Alternatives to Compulsory Acquisition

- 6.6.1 As set out in the ES and the Consultation Report (Document References 6.1.0 and 5.1.0 respectively) APL has studied various alternatives at relevant stages prior to the making of the Application. These are set out in summary below.
- 6.6.2 Chapter 5 of the ES (Document Reference 6.1.0) explains the studies made in respect of and consideration given to:
- (a) site selection;
  - (b) alternative technologies for electricity generation;
  - (c) alternative options for the Access Road;
  - (d) alternative options for the Electrical Connection; and
  - (e) alternative options for the Gas Connection.
- 6.6.3 Chapter 10 of the Consultation Report explains further how community and statutory consultees have influenced considerations as to alternative layouts and options for the Power Generation Plant, Electrical Connection and Gas Connection.

### Site Selection

- 6.6.4 As reported in section 5.2 in Chapter 5 of the ES, APL's site selection process began in 2010. As recognised by NPS EN-2 (Section 2.2.1), it is for energy companies to decide what applications to bring forward and the Government does not seek to direct applicants to particular sites. In addition, the specific criteria considered by applicants, and the weight they give to them, can and will vary from project to project.
- 6.6.5 A range of sites around the UK were studied to ascertain their suitability to support power generation plants of the Project's nature. The key factors which were considered necessary in a site were broadly four-fold: technical (e.g. the size of the site and the proximity to appropriate gas and electrical connection points), economic (e.g. the proximity of a site to appropriate gas and electrical connection points, in order to reduce the cost to the UK consumer and the environmental impact of the associated connections), environmental (proximity of sensitive receptors, such as residential properties or sites of ecological importance) and whether the proposals would be in line with local planning policy. Based on these considerations, the Order Land (and the Generating Equipment Site within the Order Limits) was considered suitable.

### Alternative Technologies

- 6.6.6 The following three technology options were originally considered for the Power Generation Plant operating as a peaking plant: OCGT plant; Combined Cycle Gas Turbine ("**CCGT**") plant; and Reciprocating Gas Engines ("**RGE**") plant. The potential for using Combined Heat and Power ("**CHP**") opportunities using these technologies was also considered; however, it is considered not technically or economically feasible with the selection of an OCGT peaking power station (see Appendix 5.1 of the ES, Document Reference 6.2.0).
- 6.6.7 A larger number of RGE units would be required to generate up to 299 MW. Spatially, this is not possible at the Project Site and this option was discounted from further detailed consideration. As between CCGT and SCGT plant, it was found that SCGT would be the most suitable technology choice for generating up to 299 MW as a peaking plant at the Project Site based on environmental, technical and feasibility considerations, relating to: visual impact, water resources, noise and available space, financial considerations, and start-up times. In particular, it was found that an OCGT plant would likely perform better economically and with short start-up times (paying due regard to the Capacity Mechanism, the likely market regime), and lower impacts in respect of water usage, visual impact, noise and land take.

### **Alternative Layouts & Route Options**

- 6.6.8 A range of site layouts for the Generating Equipment were examined before culminating in the final design of the Project taking into account the following constraints:
- Appropriate buffer to protect a 1.68 metre cast iron water main which bisects the Generating Equipment Site;
  - Avoidance of landfill to north;
  - Avoidance of higher topography to the north west which would be more visible in key views;
  - Avoidance of woodland to the East;
  - Avoidance of solar farms to the north, south, east and west;
  - Avoidance of field boundaries as far as possible (being wildlife/ heritage features).

- 6.6.9 Dimensions of Gas Turbine Generators, cooling equipment, demineralised water tank, fire water tank, administration/workshop/control building(s) and Gas Receiving Station were also considered and refined so far as possible having regard to site constraints as set out in Chapter 5 of the ES.
- 6.6.10 At the commencement of non-statutory consultation for the Project, several options were still under consideration:
- Two possible access roads to the Power Generation Plant Site;
  - Two possible options for connecting the Generating Equipment to a suitable source of fuel gas;
  - Four possible options for the Gas Connection route corridor (within an identified Gas Connection Opportunity Area);
  - Two possible Electrical Connection options to export power from the Generating Equipment to the NETS: underground Cable; or, overhead line;
  - Possible options for the Electrical Connection route corridor (within an identified Electrical Connection Opportunity Area to the south-west of the Generating Equipment Site);
- 6.6.11 Two options were considered for the access to the Generating Equipment Site:
- (a) 'Access Option 1' (so-called as it was identified first) would have involved taking access from the north via the Rhyd-y-pandy Road and the existing access road west of Brynheulog past Abergelli Farm which would need to be extended to the Generating Equipment Site.
  - (b) 'Access Option 2' is from the west via the B4489, along the access road to Swansea North Substation and Felindre Gas Compressor Station, which will be widened to accommodate the abnormal loads required during construction, and then along a new section of purpose built access road to be constructed across undeveloped land to the Generating Equipment Site.
- 6.6.12 'Access Option 2' was the option taken forward and is referred to in this Statement as the Access Road. The main reasons for this choice were that the majority of the public consulted during 2014 supported this option in preference to 'Access Option 1',

as it would result in a lower adverse impact on traffic by using a shorter, more direct route and would avoid the roads leading to Morryston Hospital. This option also minimises the amount of construction required, as part of the access is existing.

- 6.6.13 As to alternative options for the Gas Connection, four principal potential connection route options (these are shown on Figure 5.2 of the ES and described in section 5.4 of Chapter 5 of the ES (Document Reference 6.1.0)) were explored prior to identification of a single preferred route for the Gas Connection. In selecting the final route for the Gas Connection, due regard has been paid to relevant factors including environmental, planning, safety, engineering and constructability in selecting the preferred route. Although not the shortest route, the selected route has lower risks and avoids ecologically significant habitats, such as rhos pasture and deciduous woodland which were identified during the Phase One Habitat Survey.
- 6.6.14 As to alternative options for the Electrical Connection, a grid connection assessment was undertaken for the Project in March 2014 in order to define and evaluate the options available for connecting the Generating Equipment to the NETS for the export of electricity. Both underground cables and overhead lines were initially considered. However, underground cables were selected as the preferred option due to the limited visual impact.
- 6.6.15 The Project will connect into a Gas Insulated Switchgear (GIS) generator bay within Swansea North Substation. Only a limited number of route corridor options for the Electrical Connection were considered, as the most appropriate option was available (i.e. the shortest, most direct route, requiring the least amount of land take and avoiding any statutory designated sites or valued habitats). This negated the need to assess any less favourable options.
- 6.6.16 APL therefore considers that all reasonable alternatives have been considered prior to the making of the Application and such consideration has included reasonable factors at relevant stages, such as consultee comments, technical feasibility, the anticipated market regime, and the minimisation of environmental and visual impacts and land take.

## 6.7 Availability of Funds for Compensation

- 6.7.1 The Funding Statement (Document Reference 4.2) confirms that APL has the ability to procure the financial resources

required for the Project, including the cost of acquiring any land and rights and the payment of compensation, as applicable.

6.7.2 In addition, the Order contains an obligation on APL to put in place a guarantee or other form of financial security (to be approved by the Secretary of State) prior to exercising any of the compulsory acquisition powers.

6.7.3 APL therefore considers that the Secretary of State can be satisfied that the requisite funds for payment of compensation will be available at the appropriate time.

## **7. JUSTIFICATION FOR THE USE OF POWERS OF COMPULSORY ACQUISITION**

### **7.1 Compelling Case**

7.1.1 A Planning Statement (Document Reference 10.1.0) accompanies the Application. In addition to the information set out above, the Planning Statement explains how the Project:-

- (a) meets an urgent need for new energy infrastructure;
- (b) is compliant with NPS EN-1 and NPS EN-2, and in accordance with the other decision-making factors specified in Section 104 of the PA 2008.
- (c) is a form of economic development that is suitable in its local context;
- (d) minimises or mitigates adverse landscape and amenity impacts to an acceptable degree;
- (e) minimises or mitigates adverse environmental impacts to an acceptable degree;

7.1.2 The Planning Statement provides an extensive review of these matters, summarised in the subsequent paragraphs of this section.

### **7.2 The Urgent Need for New Gas Fired Generating Station Infrastructure**

7.2.1 The urgent need for flexible gas fired power generating stations is established in NPS EN-1, and is supported in a range of other national policy:

7.2.2 the National Infrastructure Plan 2014 (HM Treasury, December 2014),



- 7.2.3 the Gas Generation Strategy (DECC, 2012) and
- 7.2.4 The “Final Report of the Industrial Strategy Commission” (Industrial Strategy Commission, November 2017).
- 7.2.5 Both the National Policy Statements and other national policy acknowledge the substantial national need for gas generation infrastructure to respond to changes in supply and demand and to replace the capacity that will be lost through the closure of existing large coal plants, to which the Project will directly contribute.
- 7.2.6 The Environment Act (Wales) 2016 sets out a long term target of reducing carbon emissions in Wales by at least 80% by 2050. The Project will contribute to achieving this goal by supporting security of supply and enabling reliance on renewable technology.
- 7.2.7 Gas-fired generating stations are very well suited to meeting ‘peak’ load demands as they can be specified with very reliable, flexible technology. Peaking plants operate for up to 2,250 hours per year and help to ‘balance out’ the grid at times of peak electricity demand and also help to support the grid at times when intermittent renewable sources cannot generate electricity. The chosen technology for a peaking plant should maximise reliability for an intermittent pattern of usage, and short start-up time.
- 7.2.8 With the substantial recent and forecast increases in intermittent sources on the grid, ‘peaking’ plants have a valuable role in ‘evening out’ the power supply to the grid and thus complementing renewable sources, as supported by the National Policy Statements.
- 7.2.9 Accordingly it can be seen that the Project can contribute to the immediate and medium term needs for flexible, reliable, peak load power generation and facilitate the transition to a low carbon economy. It therefore makes a material contribution to attaining UK and Welsh energy policy objectives.

### 7.3 **Economic development considerations**

- 7.3.1 NPS EN-2 notes that “Fossil fuel generating stations have large land footprints and will therefore only be possible where the applicant is able to acquire a suitably-sized site” (NPS EN-2, paragraph 2.2.2). It is also notes that “Applicants should locate new fossil fuel generating stations in the vicinity of existing transport routes wherever possible.” These factors, along with consideration of the nature and intensity of neighbouring land

uses and the proximity of grid connections to minimise construction effects on the surrounding area, have been taken into account in selecting the site (see the alternatives section at paragraph 6.6 above).

7.3.2 Planning Policy Wales (Edition 9, November 2016, Welsh Government) seeks to plan for economic development, defined as development of land and buildings for activities that generate wealth, jobs and incomes, and notes that the construction and energy sectors are important to that economy.

7.3.3 Chapter 14 of the ES (Document Reference 6.1.0) deals with the socio economic impacts of the Project and its findings are summarised below:

- (a) During construction and decommissioning the Project will have slight beneficial effects on the socio-economic status of the area through both employment creation and capital expenditure and worker spending in the local economy.
- (b) During operation the Project is anticipated to bring slight beneficial effects to the area in the vicinity of the Project Site through the generation of jobs and investment of staff from e.g. spending their wages locally.
- (c) No likely significant impacts are predicted on tourism and community infrastructure as a result of the construction and operation of the Project from visual, noise, traffic and accessibility and air quality impacts.
- (d) There are no likely significant effects when the Project is considered cumulatively with other projects.

7.3.4 No likely significant effects are anticipated on socio-economics as a result of the construction, operation or decommissioning of the Project. However, there are likely to be slight beneficial effects from investment and job creation at all stages of the Project.

7.3.5 The Design Note on CHP contained in the Environmental Statement Appendix 5.1 (Document Reference 6.2.0) explains the considerations that have been given to CHP at relevant stages of the evolution of the Project and concludes that there is no regional market for heat in this location, no potential future heat requirements in the area that would match the unpredictable operational pattern of a peaking power station can be identified, and the intermittent operation is inherently

unsuitable for the likely continuous or regular demands of heat users.

- 7.3.6 The Environmental Statement has also assessed all relevant likely significant environmental effects and has proposed appropriate mitigation wherever feasible (Document Reference 6.1.0).
- 7.3.7 APL considers that the Project has been sited, laid out and designed with appropriate regard to NPS policies and relevant economic development considerations.
- 7.3.8 As such, it is considered that there are no relevant matters that give rise to adverse impacts sufficient to outweigh the identified benefits of the Project.
- 7.3.9 It is considered that there are no international obligations that would be breached if the Order were made in the terms proposed.
- 7.3.10 In conclusion and in line with the factors set out in Section 122(3) and section 104 of the PA 2008 there is a compelling case in the public interest for the Order to be made in the terms proposed and in the absence of sufficient indications to the contrary.

## **8. SPECIAL CONSIDERATIONS**

### **8.1 Special Category Land – Crown Land**

- 8.1.1 No Crown interests are included in or affected by the Order Land.

### **8.2 Special Category Land – Open Space**

- 8.2.1 No open space, common land fuel or field garden allotment is included in or affected by the Order Land.

### **8.3 National Trust land**

- 8.3.1 No National Trust land is included in or affected by the Order Land.

### **8.4 Statutory Undertakers' Land and Apparatus**

- 8.4.1 The interests held by each statutory undertaker identified by APL as having a right to keep or access apparatus within the Order Land are identified in Part 2 and Part 3 of the Book of Reference (Document Reference 4.3).

- 8.4.2 Section 127(2) of the PA 2008 states that an order granting development consent may only include provision authorising the compulsory acquisition of statutory undertakers' land to the extent that:
- (a) the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
  - (b) the land can be replaced by other land belonging to or available for acquisition by the undertakers without serious detriment to the carrying on of the undertaking.
- 8.4.3 Section 127(5) of the PA 2008 states that an order granting development consent may only include provision authorising the compulsory acquisition of a right over statutory undertaker's land by the creation of a new right over land to the extent that:-
- (a) the right can be purchased without serious detriment to the carrying on of the undertaking; or
  - (b) any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of the other land belonging to or available for acquisition by them.
- 8.4.4 Section 138 of the PA 2008 states that an order granting development consent may only include provision for the extinguishment of rights of way, or rights to lay down, erect, continue or maintain apparatus on, under or over the land belonging to statutory undertakers for the purposes of their undertakings only if the Secretary of State is satisfied that the extinguishment is necessary for the purpose of carrying out the development to which the order relates. The protective provisions proposed by APL in the draft Order for identified statutory undertakers whose apparatus may be affected by the draft Order provides that APL may not extinguish any rights belonging to the affected undertakers without their prior agreement. Further detail is set out in Table 3 below.
- 8.4.5 Adequate protection for the statutory undertakers will be included within protective provisions in the Order and/or asset protection agreements between the parties. APL therefore considers that the statutory undertakers will not suffer serious detriment to the carrying on of the undertaking as a result of the compulsory acquisition of land or rights over land or powers of temporary possession.

8.4.6 A summary of the current status of negotiations with each statutory undertaker is set out in Table 3 below.

Table 3

<b>Summary of negotiations with statutory undertakers</b>			
<b>Plot Nos.</b>	<b>Work Nos.</b>	<b>Engagement of Section 127</b>	<b>Statutory undertaker and status of negotiation</b>
6, 6A, 6B, 10, 13, 14, 15, 16, 16A, 18, 18A, 18B, 19, 19A, 20, 21, 24	2, 4, 5	<p>APL considers that the land and rights can be acquired without serious detriment to the carrying on of National Grid's undertaking.</p> <p>The Protective Provisions in the draft Order ensure that National Grid's apparatus will be protected and access maintained during construction.</p> <p>The Protective Provisions also ensure that (if necessary) no rights will be extinguished without National Grid's agreement and no apparatus removed until alternative apparatus has been constructed.</p>	<p><b>National Grid Electricity Transmission plc:</b> APL and National Grid Electricity Transmission plc are currently negotiating the protective provisions to be included in the Order and a side agreement for the protection of National Grid's apparatus and access to apparatus. APL has included draft protective provisions for the benefit of National Grid in Part 3 of Schedule 11 to the Order.</p>
2, 6, 6A, 6B, 16, 16A, 19, 19A, 23,	2 and 5	<p>APL considers that the land and rights can be acquired without serious detriment to the carrying on of National Grid's undertaking.</p> <p>The Protective Provisions in the draft Order ensure that National Grid's apparatus will be protected and access maintained during construction.</p> <p>The Protective Provisions also ensure that (if necessary) no rights will be extinguished without</p>	<p><b>National Grid Gas plc:</b> APL and National Grid Gas plc are currently negotiating the protective provisions to be included in the Order and a side agreement for the protection of National Grid's apparatus and access to apparatus. APL has included draft protective provisions for the benefit of National Grid in Part 3 of Schedule 11 to the Order.</p>

<b>Summary of negotiations with statutory undertakers</b>			
Plot Nos.	Work Nos.	Engagement of Section 127	Statutory undertaker and status of negotiation
		National Grid's agreement and no apparatus removed until alternative apparatus has been constructed.	
3, 3A, 3B, 7C, 10, 12, 13A, 16, 16A, 18, 18A, 18B, 19, 19A, 20, 21, 22, 24	1F, 2, 3, 4 and 5	<p>APL considers that the land and rights can be acquired without serious detriment to the carrying on of Western Power Distribution (South Wales) plc's undertaking.</p> <p>The Protective Provisions in the draft Order ensure that Western Power Distribution (South Wales) plc's apparatus will be protected and access maintained during construction.</p> <p>The Protective Provisions also ensure that (if necessary) no rights will be extinguished without Western Power Distribution (South Wales) plc's agreement and no apparatus removed until alternative apparatus has been constructed.</p>	<b>Western Power Distribution (South Wales) plc:</b> APL and Western Power (South Wales) Distribution plc are currently negotiating the protective provisions to be included in the Order and a side agreement for the protection of Western Power Distribution (South Wales) plc's apparatus and access to apparatus. APL has included draft protective provisions for the benefit of Western Power Distribution (South Wales) plc in Part 4 of Schedule 11 to the Order.
7B, 7C, 10, 11, 11A, 11B, 12, 19, 20, 22,	1F, 2, 3, 4 and 5	<p>APL considers that the land and rights can be acquired without serious detriment to the carrying on of Dwr Cymru Cyfyngedig's undertaking.</p> <p>The Protective Provisions in the draft Order ensure that Dwr Cymru Cyfyngedig's apparatus will be protected and access maintained</p>	<b>Dwr Cymru Cyfyngedig:</b> APL and Dwr Cymru Cyfyngedig are currently negotiating the protective provisions to be included in the Order and a side agreement for the protection of Dwr Cymru Cyfyngedig's apparatus and access to apparatus. APL has included draft protective provisions for the benefit of Dwr Cymru Cyfyngedig in Part 5 of Schedule 11 to the

<b>Summary of negotiations with statutory undertakers</b>			
Plot Nos.	Work Nos.	Engagement of Section 127	Statutory undertaker and status of negotiation
		<p>during construction.</p> <p>The Protective Provisions also ensure that (if necessary) no rights will be extinguished without Dwr Cymru Cyfyngedig's agreement and no apparatus removed until alternative apparatus has been constructed.</p>	Order.
2, 3, 3A, 3B, 4, 4A, 5, 5A, 5B, 6, 6A, 6B, 7C		<p>APL considers that the land and rights can be acquired without serious detriment to the carrying on of Abergelli Solar Limited's undertaking.</p> <p>The Protective Provisions in the draft Order ensure that Abergelli Solar Limited's apparatus will be protected and access maintained during construction.</p> <p>The Protective Provisions also ensure that (if necessary) no rights will be extinguished without Abergelli Solar Limited's agreement and no apparatus removed until alternative apparatus has been constructed.</p>	<p><b>Abergelli Solar Limited:</b> APL and Abergelli Solar Limited are currently negotiating the protective provisions to be included in the Order and a side agreement for the protection of Abergelli Solar Limited's apparatus and access to apparatus. APL has included draft protective provisions for the benefit of Abergelli Solar Limited in Part 6 of Schedule 11 to the Order.</p>

<b>Summary of negotiations with statutory undertakers</b>			
<b>Plot Nos.</b>	<b>Work Nos.</b>	<b>Engagement of Section 127</b>	<b>Statutory undertaker and status of negotiation</b>
10, 13, 14, 15, 16, 16A, 19	2, and 4	<p>APL considers that the land and rights can be acquired without serious detriment to the carrying on of Wales and West Utilities Limited's undertaking.</p> <p>The Protective Provisions in the draft Order ensure that Wales and West Utilities Limited's apparatus will be protected and access maintained during construction.</p> <p>The Protective Provisions also ensure that (if necessary) no rights will be extinguished without Wales and West Utilities Limited's agreement and no apparatus removed until alternative apparatus has been constructed.</p>	<p><b>Wales and West Utilities Limited:</b> APL and Wales and West Utilities Limited are currently negotiating the protective provisions to be included in the Order and a side agreement for the protection of Wales and West Utilities Limited's apparatus and access to apparatus. APL has included draft protective provisions for the benefit of Wales and West Utilities Limited in Part 7 of Schedule 11 to the Order.</p>
7B, 7C, 10, 12	1F, 2, 3, 4	<p>APL does not consider that section 127 is engaged in relation to the decommissioned oil pipeline owned by BP International Limited, as BP International Limited is not a statutory undertaker within the meaning of Section 8 of the Acquisition of Land Act 1981,</p>	<p>APL has not included draft protective provisions for the benefit of BP International Limited in Schedule 11 to the Order as APL does not consider that section 127 is engaged.</p>

## 8.5 Other consents



- 8.5.1 Other consents are required in order for the Project to be constructed and subsequently operate. The Details of Other Consents and Licences Document (Document Reference 5.4) sets out the additional consents required and when they will be applied for. Some of these additional consents are identified below.
- 8.5.2 APL is not aware of any reason in principle why any consents, licences or permits listed are not likely to be granted.

### **Planning Permission**

- 8.5.3 As explained in paragraphs 2.9 - 2.12 above, the Project includes an Electrical Connection and a Gas Connection which are considered by APL to be Associated Development and in respect of which APL is not therefore seeking development consent as part of the Application. This approach is consistent with paragraph 3.23 of the decision letter for The Hirwaun Generating Station Order 2015 where the Secretary of State determined that the gas connection and the electrical connection were not part of the generating station and it was not therefore appropriate to include the gas connection and electrical connection in the DCO.
- 8.5.4 APL will submit a separate planning application for the Gas Connection to the local planning authority, City and County of Swansea Council (CCS), under the Town and Country Planning Act 1990 (TCPA 1990).
- 8.5.5 The Electrical Connection will be consented either through Permitted Development rights or a planning application to CCS under the TCPA 1990.
- 8.5.6 It is anticipated that planning permission for the Gas Connection will have been granted prior to the end of the DCO Examination. It is also anticipated that either planning permission or confirmation from CCS that permitted development rights are considered to be available (following the grant of a generation licence under the Electricity Act 1989 and EIA screening) for the Electrical Connection will have been issued prior to the end of the DCO Examination. APL is in pre-application discussions with CCS in relation to the Gas Connection and Electrical Connection, and the relevant planning application(s) are expected to be submitted prior to the commencement of the DCO Examination

### **Connection Agreement**

- 8.5.7 APL received an offer of a Bilateral Connection Agreement and Construction Agreement from NGET on 23 February 2018 (the Connection Agreement) to connect the Generating Equipment to the NETS.
- 8.5.8 The Connection Agreement offer provides the Generating Equipment with an export capacity of 299 MW and a connection date to the NETS of 30 September 2022.
- 8.5.9 APL can confirm that it will enter into the Connection Agreement by 23 May 2018 thereby securing an agreement to export the output of the Generating Equipment to the NETS.
- 8.5.10 This agreement is discussed in more detail in the Grid Connection Statement (Document Reference: 9.1).

#### **Generation Licence**

- 8.5.11 As required under Section 6 of the Electricity Act 1989, APL has submitted an application for a Generation Licence to the Gas and Electricity Markets Authority.

#### **Environmental Permit**

- 8.5.12 As required by the Environmental Permitting (England and Wales) Regulations 2016 as amended, APL will submit an application for an Environmental Permit, required to operate the Project, to Natural Resources Wales. APL has been in discussions with Natural Resources Wales regarding the timing of the application for an Environmental Permit and APL is seeking to produce a Statement of Common Ground with Natural Resources Wales before examination of the Order.

#### **Permit to emit CO<sub>2</sub>**

- 8.5.13 The Greenhouse Gas Emissions Trading Scheme Regulations 2005 require any operator that carries out a 'regulated activity' to have a permit. Regulated activities include combustion that uses large amounts of energy or generate large amounts of CO<sub>2</sub>, perfluorocarbons or nitrous oxide (N<sub>2</sub>O) (under Annex 1 of Directive 2009/29/EC) and so will capture the Project unless an exemption applies. Applications will be made to ensure compliance with the 2012 Regulations (which require any operator that carries out a 'regulated activity', including combustion of fuels, to have a permit). The application will be progressed in parallel with the Environmental Permit application.

## 9. HUMAN RIGHTS

9.1 The Human Rights Act 1998 incorporated into UK law the European Convention on Human Rights (the "**Convention**"). The Convention includes provisions in the form of Articles, the aim of which is to protect the rights of the individual.

9.2 The following Articles of the Convention are relevant to the Secretary of State's decision as to whether the Order should be made so as to include powers of compulsory acquisition:

9.2.1 **Article 1 of the First Protocol to the Convention:** This protects the right of everyone to a peaceful enjoyment of possessions and provides that no one can be deprived of their possessions except in the public interest and subject to the relevant national and international laws and principles.

9.2.2 **Article 6:** This entitles those affected by the powers sought in the Order to a fair and public hearing of any relevant objections they may have to the granting of those powers. This includes property rights and can include opportunities to be heard in the decision making process.

9.2.3 **Article 8:** This protects private and family life, home and correspondence. No public authority can interfere with these rights except such as in accordance with the law and is necessary in the interest of national security, public safety or the economic well-being of the country.

9.3 The Secretary of State, as the decision maker, is under a duty to consider whether the exercise of powers interacts with the rights protected by the Convention.

9.4 The Order has the potential to infringe the rights of persons who hold interests in land within the Order Limits under Article 1 of the First Protocol. Such an infringement is authorised by law so long as:

9.4.1 the statutory procedures for making the Order are followed and there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition in the Order; and

9.4.2 the interference with the convention right is proportionate.

9.5 In preparing the Application, APL has considered the potential infringement of the Convention rights in consequence of the inclusion of compulsory acquisition powers within the Order. APL considers that there would be a very significant public benefit arising from the grant of

the Order. The benefit is only realised if the Order is accompanied by the grant of powers of compulsory acquisition. APL has concluded, on balance, that the significant public benefits outweigh the effects upon persons who own property within the Order Land. For those affected by expropriation or dispossession, compensation is payable in accordance with the statutory compensation code.

- 9.6 In relation to Article 6, there has been opportunity to make representations regarding the preparation of the Application. In accordance with Part 5 of the PA 2008, APL has consulted with persons set out in the categories contained in Section 44 of the PA 2008, which includes owners of land within the Order Limits and those who may be able to make claims either under Sections 7 and 10 of the Compulsory Purchase Act 1965 in respect of injurious affection or under Part 1 of the Land Compensation Act 1973. Also, the beneficiaries of rights overridden by the exercise of powers in the Order would be capable of making claims under Section 10 of the Compulsory Purchase Act 1965.
- 9.7 Furthermore, representations can also be made in response to any notice given under Section 56 of the PA 2008 for consideration at examination of the Application for Development Consent by the Examining authority and in any written representations procedure which the Examining authority decides to uphold or at any compulsory acquisition hearing held under Section 92 of the PA 2008.
- 9.8 Should the Order be made, any person aggrieved may challenge the Order in the High Court if they consider that the grounds for doing so are made out pursuant to Section 118 of the PA 2008.
- 9.9 In relation to matters of compensation for land to be acquired, affected persons have the right to apply to the Upper Tribunal (Lands Chamber), which is an independent judicial body to determine the compensation payable.
- 9.10 For the above reasons, any infringement of the Convention rights of those whose interests are affected by the inclusion in the Order of powers of compulsory acquisition, is proportionate and legitimate and is in accordance with national and European law. For the reasons set out in Sections 6 and 7 of this Statement, APL considers that there is a compelling case in the public interest for the exercise of such powers of compulsory acquisition. APL considers that it would, therefore, be appropriate and proportionate for the Secretary of State to make the Order, including the grant of compulsory acquisition powers.

## 10. FURTHER INFORMATION

### 10.1 Negotiation of Sale

10.1.1 Owners and occupiers of property affected by the Order who wish to negotiate a sale or discuss matters of compensation should contact Susannah Crawford of APL (Tel - 0131 550 3380, email - [scrawford@stagenergy.com](mailto:scrawford@stagenergy.com)).

## 10.2 Compensation

10.2.1 Provision is made by statute with regard to compensation for the compulsory acquisition of land and the depreciation value of properties. Helpful information is given in the series of booklets published by the Department for Communities and Local Government entitled "Compulsory Purchase and Compensation" listed below:-

- (a) Booklet No. 1 - Compulsory Purchase Procedure;
- (b) Booklet No. 2 - Compensation to Business Owners and Occupiers;
- (c) Booklet No. 3 - Compensation to Agricultural Owners and Occupiers;
- (d) Booklet No.4 - Compensation for Residential Owners and Occupiers; and
- (e) Booklet No.5 – Reducing the Adverse Effects of Public Development: Mitigation Works.

10.2.2 Copies of these booklets are obtainable, free of charge, from:  
<https://www.gov.uk/government/collections/compulsory-purchase-system-guidance>.

## 11. CONCLUSIONS

11.1 APL submits, for the reasons explained in this Statement, that the inclusion of powers of compulsory acquisition in the Order for the purposes of the Project meets the conditions of Section 122 of the PA 2008 as well as the considerations in the Guidance.

11.2 The acquisition of land and rights (including restrictive covenants) and the temporary use of land, together with the overriding of interests, rights and restrictive covenants and the suspension or extinguishment of private rights is no more than is reasonably required to facilitate or is incidental to the Project.

11.3 Furthermore, the land identified to be subject to compulsory acquisition is no more than is reasonably necessary for that purpose and is proportionate, as is shown in the Order (Document Reference 3.1), the Works Plan (Document Reference 2.3) and other information both in

this Statement and in other document accompanying the Application for Development Consent.

- 11.4 The need for the Project, suitability of the Order Land and the support for such projects is in NPS EN-1 and NPS EN-2, which together demonstrate that there is a compelling case in the public interest for the land to be acquired compulsorily.
- 11.5 All reasonable alternatives to compulsory acquisition have been explored. Given the national and local need for the Project and the support for it found in policy, as well as the suitability of the Order Land (for the reasons outlined above), compulsory acquisition of the land and rights and the temporary use of land, together with the overriding of interests, rights and restrictive covenants and the suspension or extinguishment of matters affecting the Order Land identified by APL for the Project is justified.
- 11.6 The proposed interference with the rights of those with an interest in the Order Land is for a legitimate purpose, namely the Project, and is necessary and proportionate to that purpose. APL considers that the substantial public benefits to be derived from the proposed compulsory acquisition of the Order Land decisively outweigh the private loss that would be suffered by those whose land is to be acquired.
- 11.7 APL has set out clear and specific proposals regarding how the Order Land will be used.
- 11.8 The requisite funds are available, and will remain available during the up to five year period within which the Order could be implemented, to meet any costs of land acquisition and compensation payable as a result of the use of powers of compulsory acquisition. The draft Order makes provision for a guarantee to secure payment of compensation, which may be requested for up to 15 years from the date of exercise of the relevant powers of compulsory acquisition, which will allow sufficient time for compensation claims (which arise during the 5 year period in which the powers may be exercised) to be settled.
- 11.9 The purpose of the powers of compulsory acquisition in the Order is entirely legitimate and justifies interfering with the rights of those persons with an interest in the land proposed to be acquired.