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Ein cyf / Our ref: CAS-70299-R7S4  
Eich cyf / Your ref: EN010069

Dyddiad / Date: 9 November 2018

Annwyl / Dear Mr. Broderick

**ABERGELLI POWER LIMITED: PROPOSED GAS FIRED POWER PLANT AT LAND ADJACENT TO THE FELINDRE GAS COMPRESSOR STATION AT ABERGELLI FARM, FELINDRE, SWANSEA, SA5 7NN**

**WRITTEN REPRESENTATIONS BY THE NATURAL RESOURCES BODY FOR WALES.**

These Written Representations are submitted by the Natural Resources Body for Wales (NRW) in pursuance of Rule 10(1) of the Infrastructure Planning (Examination Procedure) Rules 2010 in relation to an application by Abergelli Power Limited (the Applicant) to the Secretary of State under the Planning Act 2008 for a Development Consent Order (DCO) for the construction and operation of a Gas-fired peaking plant and connection infrastructure with a capacity of up to 299 MW.

The operation of this development gives rise to Combustion Activities under Schedule 1 Part 2 of the Environmental Permitting (England and Wales) Regulations 2016 and we are the determining authority for an Environmental Permit for such activity. The Environmental Permit is determined under distinct and separate legislation and our comments in relation to the Environmental Statement (ES) are independent and without prejudice to any comments made in respect of the Environmental Permit application.

We can confirm that an Environmental Permit application has been received and is currently under determination. We welcome that the Environmental Permit application has been twin tracked with the DCO application, in accordance with the Planning Inspectorate Advice Note 11 (Annex A – Cyfoeth Naturiol Cymru/Natural Resources Wales).

We have provided pre-application advice to the developer, with responses to the Scoping Report, Preliminary Environmental Information Report (PEIR) and draft ES. The pre-application stage has been a thorough and extensive process, which has resulted in several issues being scoped out, improvements made to the scheme and

a comprehensive ES submission. We advise that a number of our concerns can be dealt with through DCO requirements.

In Annex A below we provide NRW's Written Representations, which include our comments on the proposed DCO requirements. Annex B contains our response to the first set of written questions from the Examining Authority (ExA) and Annex C contains our updated Statement of Common Ground with the applicant.

I hope the above comments are helpful. If you have any queries or require any further information regarding this representation, please contact Hannah Roberts (Development Planning Advisor) using the details above.

Yr gywir / Yours sincerely

**Gemma Beynon**

Development Planning Manager, Operations South

*Enclosed:*

- *Annex A – Written Representation by the Natural Resources Body for Wales (NRW)*
- *Annex B: Examining Authority's First Round of Questions – 17 October 2018*
- *Annex C: Statement of Common Ground between the applicant and NRW*

## **Annex A – Written Representation by the Natural Resources Body for Wales (NRW)**

### 1. Ecology

#### 1.1. European Protected Species

##### 1.1.1. Bats

Following the submission of our relevant representation (RR) on 2 August 2018, we note that updated application documents have been accepted by the Planning Inspectorate which includes a ‘Bat Activity and Roost Confirmation Survey’ report by Aecom, dated August 2018. The report has provided the updated bat survey work, as referred to in our RR. We welcome the report and the recommendations put forward within the report, which are included as part of the DCO Requirements 3 (Provision and Maintenance of Landscaping) and 11 (Bat Method Statement).

Under Requirement 11 section (2), reference should be included on the need to obtain a European Protected Species (EPS) licence (under the Conservation of Habitats and Species Regulations 2017) if any roosting bats are found on site and affected by the development. The applicant should also allow sufficient time to be incorporated into the scheme to obtain any such licence if required.

##### 1.1.2. Water Vole and Otter

Table 8.14 of the ES notes that *“Habitat management will be undertaken to reduce the quality of the habitats for burrow/holts/couch creation”* following the proposed pre-construction checks. It should be noted that if this occurs, then full details of the habitat that water voles and otters may be displaced into must be provided as part of the mitigation proposals. Additionally, alternative habitat must be suitable for the species and available to colonise in advance of being displaced. We advise that it is not sufficient to simply displace them from the construction area. We note that this detail is to be included within Requirements 3 and 9 (Ecological Management Plan).

Requirement 8 refers to pre-construction ecological constraints surveys in relation to Water Vole and Otters, which we welcome. We advise that in relation to our point made in section 1.1.1. above that the Requirement should refer to the need for a Conservation licence (under the Wildlife and Countryside Act 1981, as amended) for water voles, and EPS licensing requirements for Otters, if they are found on site and are to be affected by the development. Requirement 8 also refers to [REDACTED], and we advise that the review of any [REDACTED] survey would fall under the remit of the Local Planning Authority (LPA). Any licensing requirements under The [REDACTED] Protection Act 1992 however should be obtained from NRW’s licensing department.

### 1.2. Lighting Plan, Lighting Strategy and LEMP

The outline lighting strategy provided includes details of how lighting will be controlled across the site, and the outline Landscape and Ecology Mitigation Plan (LEMP) does provide some detail on the proposed dark corridors. We however haven’t been

provided with an outline lighting plan under this submission, which demonstrates that watercourses, vegetative bat flight paths and dark corridors around the Generating Equipment Site will continue to be kept dark for foraging and commuting purposes by protected species.

The lighting strategy will need to include a lighting plan which, along with the above, confirms the location of the lights, their specifications, where light spill measures will be deployed (e.g. hoods, cowls, timers, details of any lights on timing) and anticipated light spill. We previously advised that the lighting plan should consider construction, operational and emergency lighting. We note that the provision of a lighting scheme has been included as separate DCO requirements for the construction phase under Requirement 17 (Construction Environmental Management Plan), and for the operational phase under Requirement 26 (Control of Artificial Light Emissions During Operation). We welcome further discussions with the developer on the detail of the lighting strategy, lighting plan and LEMP at the discharge of DCO requirements stage.

Requirements 18 (Dust Management Plan), 19 (Pollution Prevention Management Plan) and 20 (Waste and Material Management Plan) appear to be duplicating Requirement 17. It was clarified at the Issue Specific Hearing (ISH) that these separated Requirements 18-20 refer only to the earth works proposals stage under Work no.5. If the Requirements remain as proposed, the inclusion of lighting proposals for the earth work should be added to Requirement 19 (as well as 17) to demonstrate continuation of dark corridors for wildlife during these works.

### 1.3. Watercourse Crossings

The 'Outline Landscape and Ecology Mitigation Plan – Access Road' (Figure 3.6e) dated 14 May 2018 notes that the watercourses will be culverted under the access road and will include measures to allow otter movement. We have previously advised that further information on the access route and how this affects the watercourses which are known to be used by protected species for commuting and foraging should be submitted.

It is currently unclear how these watercourses will be crossed, and this detail does not appear to have been included within the Outline Drainage Strategy. Details on any culverting and re-routing of watercourses, and riparian habitat retention/reinstatement will be required, as well as the measures that will be put in place to ensure that protected species can continue to move along the watercourses. These should be provided within the appropriate DCO Requirements.

We note and welcome the provision of Requirements 6 (Surface and Foul Water Drainage) and 7 (Surface Water Management Plan).

**Annex B: Examining Authority’s First Round of Questions – 17 October 2018**

Question No.	Question	NRW Response
1.0.3.	<p><b>Operating Hours:</b></p> <p>The ES [APP-042] at paragraph 6.4.37 states:</p> <p><i>“The Generating Equipment Site is a peaking plant and will therefore only operate during periods of high power demand. It is therefore anticipated that the Generating Equipment will normally operate for 1,500 hours per year, estimated as a rolling average over 5 years, but may operate for up to a maximum of 2,250 hours per year as a realistic worst-case for any given year. The maximum number of hours that the plant can operate will be set out in the site’s Environmental Permit and this operating period cannot be exceeded.”</i></p> <p>Where in the draft DCO [APP-014] is it secured that operation of the gas turbine generators will not exceed 1500 hours in any calendar year?</p> <p>How is it proposed to calculate the rolling average level of hours of operation in each of the first five calendar years of operation?</p>	<p><i>The plant has been designed and will run as a peaking power station supplying electricity to the National Electricity Transmission System for up to 2250 hours per year (1500 hours per 5-year rolling average) at times of high demand or during periods of instability in the grid.</i></p> <p><i>The rolling average will be calculated by the operating systems, restricted by the permit and reported to NRW. The conditions of the environmental permit will be examined through routine audits which are a requirement of the Industrial emissions directive (IED). The operator will be required through their operating systems (if successful in their application) to demonstrate compliance with the limits.</i></p> <p><i>[We note that this question was also asked within Annex D ‘Action Points from Issue Specific Hearing 1 (ISH1) into the draft Development Consent Order (dDCO) on Wednesday 10 October 2018’ of the Rule 8 letter, under question 6. Please accept this response as our response to question 6.]</i></p>

<p>1.0.9.</p>	<p><b>Environmental Permit (EP):</b></p> <p>a) What is the current status of the Project's EP application?</p> <p>b) Are there any reasons of which NRW are aware why an EP should not be forthcoming for the Project as described in the ES [APP-042]?</p> <p>c) Are there any reasons of which NRW are aware why an EP for the Project would be granted subject to conditions or operational limitations that are not anticipated in the ES?</p> <p>d) Are any additional controls needed in the draft DCO [APP-014] to ensure that the air emissions Rochdale Envelope as assessed in the ES (see paragraph 6.4.35 [APP-042]) is not exceeded and relevant IED / EPR emissions limit values and benchmarks are met?</p> <p>e) Does NRW believe these matters will be satisfactorily addressed by the EP process?</p>	<p>a) <i>The EP application is currently 'under determination'.</i></p> <p>b) <i>No, however the permit is still under determination.</i></p> <p>c) <i>As above</i></p> <p>d) <i>As above</i></p> <p>e) <i>Yes</i></p> <p><i>NB. The permit is currently under determination; therefore, conclusions cannot be drawn at this stage.</i></p>
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<p>1.0.15.</p>	<p><b>Operational Matters:</b></p> <p>Paragraph 3.4.30 of the ES [APP-042] states the power generation plant will have a rated electrical output of, or less than, 299MWe. Schedule 1 of the draft DCO [APP-014] states up to 299MWe.</p> <p>Paragraph 3.4.31 of the ES states that:</p> <p><i>“APL will be required to demonstrate that it would not be possible for the operating plant to exceed 299 MWe, in order to comply with the IED that requires all new combustion plants with a rated electrical output of 300 MW or more to have met a number of conditions and ensured space is available for carbon capture and storage.”</i></p> <p>Is there any operating scenario where rated electrical output could be &gt;299MWe?</p> <p>Can the Applicant and NRW confirm that an EP (if granted) will reflect this operational regime described in the ES?</p>	<p><i>The electrical output will be restricted by the environmental permit and by the technology utilised in the proposal. There are no operating scenarios where the rated electrical output could be &gt;299 MWe for the plant, as the achievable efficiencies are also limited.</i></p>
<p>1.2.3.</p>	<p><b>Table 4-6 Projects [APP-042] considered within the cumulative assessment:</b></p> <p>Are CCS and NRW satisfied with the long list of projects in Table 4-6 of the ES?</p> <p>Projects 26 and 27 refer to 750644 and 675490 homes respectively?</p>	<p><i>Yes, from an NRW perspective.</i></p>
<p>1.4.2.</p>	<p><b>Worst Case Scenario:</b></p> <p>Paragraphs 6.4.40 and 6.4.41 of the ES [APP-042] states:</p>	<p><i>The air quality modelling report is technically assessed as part of the permit determination. Although the permit is currently in draft and subject to change, these elements</i></p>

	<p><i>“In relation to long term (annual mean) concentrations assuming full load operation for the year will be unrealistic. Therefore, long term impacts were estimated by scaling the results for continuous full load operation by the likely operating time i.e.</i></p> <p><i>2,250 (maximum hours of operation) 8,760 (total hours in a year) = 0.257”.</i></p> <p>Does NRW believe that this approach is appropriate?</p> <p>Paragraph 6.4.43 of the ES states:</p> <p><i>“The assessment of daily mean concentrations, applicable to the ecological assessment falls between the cases for long and short-term concentrations. Nevertheless, to ensure a conservative assessment daily mean concentrations are assessed on the basis of continuous operation.”</i></p> <p>What does the Applicant consider as the worst case to be in terms of “continuous operation”, 2,250 or 1,500 hours per annum?</p>	<p><i>have been considered and NRW agrees this approach is appropriate. 2250 maximum hours has been modelled as part of their AQ assessment and the PC factored by 0.257 to account for the annual emissions.</i></p>
1.4.3.	<p><b>Modelling of Impacts during Start up and Shut down:</b></p> <p>Paragraph 6.4.44 of the ES [APP-042] states:</p> <p><i>“The start-up and shut down periods do not warrant specific assessment for the Project and impacts during these periods are robustly considered in the assessment by the assumed 2,250 hours of full load operation for the Plant, i.e. maximum</i></p>	<p><i>As above. The environmental permit is currently in the determination stage however this element has been considered and deemed appropriate.</i></p>



	<p><i>annual operations rather than the anticipated normal operating hours of 1,500 per year.”</i></p> <p>Does NRW believe that this approach is appropriate?</p>	
1.4.4.	<p><b>Critical Load Assessment:</b></p> <p>Paragraph 6.4.76 of the ES [ APP-042] states:</p> <p><i>“The assessment against Critical Loads has been carried out in accordance with AQTAG06 ‘Technical guidance on detailed modelling approach for an appropriate assessment for emissions to air’ (Ref. 6.29). However, it should be noted that this does not provide definitive advice on interpreting the likely effects on different habitats of changes in air quality.”</i></p> <p>Where is the definitive advice on interpreting effects on ecosystems provided?</p>	<p><i>We refer you to the Air Pollution Information System website at <a href="http://www.apis.ac.uk/">http://www.apis.ac.uk/</a></i></p> <p><i>APIS provides information on critical loads and critical levels and how they were derived and impacts on various habitats. The nutrient nitrogen critical loads were revised in 2010 in Noordwijkerhout, The Netherlands. Full report available <a href="#">here</a>. APIS has provided a summary table of the 2010 and a comparison of the 2003 nutrient nitrogen critical loads <a href="#">here</a>.</i></p> <p><i>The guidance AQTAG06 is about modelling and not defining critical loads.</i></p>
1.4.5.	<p><b>Human Health:</b></p> <p>The effects on human health of power station aerial emissions are presented in Tables 6-33 and 6-34 of the ES [APP-042]. Public Health England in their relevant representations [RR-009] state that they are satisfied that the project will not pose any significant risk to human health.</p> <p>Are NRW and CCS satisfied with the conclusions of the ES with regard to human health?</p>	<p><i>The power station emissions are considered by NRW through the determination and assessment of the application for an environmental permit. Any successful permit application will require an operator to use best available techniques ‘BAT’ required by the Industrial Emissions Directive (IED) and it will specify associated emission limit values which are protective in respect of human health and the environment.</i></p>
1.5.3.	<p><b>A1 EPR Permit:</b></p>	

	Table 7-4 of the ES [APP-042] refers to an A1 EPR Permit. Will this be a “Standard Rules” or “Bespoke” permit?	<i>The EPR permit will be bespoke.</i>
1.6.6.	<b>Table 8-6 [APP-042] Use of 2014 Survey Data:</b>  Are CCS and NRW content with the arguments put forward for the use of 2014 survey data in the ecological assessment?	<i>Yes, we accept that from the updated Phase 1 Habitat Survey carried out in 2017 the justification that site conditions were not deemed significantly different to those surveyed in 2014. We note that many of the protected species surveys were updated in 2017/18.</i>
1.6.7.	<b>ECJ Rulings on Mitigation in HRA Screening:</b>  In April 2018, the European Court of Justice (ECJ) issued a decision in the case of <a href="#"><i>People Over Wind, Peter Sweetman v Coillte Teoranta (C-323/17)</i></a> . The ruling confirmed that proposed mitigation measures cannot be taken into account for the purposes of screening under the UK Habitats Regulations, which give effect to the EU Habitats Directive (92/43/EEC) (paragraph 1.1.8 [APP-066].  a) Does NRW have a view on the significance of these rulings for the Applicant’s NSER [APP-066]?  b) What is the Applicants view?	<i>a) The ‘People over Wind’ case notes that measures intended to reduce or avoid harm to European sites (mitigation measures) should not be considered when screening a plan or project for likely significant effects (LSE screening). We advise that it is for the competent authority to decide whether the proposed mitigation is required to address any of the potential (adverse) effects identified in the NSER and, therefore, if the project requires an ‘appropriate assessment’.</i>
1.6.8.	<b>Table 8.13 Sensitivity of Ecological Features [APP-042]:</b>  Do NRW and CCS agree with the evaluation of sensitivity by the Applicant?	<i>Yes, however Water Voles and Otters should be reclassified as Medium due to the presence of habitats that could support these species.</i>
1.6.9.	<b>NOx Deposition on European Sites:</b>	<i>Yes</i>

	<p>At paragraph 8.7.127 of the ES [APP-042] it is concluded the Project's Process Contribution (PC) of NO<sub>x</sub>, and consequently the PC of nitrogen deposition and nitrogen acidity deposition are very small and so low as to be effectively zero (less than 0.01 kg/N/ha/yr and less than 0.01 keqH<sup>+</sup>/ha/yr, respectively). For all sites, the PC does not cause Critical Loads to be exceeded.</p> <p>Does NRW agree with this conclusion?</p>	
1.6.10.	<p><b>Crymlyn Bog SAC and Ramsar:</b></p> <p>At paragraph 8.7.127 of the ES [APP-042] it concludes that in the case of Crymlyn Bog SAC and Ramsar site where the Critical Load for nitrogen and nitrogen acid is already in exceedance, the influence of nitrogen and nitrogen acid from the Project is not at a level where it would cause a significant effect.</p> <p>Do NRW agree with this conclusion?</p> <p>Will the conservation objectives of the SAC be hindered by the additional PC of the Project?</p>	<p><i>Yes, we agree with the conclusion.</i></p> <p><i>The Conservation Objectives are not likely to be affected from the small additional PC of the project.</i></p>
1.6.11.	<p><b>Carmarthen Bay SAC and Burry Inlet SAC and Ramsar:</b></p> <p>At paragraphs 8.7.129 and 8.7.130 of the ES [APP-042] it concludes that operational effects of hydrological and aerial emissions on the above 2 sites will be negligible.</p> <p>Does NRW agree with this conclusion?</p>	<p><i>Yes we agree given the clarification on likely usage of the site post construction.</i></p> <p><i>[Please note that the Burry Inlet should be SPA rather than SAC in the title.]</i></p>

1.6.18.	<p><b>NSER [APP-066]:</b></p> <p>Are NRW and CCS satisfied that:</p> <ul style="list-style-type: none"> <li>a) the study area of 10km is acceptable;</li> <li>b) that the correct sites and features have been identified;</li> <li>c) that the appropriate potential LSE have been identified;</li> <li>d) they are in agreement regarding the scope and methodology of the in-combination assessment and they agree with the conclusions of the NSER?</li> </ul>	<ul style="list-style-type: none"> <li>a) yes</li> <li>b) yes</li> <li>c) yes</li> <li>d) yes</li> </ul>
1.6.20.	<p><b>NSER [APP-066]:</b></p> <p>Are NRW content that the Applicant has identified the correct qualifying features for the sites presented in the Matrices?</p>	Yes
1.12.1.	<p><b>Flood Consequence (FCA) and Water Framework Directive (WFD) Assessments:</b></p> <p>What is the NRW's view on the conclusions of FCA and WFD assessments?</p> <p>Can the Applicant explain how the proposed parameters presented in the draft DCO [APP-014] have been applied in the FCA and WFD Screening Assessment?</p>	<p><i>From a flood risk perspective, a small section of the red line boundary does encroach into flood zone C2 of the Development Advice Map (DAM) referred to under Technical Advice Note 15: Development and Flood Risk (TAN 15). The applicant has confirmed that no building, development or construction activities will be built within this flood zone, and that the infrastructure will all be contained entirely within flood zones A and B, which we have no concerns about.</i></p> <p><i>The ecological mitigation area falls within flood zone C2, and we have made it clear that no infrastructure/built development should be placed in this area. If any raising of land is proposed in this area, then that may need to be addressed and may also require a Flood Risk Activity Permit from NRW. Any works on the River Llan may also require a Flood Risk Activity Permit.</i></p>

		<i>NRW are satisfied that the WFD assessment for this project is fit for purpose and agree with its conclusion that the project will not have a significant adverse effect on the River Llan waterbody, from a WFD perspective.</i>
1.12.2.	<p><b>Table 9-3 of the ES [APP-042] Water Receptor Sensitivity and Value:</b></p> <p>Do NRW and CCS agree with the receptor sensitivity and value conclusions used in the water resources assessment?</p>	<i>Yes, we agree.</i>
1.13.4.	<p><b>Peat Management Plan:</b></p> <p>Requirement 16 of the draft DCO [APP-014] proposes a Peat Management Plan.</p> <p>Are NRW content with the drafting of Requirement 16?</p>	<i>Yes</i>
1.13.7.	<p><b>Tables 10-3 and 10-4 of ES [APP-042]:</b></p> <p>Do NRW and CCS agree with the descriptors of sensitivity and magnitude described in these Tables respectively?</p>	<p><i>Yes.</i></p> <p><i>Please note there is an error under Table 10-3 Medium where the text should refer to Sites of Special Scientific Interest (SSSI) rather than Special Areas of Conservation (SAC).</i></p>
1.13.8.	<p><b>Table 10-8 Geological Hazards ES [APP-042]:</b></p> <p>Are you aware of any other geological hazard or potential geological hazard in the area?</p>	<i>Geological hazards fall outside of NRW's remit; the LPA will comment on ground stability and any historical coal mining would be commented on by the Coal Authority.</i>

## **Annex C: Statement of Common Ground between the applicant and NRW**

Please see the attached Statement of Common Ground (SoCG). This has been updated following the receipt of '*Abergelli Power Project Bat Activity and Roost Confirmation Survey*' report by Aecom, dated August 2018 as part of the Updated Additional Documents, accepted by the Planning Inspectorate.

For information, the following sections of the SoCG have been updated:

- 3.F.2, 3.F.4, 3.F.9, 3.F.10
- 3.G.3
- 3.N.1
- 3.O.1