



Applicant's Response to Written Representations

PINS Reference Number: EN010069

Deadline 2 – 30 November 2018

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Appendix 1: Ancient Woodland and Access Road Overlay

1 Summary

- 1.1.1 The Applicant, Abergelli Power Limited, is applying to the Secretary of State (SoS) under the Planning Act 2008 (PA 2008) for development consent to construct, operate and maintain an Open Cycle Gas Turbine (OCGT) gas fired peaking power generating station, fuelled by natural gas with a rated electrical output of up to 299 Megawatts (MW) (the Abergelli Power Project).
- 1.1.2 The Development Consent Order (DCO) Application for the Abergelli Power Project (the Project) was submitted by the Applicant to the SoS in May 2018. It was formally accepted to progress to examination in June 2018.
- 1.1.3 This document contains the Applicant's comments on Written Representations (WR) submitted to the Examining Authority for Deadline 1 on 9 November 2018.
- 1.1.4 Where the Applicant has not commented on a WR, or a section of a WR, submitted by an interested party, this is because the Applicant considers that it has already responded to the point(s) made by virtue of the documents that the Applicant submitted to PINS on 9 November 2018.
- 1.1.5 This document, therefore, only focuses on the points made by interested parties that the Applicant considers to be new or different to those raised in any Relevant Representations (RR) and/or those which are factually incorrect. In addition, where agreement has now been reached on a matter (or is being actively progressed) then the Applicant includes comments on this where helpful to the Examining Authority.

2 REP1-026 Natural Resources Wales

Paragraph reference	NRW Written Representation comment	APL response
1.1.1	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.	<p>It is agreed that a licence would be required if any European Protected Species (“EPS”) would be affected. This is a requirement under the Conservation of Habitats and Species Regulations 2017 (the “Habitats Regulations”).</p> <p>However, the Applicant does not consider it necessary or appropriate for the DCO to include a specific provision referencing the need to obtain an EPS licence, as this would duplicate the existing legislative controls set out in the Habitats Regulations. Requirements in a DCO should not duplicate controls set out in other statutory regimes.</p> <p>An application for an EPS licence would be made to Natural Resources Wales (NRW) as the relevant licensing body under the Habitats Regulations.</p> <p>The Outline Landscape and Ecology Mitigation Strategy [REP1-016] clearly sets out in paragraph 3 of Appendix C Bats and Appendix D Otter and Water Vole that, if required, an EPS licence will be applied for.</p>
1.1.2 1st para	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	Appendix D Otter and Water Vole of the Landscape and Ecology Mitigation Strategy (LEMS) [REP1-016] was updated at Deadline 1 to include information on otter and water vole pre-construction checks and habitat management.

	<p>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).</p> <p>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.</p>	<p>As above, the Applicant does not consider it necessary for the requirement of a conservation licence or EPS licence to be included in the DCO Requirements as the DCO should not duplicate controls set out in other statutory regimes, including a requirement for a licence under the Wildlife and Countryside Act 1981 or the Protection of [REDACTED] Act 1992.</p>
1.2.	<p>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</p>	<p>The Applicant has amended the draft DCO to require the local planning authority to consider the submission of the lighting strategy in consultation with NRW. Please see Requirement 26 in the draft DCO submitted at Deadline 2.</p>

	will continue to be kept dark for foraging and commuting purposes by protected species.	
1.2.	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.	The Applicant notes the comments of NRW in relation to construction lighting for Work no. 5. The Applicant has amended the draft DCO to include approval of construction lighting within Requirement 19. Please see the amended draft DCO submitted at Deadline 2.
1.3	<p>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.</p> <p>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.</p>	The Outline Drainage Strategy (Section 5) [REP1-017], and the LEMS, Appendix D [REP1-016] were updated at Deadline 1 to include details of watercrossing and Otter and Water Vole management. These matters are secured through requirements 6 (surface and foul water drainage) and 9 (ecological management plan) – the submissions pursuant to those requirements must be in substantial accordance with (respectively) the Outline Drainage Strategy and LEMS.

	We note and welcome the provision of Requirements 6 (Surface and Foul Water Drainage) and 7 (Surface Water Management Plan).	
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3 REP1-027 Michael Edwards, REP1-028 Wynne Watkins and Redisplay Limited

- 3.1 The written representations of Mr Edwards, Mr Watkins and Redisplay Limited raise comments in relation to the following two areas, which are summarised in more detail below:
- 3.1.1 the validity of the draft DCO, raising in particular the exclusion of the Electrical Connection and the Gas Connection from the authorised development in the DCO; and
 - 3.1.2 Compulsory Acquisition and the justification for the access route.
- 3.2 **Summary of points raised by the Respondents in relation to the validity of the draft DCO**
- 3.2.1 The Respondents contend that the Gas Connection and Electrical Connection should be regarded as being integral to the generating station. The Respondents contend that to grant consent for the Power Generation Plant without including authorisation for the Gas Connection and Electrical Connection would be unlawful.
 - 3.2.2 The Respondents suggest that the Applicant is wrong to rely on the Secretary of State's decision in the Hirwaun Generating Station Order 2015. The Respondents assert that the Secretary of State failed to give detailed reasons for excluding the gas connection and the electrical connection.
 - 3.2.3 The Applicant places reliance on its interpretation of the decision in *R (on the application of Redcar and Cleveland Borough Council) v Secretary of State for Business, Enterprise and Regulatory Reform [2008] EWHC 1847 (Admin)*.
 - 3.2.4 The Respondents consider that the Applicant's decision to include compulsory acquisition powers for the land and rights required for the Gas Connection and the Electrical Connection indicates that the Gas Connection and Electrical Connection are integral to the generating station.
 - 3.2.5 The Respondents also consider that the Electrical Connection and the Gas Connection will give rise to the same environmental impacts as the Power Generation Plant, as they are in close geographical proximity.
 - 3.2.6 The Respondents consider that it is inconsistent to include the Access Road within the authorised development but not to include the Gas Connection and the Electrical Connection.
 - 3.2.7 The Respondents consider that the length of the connection allows a distinction to be drawn between the proposed electrical and gas connections for the Abergelli project and other projects, such as Swansea Bay Tidal Lagoon and South Hook.
- 3.3 **Summary of points raised by the Respondents in relation to compulsory acquisition and the justification for the access route**
- 3.3.1 The Respondents assert that the statutory tests in section 122 of the Planning Act 2008 have not been met.
 - 3.3.2 The Respondents assert that the decision making to select the preferred access route was flawed.

3.3.3 The Respondents assert that the Applicant has incorrectly identified woodland to be ancient woodland when it is not, and that that factual error has influenced the selection of the route.

3.4 The Applicant has considered the representations made and responds to these issues below.

4. **THE VALIDITY OF THE DRAFT DCO – THE APPLICANT'S RESPONSE**

4.1 The Applicant considers that the draft DCO as drafted is valid and complies with all legislative requirements set out in the Planning Act 2008, and properly has regard to the devolution settlement to the Welsh Government, as most recently set out in the Wales Act 2017. The Applicant considers that the draft DCO has properly had regard to the "Guidance on associated development applications for major infrastructure projects" published by the Department for Communities and Local Government in April 2013.

4.2 The Applicant has set out in section 2.4 of the Planning Statement [APP-007] the legislative and regulatory context for the Project. The Explanatory Memorandum [APP-013] also explains the legislative context (see paragraphs 3 – 9), and the Statement of Reasons [APP-010] also explains the rationale for the exclusion of the Electrical Connection and the Gas Connection from the DCO Application (see paragraphs 2.1 – 2.14).

4.3 Section 31 of the Planning Act 2008 sets out the statutory requirement for a development consent order for development that is or forms part of a nationally significant infrastructure project. Section 14(1)(a) of the Planning Act 2008 defines "nationally significant infrastructure project" to include a project which consists of the construction or extension of a generating station. "Generating station" is defined in Section 15 to include an onshore generating station in Wales which does not generate electricity from wind (a devolved matter), and where its capacity is 50MW or more. The further devolution set out in the Wales Act 2017 for generating stations up to 350MW has not yet taken effect, so the Secretary of State retains jurisdiction to determine the application.

4.4 "Associated development" is given a statutory definition in section 115 of the Planning Act 2008. Section 115(2) states that associated development must be "associated with" the development for which development consent is required, and must also fall within sub-section 3, 4 or 4A. For the following reasons none of those sub-sections apply to the Project: sub-section 3 covers development in England only; sub-section 4 covers development in Wales, but is limited in scope and permits associated development where it is "only for the carrying out or construction of surface works, boreholes or pipes" in connection with underground gas storage facilities; and sub-section 4A is only applicable for generation projects with a capacity in excess of 300MW. It is not therefore permissible to include the Gas Connection or the Electrical Connection within the application as associated development, as they do not fall within section 115. It is not understood to be the Respondents' case that the Gas Connection and Electrical Connection would be capable of inclusion in the DCO as associated development, but rather that they should be regarded as integral to the generating station that is the nationally significant infrastructure project (NSIP).

4.5 The current "Guidance on associated development for major infrastructure projects" (DCLG, April 2013) lists in Annex A connections to national, regional or local electricity networks as an example of a typical type of associated development. Annex B lists (under associated development specific to individual types of major infrastructure) "gas pipelines and pressure reduction stations" as being examples of associated development associated with projects for onshore generating stations. The original guidance published in 2009 (now replaced by the 2013 guidance) also included grid connections in the list of indicative examples of associated development. It is the case that from the inception of the Planning Act 2008, the guidance has indicated that grid connections are examples of what may be treated as "associated development" for the purposes of the Planning Act 2008.

- 4.6 Whether development forms part of a generating station or is associated development must be considered on a case by case basis, having regard to the particular development under consideration. The Applicant has done so, and sets out below its view of whether the Gas Connection and the Electrical Connection can properly be viewed as being "integral" to the NSIP (the Power Generation Plant).
- 4.7 A related point is raised by the Respondents in relation to the treatment of the Access Road as integral - this is also considered below.
- 4.8 **The Gas Connection**
- 4.9 The Applicant's view is that the Gas Connection is physically separate and severable from the Power Generation Plant which forms the NSIP. The Gas Connection is not physically or geographically integrated with or integral to the Power Generation Plant. The Power Generation Plant can be constructed separately to the Gas Connection. The Gas Connection is fuel supply infrastructure - the infrastructure for the Gas Connection does not itself generate electricity during the operational phase of the Project.
- 4.10 The Applicant, in scoping the authorised development described in Schedule 1 of the draft DCO, has distinguished between the elements of the Project relating to gas supply to the plant which are physically integral to the Power Generation Plant and those which are not. Those parts which regulate the flow of gas to the plant, and which include treatment of the gas supply before it is combusted, have been included in the draft DCO as Work No. 1C.
- 4.11 The Minimum Offtake Connection (MOC) (where the connection to the National Gas Transmission System is made within the Above Ground Installation (AGI)) will, once constructed, be owned and operated by National Grid, and will not be controlled by the undertaker. The MOC will become part of the National Transmission Network. It may continue in use beyond the life of the Power Generation Plant. Other connections could be made there by National Grid in the future if they considered it to be appropriate. It is physically and operationally severable from the Power Generation Plant and is not integral to its physical construction.
- 4.12 The Gas Pipeline will be owned by APL and will only serve the Project, but is properly to be considered as separate to and subordinate to the Power Generation Plant.
- 4.13 As a result, APL has, consistent with the devolution settlement to Wales, sought planning permission from the relevant local planning authority for the AGI and the Gas Pipeline (in this case the City and County of Swansea). The planning application has been duly made and validated by CCS, and is due to be determined in December 2018. CCS has accepted that it has the jurisdiction to entertain the planning application.
- 4.14 **The Electrical Connection**
- 4.15 The Applicant's view is that the Electrical Connection is physically separate and severable from the Power Generation Plant which forms the NSIP. The Electrical Connection is not physically integrated with the Power Generation Plant and it could be constructed and installed separately from Work No.1 (the Generating Equipment), Work No.2 (the Access Road) and Work No. 5 (the earthworks). The Electrical Connection is the export infrastructure to allow the power generated in the Generating Equipment to be transmitted to the National Electricity Transmission System (NETS). The Electrical Connection apparatus does not itself generate electricity.
- 4.16 The Applicant, in scoping the authorised development described in Schedule 1 of the draft DCO, has distinguished between the elements of the Project relating to the export of electricity which are physically integral to the Power Generation Plant. Those parts which regulate the export voltage and current to manage the transmission of power into the national grid have been included in the draft DCO as Work No. 1D.

- 4.17 The Electrical Connection cable will be run by APL to the sealing end location within the Substation. The connection works to the National Electricity Transmission System within the Substation will be undertaken by National Grid under the connection agreement. The GIS bay within the Substation will be owned by National Grid. It will be physically and operationally severable from both the Access Road and the Generating Equipment.
- 4.18 The Electrical Connection will only serve the Project, but is considered by the Applicant to be separate to and subordinate to the Power Generation Plant.
- 4.19 As a result, APL has, consistent with the devolution settlement to Wales, sought planning permission from the relevant local planning authority for the Electrical Connection (in this case the City and County of Swansea). The planning application has been duly made and validated by CCS, and is due to be determined in December 2018. CCS has accepted that it has the jurisdiction to entertain the planning application.
- 4.20 **The Access Road**
- 4.21 The Applicant considers that the Access Road is integral to the Power Generation Plant. It is necessary for the construction, operation and decommissioning of the Generating Equipment. Without a suitable access, the Generating Equipment cannot be operated and therefore could not generate electricity, the function of the Power Generation Plant and the reason it is a NSIP.
- 4.22 The Access Road provides the means of connecting the Generating Equipment Site to the public highway network and to provide access for the construction and maintenance of the Generating Equipment. The Generating Equipment cannot operate if there is not a safe and suitable means of access and egress available at all times. The Access Road will also, in due course, provide the means by which the decommissioning of the Generating Equipment can be undertaken. The newly constructed section of the Access Road and the alterations proposed to the existing section serve no other purpose than the construction and operation of the Generating Equipment.
- 4.23 Several DCO projects consented to date in Wales have included means of access as being integral to the NSIP, in order for construction and operation of the generating station to take place. This includes the Brechfa Forest West Wind Farm Order 2013, the Clocaenog Forest Wind Farm Order 2014, the Hirwaun Generating Station Order 2015 and the Wrexham Gas Fired Generating Station Order 2017.
- 4.24 **The Relevance Of The Redcar Case**
- 4.25 The claimant in the *Redcar* case was unsuccessful in its challenge to the section 36 consent, the challenge having been brought on the basis that the consent was invalid because it related to only part of a generating station. That head of claim was rejected by Mr Justice Sullivan.
- 4.26 Sullivan J considered the definition of "generating station" in section 64 of the Electricity Act 1989 (which is incorporated into the Planning Act 2008 in section 235). He rejected the claimant's argument that the offshore turbines alone were not a generating station because they were not capable of producing consumable power without a grid connection, and noted that the Electricity Act 1989 draws a clear distinction for the purposes of regulation between generation, and transmission and distribution activities. The correct question in Sullivan J's decision was set out in paragraph 17:
- "The question for the purpose of section 36 is not whether the electricity generated by the turbines in any particular case is "of use", or "has been converted into useable form", but where it is to be generated".*
- 4.27 In paragraph 18 of the judgment, Sullivan J noted that whilst the whole project proposed by the interested party included onshore elements which were not part of the section 36

application, “it does not follow that the wind farm comprised in the section 36 application could not be properly described as a “generating station” for the purposes of that section”.

- 4.28 The quotation selected by the Respondents at paragraphs 6.3 – 6.5 suggests commercial reasons why applicants for onshore power generating plant might choose to include the whole project, *including ancillary facilities*, within their section 36 application. It does not give any authority for the proposition advanced by the Respondents that the export cable is part of the generating station rather than an ancillary facility, and it does not provide authority for the view that geographical or environmental considerations are determinative to the interpretation of the legal definition of “generating station”. The question to be answered is “where is electricity to be generated?” The simple answer is that the Gas Connection and the Electrical Connection do not generate electricity. The *Redcar* case supports the Applicant's approach, as it was specifically found that an electrical connection/sub-station were “ancillary facilities” and not part of the “generating station”. That is analogous to the approach taken by the Applicant, in treating the Electrical Connection as “associated development” and excluding it from the scope of the authorised development in the draft DCO.
- 4.29 The Applicant considers that there is no inconsistency between the approach of the Secretary of State at Hirwaun and the approach of Sullivan J in *Redcar*.
- 4.30 As the relevant question is “where is the electricity generated?”, the length of the connection is not relevant to whether it is integral to the generating station or not. The Respondents are therefore incorrect in their assertions that the decision of the Secretary of State in relation to Swansea Bay Tidal Lagoon can be distinguished as a result of the length of the connection. Those decisions are consistent with the reasoning adopted by the Applicant in this application.
- 4.31 **The Environmental Impacts Of The Gas Connection And Electrical Connection**
- 4.32 The Applicant does not agree with the Respondents’ assertion that the Gas Connection and the Electrical Connection give rise to the same environmental impacts as the Power Generation Plant. This is inaccurate, as can be seen from the Environmental Statement for the Project, which assesses and quantifies the effects of each element (Power Generation Plant, Gas Connection and Electrical Connection) individually, and then considers whether there would be any “whole project” effects arising from the construction or operation of the constituent parts at the same time.
- 4.33 EIA screening has been undertaken by CCS for each of the Electrical Connection and Gas Connection planning applications. Environmental information relating to each application (accompanied, as required by European Law, by a statement describing the overall project effects to avoid underreporting by “salami slicing”) has been submitted with each planning application. CCS returned a negative opinion, concluding that likely significant effects were not likely due to the nature, scale and location of the proposals.
- 4.34 The geographic extent of the effects, and the types of effects generated by the installation and operation of the Gas Connection and Electrical Connection are not contiguous with the Power Generation Plant nor are the effects the same.
- 4.35 The treatment of the Project as a whole for the purposes of the EIA Regulations flows from EU case law, and does not have any read across into how sections 14, 15 and 115 of the Planning Act 2008 should be interpreted.
- 4.36 As stated above in paragraph 2.32, *Redcar* also does not provide any authority for the suggestion that the extent of environmental impacts of a proposal should be used to define what is or is not part of a “generating station” for the purposes of sections 14 and 15 of the Planning Act 2008.
- 4.37 **The relevance of inclusion of land acquisition powers for the Gas Connection and Electrical Connection**

- 4.38 The Applicant considers that the Respondents have misinterpreted the provisions relating to compulsory acquisition. There are express powers given to the Secretary of State in section 122 of the Planning Act 2008 to grant powers of compulsory acquisition for the development for which development consent is required (the NSIP) (section 122(2)(a)), and also where the land is required to “facilitate” or is “incidental to” that development (section 122(2)(b)). The power to grant compulsory acquisition powers is not therefore limited to the land required for the NSIP itself.
- 4.39 Furthermore, there is no obligation on an applicant to include any powers of compulsory acquisition in a draft DCO. The presence or absence of provisions seeking compulsory acquisition powers over land for connections cannot therefore be used to inform whether a particular proposed development meets the definition of a generating station NSIP, or whether that development is integral to a generating station.
- 4.40 The overlap between the rights sought for the Access Road construction and the rights sought for the electrical cable does not mean that the electrical cable is integral to the Access Road. It merely reflects the fact that the two are overlapping or adjacent in parts, a point which assists in the minimisation of environmental impacts and land required for the Project. The electrical cable will be maintained separately, and will be laid in ducting, so that it could be repaired or replaced without disturbance to the Access Road. Functionally, the Access Road and the electrical cable are separate, and separate categories of land rights are sought for each use. The land rights sought for the Access Road are more extensive than those sought for the electrical cable - the Applicant has designed the route of the cable to minimise environmental impacts by using the same corridor.
- 4.41 The Applicant has explained in its Statement of Reasons [APP-010] the need and the justification for the compulsory acquisition powers sought for the Gas Connection and the Electrical Connection.
- 4.42 **The Applicant’s conclusions on validity of the DCO application**
- 4.43 The Applicant considers that the proposed draft DCO is valid and robust. There is no basis upon which to conclude that either the Electrical Connection or Gas Connection is integral to the Generating Equipment. As such, they are properly consented (having regard to the devolution settlement in Wales) by the local planning authority under the Town and Country Planning Act 1990.
- 4.44 The Applicant has separated out these elements accordingly and submitted planning applications to CCS. The Applicant expects the planning applications to be determined in December 2018, which will provide confidence that there is no impediment to delivery of those elements of the project. It would be entirely within the Secretary of State’s jurisdiction to grant consent for the authorised development as proposed in the draft DCO.
5. **COMPULSORY ACQUISITION AND JUSTIFICATION FOR THE ACCESS ROUTE**
- 5.1 The Applicant has set out in the Statement of Reasons [APP-010] its justification for the compulsory acquisition powers proposed in the draft DCO. The Applicant is of the view that all of the land over which powers are sought meets the definition set out in Section 122 of the Planning Act 2008, namely that it is either land required for the development to which the development consent relates, or land which is required to facilitate or is incidental to that development. The Applicant has also set out in the Statement of Reasons why it considers that there is a compelling case in the public interest for the land to be acquired compulsorily to ensure that the Project can be delivered in a timely manner.
- 5.2 **Access Options 1 and 2**
- 5.3 The Respondents raise concerns in relation to the selection of the route for the Access Road. The Applicant has set out the route selection process in the following application documents:

- 5.3.1 The Consultation Report [APP-059];
 - 5.3.2 The Environmental Statement [APP-042];
 - 5.3.3 The Statement of Reasons [APP-010].
- 5.4 The Applicant consulted on access options in 2014. The consultation feedback in relation to Access Option 1 and Access Option 2 is reported in the Consultation Report [See Appendices Volume C, Appendix 6D]. The 2014 Consultation was accompanied by the 2014 PEIR, which contained preliminary environmental information regarding the environmental effects of Option 1 and Option 2 (see <http://www.abergellipower.co.uk/en/>). The Applicant had regard to all consultation responses received. The Respondents did not respond to the 2014 Consultation.
- 5.5 Following consultation on the 2014 PEIR, the decision was made to take forward Access Option 2. The main reasons for this choice were that the majority of the public consulted during 2014 supported Access Option 2 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 would also minimise the amount of construction required, as part of the access is existing.
- 5.6 The Applicant continued to develop its proposals, and then subsequently re-consulted in 2018. The consultation materials set out the decision that the Applicant had taken in relation to selection of Access Option 2, and explained the rationale for the selection of Access Option 2.
- 5.7 Within the 2018 Consultation, the Applicant presented sub-options for the new section of Access Option 2 – Option A and Option B. The Consultation materials were accompanied by the 2018 PEIR, with preliminary information on the environmental effects of Option A and Option B (see <http://www.abergellipower.co.uk/en/>)
- 5.8 The key advantage to Option A was its complete avoidance of the Ancient Woodland area adjacent to the Substation and Felindre Gas Compressor Station. Option B performed better in terms of impacts to National Grid's current and future planned operations, sustainability in relation to materials to be excavated and removed, and Project cost.
- 5.9 Following the 2018 Consultation, the Applicant had regard to all consultation responses received. The Respondents did not respond to the 2018 Consultation.
- 5.10 The Planning Act 2008 set up a front-loaded process for the consideration of NSIPs, with a significant emphasis on pre-application consultation in both the legislation and accompanying guidance. As the Guidance on the pre-application process (DCLG, March 2015) notes:
- 5.10.1 the consultation can enable: "members of the public to influence proposed projects, feedback on potential options..." and "applicants to obtain important information about the economic, social and environmental impacts of a scheme from consultees, which can help rule out unsuitable options" (paragraph 18, emphasis added); and
 - 5.10.2 specifically in relation to those with an interest in land, that consultation "will give such parties early notice of projects, and an opportunity to express their views regarding them" (paragraph 49, emphasis added).
- 5.11 The Applicant received feedback from statutory consultees, raising concerns about the loss of ancient woodland, and proposed revisions to Option B to address these concerns. These meant that the advantages of Option B (as set out above) were retained and incorporated the key advantage of Option A (avoidance of the woodland).
- 5.12 The Environmental Statement submitted with the Application has assessed the selected Access Road. Chapter 5 of the Environmental Statement contains information on the main alternatives considered by the Applicant.

5.13 As set out in the Environmental Statement (Chapter 5), the Applicant considers that Access Option 2 is the most appropriate route. In formulating its view, the Applicant had regard to a range of considerations, which included consultation feedback, environmental information and land ownership information / impacts.

5.14 Access Option 1 would also have resulted in a need to acquire third party land, and would have required heavy plant and equipment crossing the apparatus of statutory undertakers in several locations (including the National Transmission System pipelines owned by National Grid). The nature of the construction works proposed, and the plant and equipment required for the Generating Equipment is significantly different to the construction works undertaken previously by National Grid for the installation of their gas pipeline, so the previous use of the B4889 does not establish its suitability for use for this project.

5.15 **Ancient Woodland**

5.16 Ancient woodland is protected in planning policy terms, as it takes hundreds of years to be established and is an irreplaceable habitat with important soil and ecological resources, and as a rare habitat. Paragraph 5.3.14 of NPS EN-1 states:

"Ancient woodland is a valuable biodiversity resource both for its diversity of species and for its longevity as woodland. Once lost it cannot be recreated. The [IPC] should not grant development consent for any development that would result in its loss or deterioration unless the benefits (including need) of the development, in that location outweigh the loss of the woodland habitat. Aged or 'veteran' trees found outside ancient woodland are also particularly valuable for biodiversity and their loss should be avoided. Where such trees would be affected by development proposals the applicant should set out proposals for their conservation or, where their loss is unavoidable, the reasons why".

5.17 The Applicant has had regard to this policy and the strong presumption against the loss of ancient woodland in its route selection decisions. The Applicant has given particular weight to this policy as any DCO application must be determined in accordance with the applicable NPS in accordance with Section 104 of the Planning Act 2008.

5.18 Planning Policy Wales (Edition 9, November 2016) (which is considered to be an important and relevant consideration in the determination of the application under Section 104 of the Planning Act 2008) provides as follows at paragraph 5.2.9:

"Local planning authorities should seek to protect trees, groups of trees and areas of woodland where they have natural heritage value or contribute to the character or amenity of a particular locality. Ancient and semi-natural woodlands are irreplaceable habitats of high biodiversity value which should be protected from development that would result in significant damage."

5.19 The Consultation Draft of Planning Policy Wales Edition reiterates this policy protection, and notes the requirement to consult Natural Resources Wales:

"5.62 Planning authorities should protect trees, hedgerows, groups of trees/shrubs and areas of woodland where they have ecological value, contribute to the character or amenity of a particular locality, or perform a beneficial green infrastructure function. Planning authorities should consider the importance of native woodland and valued trees, and should have regard, where appropriate, to local authority tree strategies or supplementary planning guidance.

5.63 Ancient and semi-natural woodlands and individual ancient, veteran and heritage trees are irreplaceable natural resources, and often have significant landscape, biodiversity and cultural value. Such trees and woodlands should be afforded additional levels of protection and every effort should be made to prevent

potentially damaging operations and their unnecessary loss. In the case of a site recorded on the Ancient Woodland Inventory, authorities should consult with NRW. Planning authorities should also have regard to the Ancient Tree Inventory."

- 5.20 The Applicant has consulted with Natural Resources Wales and with the ecologist at CCS, and following their input, adjusted the access route to avoid damage to ancient woodland.
- 5.21 The Applicant has reviewed the report by Alison Wheeler from Hugh Wheeldon & Co (Appendix D to the Respondents' written representation) with its consultants.
- 5.22 The Ancient Woodland Inventory (www.lle.gov.wales), shows that not all the woodland through which the Option B Access Track is located is recorded as Ancient Woodland. The drawing at Appendix 1 shows an overlay of ancient woodland and the access routes. The ancient woodland colourings are taken from the Ancient Woodland Inventory, and show restored ancient woodland in orange tinting, and ancient woodland of unknown category tinted in pink. The route of Option A access route is the pink line, Option B is the brown line and the route of the revised Option B (now included as the Access Road in the draft DCO) in green.
- 5.23 However, the areas of woodland (ancient and unclassified) are contiguous, and both exhibit similar characteristics. Furthermore, as stated in the Ecological Appraisal (Hugh Wheeldon & Co., May 2018)
- "It is not recorded as ancient woodland on the AWR, but this may be debateable as the site is located on the southern edge of the former ancient woodland site to the north and may be surviving woodland edge habitat."*
- 5.24 The report goes on to state that woodland is of ecological importance – this is supported by the information contained within Table 8-13, Chapter 8: Ecology of the ES as follows:
- 5.24.1 Broadleaved semi-natural woodland habitat is botanically diverse and contributes to the variety of resources in the local area. Lowland mixed deciduous woodland is a Section 7 habitat. The habitat is classified as Medium value.
- 5.24.2 The interface between the woodland and the grassland adjacent to the west is shown to support common lizard – edge habitats are important reptile habitats.
- 5.24.3 The woodland is suitable for and is shown to support breeding birds.
- 5.24.4 The woodland edge supports a variety of commuting and foraging bat species.
- 5.25 Furthermore, trees within the woodland have the potential to be suitable for supporting roosting bats (no assessment was made due to the avoidance of removal of trees from the woodland and lack of potential for disturbance).
- 5.26 The woodland was not accessed during the ecological surveys due to the presence of a disused mine shaft at an unknown location within the woodland. However, APL's ecology consultant considers it likely that the woodland also supports other species.
- 5.27 The recently updated Standing Advice published by Natural England and the Forestry Commission¹ (applicable in England, but representing best practice) states that
- "...nearby development can also have an indirect impact on ancient woodland or ancient and veteran trees and the species they support. These can include:*
-

- *breaking up or destroying connections between woodlands; and*
- *reducing the amount of semi-natural habitats next to ancient woodland...*

5.28 As such it is desirable to avoid both areas of woodland.

5.29 The Standing Advice also recommends leaving an appropriate buffer zone of semi-natural habitat between the development and the ancient woodland (depending on the scale and impact of development, a minimum buffer should be at least 15 metres to avoid root damage and at least 50m for pollution or trampling); the width of the woodland not classified as ancient is approx. 15m. As such, any access route through this area would need to avoid the whole area of woodland (ancient and unclassified) to adhere to this best practice guidance.

5.30 The Applicant notes that in their relevant representation, [RR-025] Natural Resources Wales stated:

"We welcome that the developer has taken on board our pre-application comments on the avoidance of destruction of Ancient Semi-Natural Woodland habitat, and in doing so, have re-routed the access road to avoid this."

5.31 The Applicant therefore refutes the Respondents' suggestion that the selection of the access route was flawed and based on an incorrect understanding of the status of the ancient woodland. The evidence reviewed by the Applicant supports the Applicant's conclusion that the woodland should be treated as ancient woodland, and the modifications to the access route to avoid the destruction of ancient woodland is in accordance with the NPS policy and endorsed by the statutory nature conservation body, Natural Resources Wales.

Appendix 1







Project Title:

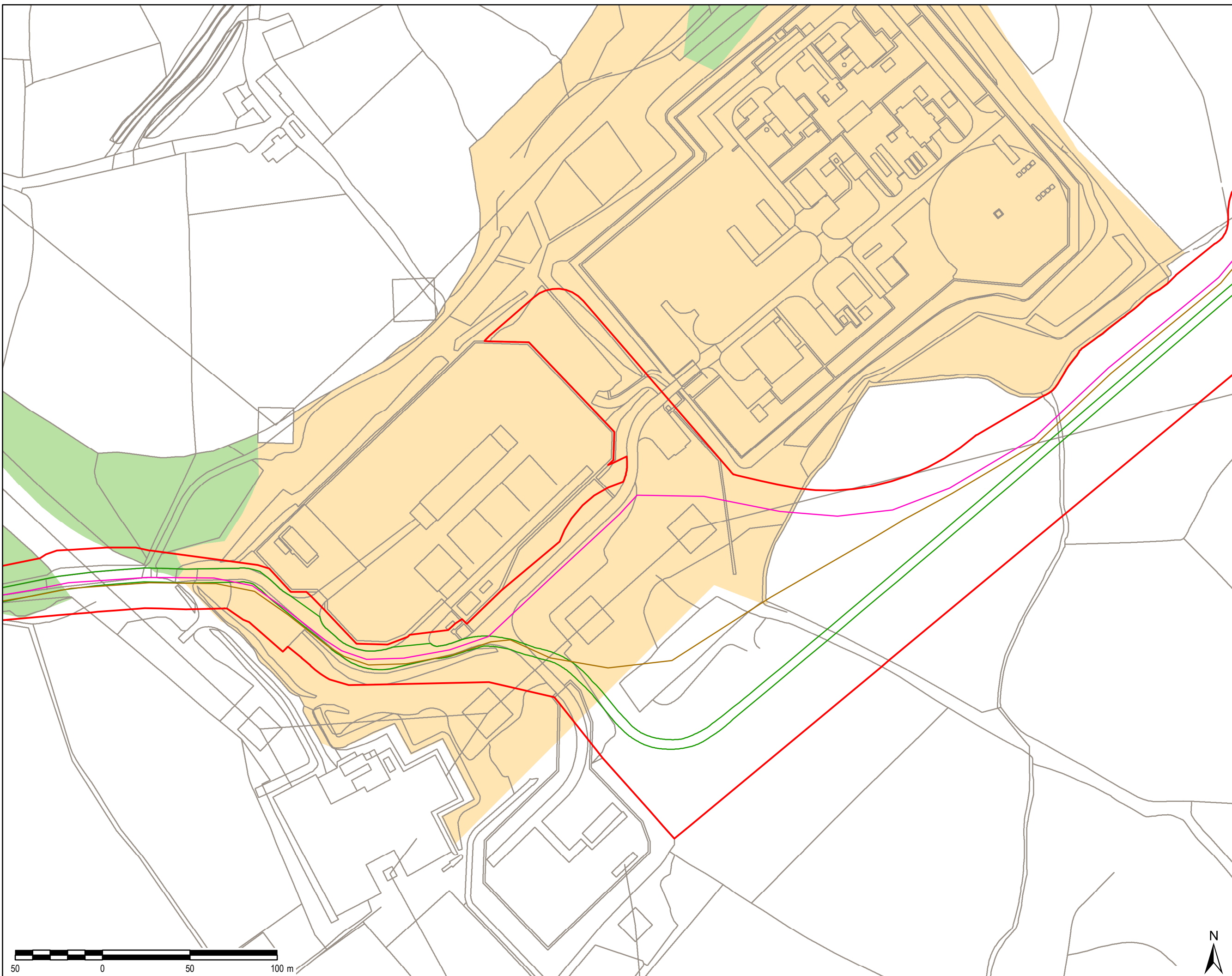
ABERGELLI POWER PROJECT

Client:



LEGEND

-  Option A Access Road
-  Option B Access Road
-  Revised Option B Access Road
-  Project Site boundary
-  Restored Ancient Woodland Site
-  Ancient Woodland Site of Unknown Category



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AECOM Internal Project No:

60542910

Drawing Title:

ANCIENT WOODLAND AND ACCESS ROAD

Scale at A3: 1:2,000

Drawing No: **Rev:**

FIGURE 1 001

Drawn: Chk'd: App'd: Date:

GM NW CA 29/11/18

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