



Applicant's Response to CCS Local Impact Report

PINS Reference Number: EN010069

Deadline 2 – 30 November 2018

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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 in response to the Local Impact Report submitted to the ExA by City and County of Swansea Council (CCS) at Deadline 1.

2 Applicants Comments on CCS Local Impact Report

LIR Reference	Summary of CCS Comment	Applicants Response
Air Quality		
9.12	CCS made comments on the PEIR with regards to table 6.7 (stack properties and emission parameters) and queried the stack diameter as there are diameters of 7m and 12m given for modelling. CCS are unclear on the impact on the modelling results and would like clarification as it is not covered in the summary of comments.	The maximum internal stack tip diameter for the stack is 7 m as stated in Table 6-7 of the ES [APP-042], whereas the external diameter of the stack is 12 m (Table 3-3), which is used as a worst-case for the visual impact assessment. The external diameter may be reduced, dependent on the final design of the stack; however this will not alter the internal diameter and so will not affect the dispersion modelling.
Noise & Vibration		
10.14	CCS does not agree with rating levels set out in column A of Table 3 of Requirement 25. The dBL _{ARs} stated are higher than those set out in table 7-21 of the ES which had already included a +3dB correction; the dBL _{ARs} put forward would place the NSR's in a Classification of effects 'minor' (Table 7-14) The increase in difference stated could allow for an increase in noise to be permitted and given the context of the area lead to the creation of significant disturbance to the neighbouring land uses. Requirement 25 should therefore be amended to reflect this.	<p>Table 3 of Requirement 25 of the draft DCO [APP-014] gives operational noise limits for the Project. These were set at the lowest level at each receptor which would result in a minor effect. In other words noise levels which meet the operational noise limits listed in the DCO will result in negligible effects. ES [APP-042] Chapter 7: Noise and Vibration uses the same principles to assess the expected effects of the predicted sound emissions from the Project but does not list the operational noise limits themselves.</p> <p>Tables 7-12 and 7-14 in the ES [APP-042] identify that the onset of minor effects for residential properties would be expected to occur with rating levels more than 5 dB above the representative background sound level. This is the basis for the operational noise limits included in Table 3 of Requirement 25 of the draft DCO [APP-014].</p> <p>The difference can be summarised as follows for the night time scenario.</p>

Noise Sensitive Receptor (NSR) Column	Measured representative night time background sound level as shown in ES Tables 7-15 and 7-21	Operational noise limit (background sound level plus 5 dB) as shown in DCO Table 3	Predicted specific sound level (L_{Aeq}) as shown in ES Tables 7-20 and 7-21	Predicted rating level (L_{Ar}) - specific sound level plus 3 dB character correction for intermittent operation as shown in ES Table 7-21	Difference between rating level and background sound level as shown in ES Table 7-21	Difference between rating level and operational noise limit showing all rating levels below the operational noise limit for relevant receptor
Calculation		A + 5		C + 3	D - A	D - B
Cefn Betingau	34	39	35	38	+4	-1
Maes-eglwys	35	40	32	35	0	-5
Lletty Morfil Farm	38	43	29	32	-6	-11
Abergelli Farm	36	41	34	37	1	-4

The differences between the operational noise limits and the predicted rating levels shown above are a function of the conditions of the Project Site. The rating levels are based on the predicted specific plant sound level at each receptor. The predicted levels are highest at those receptors closest to the Project Site. But the background sound

		<p>levels are unrelated to the distance from the Project Site as the sound sources contributing to the background sound level are located at various points none of which are on the Project. As the operational noise limits are based upon the background sound levels they too are independent of distance from the Project Site. As a result, there is essentially only one crucial location, Cefn Betingau ((Noise Sensitive Receptor (NSR) 1), which is closest to the Project Site and has the lowest background sound level of 34 dB. Lletty Morfil (NSR5), on the other hand is furthest from the Project Site and has the highest background sound level of 38 dB. As a result the same plant sound output produces very different BS 4142 assessments for the two NSRs.</p> <p>A plant designed to meet the operational noise limit at Cefn Betingau (NSR1) will result in rating levels considerably below the operational noise limits at the other receptors. The predictions in Table 7-21 show night time rating levels 1 dB below the operational noise limit at Cefn Betingau and 11 dB below the operational noise limit at Lletty Morfil (NSR5).</p> <p>The operational noise limits are rating levels, so include penalties for the character of the sound. ES [APP-042] Chapter 7: Noise and Vibration includes a 3 dB penalty in the predictions to reflect the intermittent nature of the source (it is a peaking plant), therefore the specific sound level (before character penalties added) at Cefn Betingau (NSR1) was 4 dB below the operational noise limit. If the sound produced by the plant includes other characteristics that would attract character penalties (tonality, impulsiveness) then these additional penalties would have to be added as well to allow comparison with the operational noise limits. It is the intention of the detailed design to avoid this but if such characteristics cannot be avoided then the specific sound level of the plant will be lower to allow for the addition of the penalties in the rating level for comparison with the operational noise limit.</p>
10.15	<p>CCS are also concerned about the inclusion of start-up and shut down periods of half an hour each side of the working day. The whole point of restricting hours of operation is to provide a level of protection from the effects of the construction activity to local residents. By allowing a start-up and shut down period, the DCO is allowing an early start and later finish. These should be included within the</p>	<p>The Development Consent Order ("DCO") was amended for Deadline 1 to include a definition of "shut down period" and "start-up period" to define the activities that can be carried out during the period set out in Requirement 23 of the draft DCO.</p> <p>For further information, please refer to reference 17 of agenda item 6 of the Written Summary of Oral Submissions for Issue Specific Hearing 1 (submitted by the Applicant at Deadline 1).</p>

	working day as permitted – between 8am and 6pm.	
Ecology		
11.15	<p>CCS considers that further details should be included within the CEMP to cover biodiversity impacts and it is recommended that Requirement 17 is amended accordingly.</p> <p>CCS would suggest that the scope of the CEMP is expanded to include 'biodiversity management measures' in the Requirement, listed in 17(1).</p> <p>It is suggested that the Outline CEMP is amended to include the following:</p> <ul style="list-style-type: none"> a) Risk assessment of potentially damaging construction activities. b) Identification of biodiversity protection zones. c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements). d) The location and timing of sensitive works to avoid harm to biodiversity features. e) The times during construction when specialist ecologists need to be present on the site to oversee works. f) Responsible lines of communication. g) The role and responsibilities on site of an ecological clerk of works. h) Use of protective fences, exclusion barriers and warning signs. 	<p>Roles and responsibilities for biodiversity management and protection are included within Section 2.1 of the CEMP [APP-036]. Ecological management is presented throughout the LEMS [REP1-016]. The CEMP and LEMS are secured by Requirements 17 and 9 respectively.</p> <p>Each point suggested for inclusion is discussed below, with reference to where within each of these two documents it is covered:</p> <ul style="list-style-type: none"> a) Risk assessment of potentially damaging construction activities is located within the pre-construction surveys and watching briefs in the LEMS [REP1-016] Appendices A-G. b) Identification of biodiversity protection zones are located within each relevant Appendix A-G of the LEMS [REP1-016]. c) Practical measures and method statements are located within the LEMS [REP1-016] Appendices A-G and throughout the CEMP [APP-036]. d) The location and timing of sensitive works to avoid harm to biodiversity features is located within each relevant Appendix A-G of the LEMS [REP1-016]. e) The times during construction when a specialist ecologist needs to be present on the site to oversee works are located within each relevant Appendix A-G of the LEMS [REP1-016]. f) Responsible lines of communication are located within the CEMP Section 2.1 and CEMP Appendix A: Mitigation Register. g) The role and responsibilities on site of an ecological clerk of works is located within Section 2.1 of the CEMP [APP-036]. and each relevant Appendix A-G of the LEMS [REP1-016]. h) Use of protective fences, exclusion barriers and warning signs will be provided in the finalised LEMS, if required. <p>Please see further comments in response to LIR paragraphs 20.38 – 20.39 below.</p>

<p>11.21, 11.43</p>	<p>Comments made by CCS on the removal of pond 23 and the impacts that the loss of this habitat may have on the species that utilise the habitat. It is not clear whether the mitigation would include the loss of pond 23. CCS do not accept the justification for the amount of ponds and would request at least 6 new ponds to be provided.</p>	<p>There are two existing Ponds which will be permanently removed by the construction of the Project. These are:</p> <ul style="list-style-type: none"> - Pond 22: approximately 1m x 2m, and less than 0.5m deep; and - Pond 16: temporary and comprises a woody vegetated island in the middle, holds very shallow water (<0.5m deep) totalling on average around 4m² surface water area. <p>As stated in the LEMS [REP1-016] Section 4.6.13, two new permanent ponds will be created within the Wet Meadow and Acid Grassland of the Ecological Mitigation Area. The ponds will be at least 2m x 2m and have shallow sides to allow animals to enter/exit the pond freely and should taper to a depth of at least 0.5m in the centre. The creation of two ponds for wildlife compensates for the loss of the ponds within the Project Site.</p> <p>It is proposed that the ponds will be planted with some native plant species as this will give native amphibians and invertebrates the best chance of colonising the pond.</p> <p>Pond 23 is ephemeral and is created in periods of wet weather when the ditch becomes full and water pools in an area measuring approx. 2m x 2m on the edge of the field. Should it not be possible to avoid removal of this intermittent pond then the two compensatory ponds will be increased in size in proportion to the total loss.</p> <p>The attenuation ponds or fire water tank are not being considered as ecological mitigation due to safety/maintenance and the nature of their operation.</p>
<p>11.22</p>	<p>CCS raised concerns as pond 22 was found to contain palmate newts, frogs and toads and no method statement had been provided. However, it is understood that an Updated Outline LEMS will be submitted by APL that covers this issue. The new ponds must be created in advance of disturbance or removal of the existing ponds. This work will require supervision/ undertaking by an Ecological Clerk of Works/Ecologist. CCS are also unclear on the overall sizes of the existing</p>	<p>Section 1.2.5 of the updated LEMS, submitted for Deadline 2, states that the finalised LEMS will include pre-construction and construction management measures to ensure the protection of species during the infilling and creation of ponds and other enhancement features.</p> <p>At this stage, it is not possible to specifically detail the exact method of management of the Ecological Mitigation Area (EMA) or the timing of ecological mitigation to be implemented. The minimum requirements and principles for the EMA are outlined in the LEMS [REP1-016] and based on the information currently available. Once the construction timescales are confirmed, and the detailed design has confirmed the final</p>

	ponds in order to comment effectively on the mitigation proposed	<p>working areas of the Project, the extent and detail of the ecological mitigation can be agreed within the finalised LEMS.</p> <p>Comment in regards to creation of ponds under ecological supervision and in advance of disturbance or removal of existing ponds noted, and will be included in the finalised LEMS, as stated in the LEMS [REP1-016]. APL have clarified the position in relation to mitigation for pond habitat removal above, in response to CCS LIR paragraphs 11.21, and 11.43.</p>
11.26	<p>CCS considers that the mitigation for reptiles should include finger- tip searches for species and re-location to suitable site/mitigation area, together with any rubble or log piles from the development site. Any litter/rubble/log piles located in the construction areas should be re-located to suitable reptile habitat areas to be agreed with CCS.</p>	<p>As stated in the updated LEMS [REP1-016], submitted for Deadline 1, Appendix A Reptiles and Amphibians (Herptiles):</p> <ul style="list-style-type: none"> - '8. Any areas subject to machines tracking over or repeated foot traffic, as well as the route of the fence line, will be hand searched by an ecologist for the presence of herptiles. Herptiles encountered will be captured by hand and moved out of the way into suitable habitat (see 'Translocation Area' below). The routes will then be mown to a height of less than 150 mm and maintained as such for the duration of the fencing installation.'; and - '14. Any litter or rubble piles will be removed by hand under the supervision of an ecologist to avoid injuring or killing any reptiles.' <p>As shown on Figure 3.6c of the Landscape and Ecology Mitigation Plan (LEMP) [APP-024], the EMA will include reptile hibernaculum. Where appropriate, suitable material (rubble and log piles, but not litter) will be moved from the construction site to the EMA or a suitable reptile habitat outside of the EMA. However, some areas of the construction site are infested with Himalayan balsam, and as such materials will not be relocated where there is a biosecurity risk.</p>
11.27	<p>There is the potential for new roosts to be formed in trees previously identified as having potential to support roosting bats, but not confirmed as roosts during any of the surveys; there is the potential for new roosts to be disturbed, or bats to be injured or killed during construction. Disturbance, injury or killing is afforded high magnitude, resulting in a major effect, and is considered a significant effect requiring further mitigation. CCS agree with</p>	<p>As stated in section 4.3.2 of the LEMS [REP1-016], woodcrete bat boxes will be placed in suitable locations (i.e. mature trees) within the Project Site as a habitat enhancement measure. The number and size of boxes will be agreed in consultation with CCS and NRW when the LEMS is finalised.</p>

	<p>this and consider that bat boxes should be located around the site.</p>	
11.29, 11.30	<p>The Power Generation Plant is close to areas with the potential for supporting water vole and otters. Disturbance, injury or killing are afforded high magnitude, resulting in a moderate effect; and is therefore considered a significant effect and will require additional mitigation. These conclusions are agreed but CCS have concerns with regards to the mitigation proposed.</p>	<p>No evidence of otter or water vole were identified during the surveys. However, there is habitat suitable for holt and couch creation along watercourses within the Project Site Boundary. To minimise the risk of the creation of holts or couches by otters prior to construction, the LEMS [REP1-016] states in Appendix D that a pre-construction check for otter holts/couches and activity will be undertaken where construction is present within 100m of watercourses identified as suitable for supporting the species during the 2017 field surveys, as identified in ES Appendix 8.10 Figure 1 [APP-024].</p> <p>Should the pre-construction check return a negative result, habitat management will be undertaken to help reduce the quality of the habitats for holt/couch creation for the period leading up to, and for the duration of construction in that area. Should otter be confirmed as present on watercourses within 100m of construction works during the pre-construction check, a European Protected Species Licence from NRW may be required to allow works to proceed and additional mitigation may be required. This will be confirmed following the pre-construction check as outlined in Appendix D of the LEMS [REP1-016].</p> <p>There is abundant suitable habitat for holt and couch creation outside of the working area and zone to be cleared of vegetation including ditches, and the Afon Llan, which are bordered by woodland. Therefore the small loss of habitat will be temporary as bankside vegetation will regenerate post-construction.</p>
11.31	<p>CCS commented that suitable mitigation for otters using water courses close to the project site boundary that an artificial otter holt should be located near the Afon Lliw (typical cost of £360 - £500), at a site to be agreed with the CCS ecologist. These require minimum maintenance. This has not been included in the Updated LEMP.</p>	<p>The installation of an artificial otter holt is not an appropriate mitigation measure or enhancement feature for the Project as the Afon Lliw is outside the order land. Watercourses within the Project Site and immediate surrounds are largely unsuitable to support foraging otters. With limited high quality foraging resource in the vicinity of the Project Site the chance of occupation of an artificial holt is minimal.</p> <p>Ground conditions are suitable for natural holt establishment with plenty of potential holt/couch establishment opportunities recorded within the Project Site none of which were occupied at the time of survey. It is considered likely that should otters begin to spend more time in the Project Site than the current occasional pattern of use, then one of these natural sites would be colonised in preference to an artificial holt.</p>

		Consideration was given to the provision of an otter holt as an enhancement but in this instance for the reason stated above, it was not deemed appropriate or the best use of resources.
11.32	CCS commented on the potential for construction work to impede on [REDACTED] setts. Injury or killing are afforded at high magnitude resulting in moderate effect, and as such are considered significant effects and will require further mitigation.	The provision for pre-construction checks for [REDACTED] is covered in Appendix E of the LEMS [REP1-016].
11.33	The excavation of open trenches to facilitate the gas connection may obstruct [REDACTED] from commuting across the project site and [REDACTED] may become trapped in open trenches or excavations. As such is will require further mitigation.	Pre-construction checks for [REDACTED] will be undertaken before construction as stated in Appendix E of the LEMS [REP1-016]. If new [REDACTED] setts are found, the finalised LEMS will include the appropriate mitigation.
11.36	CCS considers that pre-construction checks are required for water vole, otter, bats and [REDACTED] setts and activity where construction within 30m of suitable habitats. Attenuation ponds should not be considered as ecological mitigation as they aren't suitably connected to surrounding habitats.	The provision for pre-construction checks for otter, water vole and bat roosts is covered in Appendix C and D of the LEMS [REP1-016]. The attenuation ponds or fire water tank are not being considered as ecological mitigation due to safety/maintenance and the nature of their operation
11.37	The temporary loss/ removal of habitats must all be reinstated once construction works are complete. To compensate for loss an additional 10% of habitat is required to be reinstated.	All temporarily removed habitats will be replaced on a like for like basis. This is illustrated in the Landscape and Ecology Mitigation Plan (LEMP) ES Figure 3.6 [APP-024] which provides habitat loss/gain calculations. The impacts of temporary habitat losses have been fully assessed within the ES [APP-042] and no further mitigation is required.
11.38	Monitoring will be undertaken for any species with newly created compensatory habitats for at least five years following establishment. It is not clear how the results of this monitoring or indeed of the habitat/species management	As stated in the Outline LEMS [REP1-016], the final LEMS (secured by Requirement 9) will include the provision for monitoring for any species with newly created compensatory habitats for at least five years following establishment. Details of monitoring will be fed back to CCS.

	will be reported back to CCS and amendments are suggested to Requirement 9 – the Ecological Management Plan	Monitoring of newly created habitats will be undertaken every 5 years for the lifetime of the Project, as stated in the Outline LEMS [REP1-016] and secured by Requirement 9. The results of the monitoring will be used to inform the ongoing management, and a report will be provided to CCS following each monitoring visit.
11.39	CCS considers that monitoring is vitally important. A report/ strategy describing the results of the monitoring shall be submitted to the LPA at intervals of the lifetime of the project up to decommissioning. Monitoring should include a robust feedback mechanism to change, add new mitigation if required and submitted to the local biodiversity records centre (Sewbrec).	<p>Monitoring will be undertaken for newly created habitats for species for 5 years.</p> <p>CCS state that monitoring should be undertaken for newly created habitats once every 5 years for the lifetime of the project (Section 20.21 of the Local Impact Report).</p> <p>As stated in Section 1.2.5 of the updated LEMS, submitted for Deadline 2, the final document will include a timetable showing when habitats will be monitored and how and when the results will be fed back to the management team and CCS, and the final management activity will be to include a provision to supply wildlife data to SEWBReC. Should any element or part of the Ecological Mitigation Area fail or be failing, a provision will be incorporated into the finalised LEMS to ensure that a replacement or new management method is implemented to maintain the level of mitigation required in the area. Any replacement or amendment to the management activities will reflect the circumstances on site, and ensure that the landscaping and ecological mitigation has the best overall chance of success. The final LEMS is to be approved by CCS under Requirement 9.</p>
11.40	<p>The purpose of the Strategy shall be to ensure the long-term functionality of populations of protected species eg bats, [REDACTED] etc. within and in the immediate vicinity of the development site. The content of the Strategy shall include the following:</p> <p>a) Aims and objectives of monitoring to match the stated purpose. b) Identification of adequate baseline conditions prior to the start of development. c) Appropriate success criteria, thresholds, triggers and targets against which the effectiveness of the various conservation measures being monitored can be judged.</p>	As described in the APL comments on CCS LIR paragraph 11.22 above, at this stage, it is not possible to specifically detail the exact method of management of the Ecological Mitigation Area (EMA) or the timing of ecological mitigation to be implemented. The minimum requirements and principles for the EMA are outlined in the LEMS [REP1-016] and based on the information currently available. The exact method of management of the EMA, and the timing of ecological mitigation, will follow once the construction timescales are confirmed and the detailed design has confirmed the final working areas of the Project. Details are to be agreed within the finalised LEMS as confirmed in Section 1.2.5 of the updated LEMS, submitted for Deadline 2. The final LEMS is to be approved by CCS under Requirement 9.

	<p>d) Methods for data gathering and analysis e) Location of monitoring, f) Timing and duration of monitoring g) Responsible persons and lines of communication h) Review, publication of results and outcomes at periods to be agreed with the Authority.</p> <p>The report shall also set out (where the results from the monitoring show that conservation aims and objectives are not being met) how contingencies and/or remedial action will be identified, agreed with LPA (in consultation with NRW) and be implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.</p>	
<p>11.41</p>	<p>The ES considered that after taking mitigation into effect, the ecological impact of the proposals are considered to be not significant. However, CCS cannot agree to this without ongoing monitoring and a detailed mitigation strategy and future management plans. It is unclear how any failure in the mitigation will be identified and a review mechanism should be included into the management plan to enable it to be responsive and adapted to suit circumstances on site.</p>	<p>Please see APL comments in response to CCS LIR paragraph 11.38, above.</p>
<p>11.43</p>	<p>CCS do not accept the justification for the amount of ponds and would request at least 6 new ponds to be provided – some larger and deeper to accommodate European eel and other species, and some smaller and</p>	<p>No records of European eel were recorded as part of the desk study although it is acknowledged that the Severn Estuary supports an important population of this species and therefore they are likely to be present in the Loughor. Habitats within the Project Site are of low quality for eels in the freshwater phase with limited connectivity to the source population. The abundance of European eels declines markedly with increasing distance</p>

	<p>shallower to attract amphibians, invertebrates etc. In line with legislation, there should be biodiversity gain and enhancement measures provided and the provision of 2 small ponds does not meet this.</p>	<p>(Billy Nzau Matondo and Michaël Ovidio, decreased stock entering the Belgian Meuse is associated with the loss of colonisation behaviour in yellow-phase European eels, Aquatic Living Resources, 31, (7), (2018)), from estuarine conditions and therefore we consider that the species is either absent or present in such small numbers as to be irrelevant in terms of the Project. There is no direct loss of eel habitat or potential for direct effects to eel given the proximity of the construction works.</p> <p>Mitigation measures detailed in the LEMS [REP1-016] will maintain the connectivity of watercourses and therefore in the unlikely event that the species is present, they will not be adversely affected post construction from any loss of apparent habitat and given the distance from a likely notable population, enhancement measures would be of minimal value at this location.</p> <p>APL outlines above the proposed mitigation in relation to ponds in response to CCS LIR paragraphs 11.21 and 11.22.</p>
<p>11.44</p>	<p>The swift tower requested was deemed not necessary in this instance. There are other options for mitigation and biodiversity enhancement for the species, in the form of swift boxes to be installed on the infrastructure or elsewhere on site (as per page 43 of ES Appendix - Volume F Ecology Part I). Section 6 under Part 1 of the Environment (Wales) Act 2016 introduced an enhanced duty (the S6 duty) for public authorities in the exercise of functions in relation to Wales.</p>	<p>Swift boxes are not appropriate to this Project because of the nature of the building meaning the use of integrated or retrofitted boxes would be very difficult. Maintenance would also be difficult given the height. Based upon the number of records of swift recorded onsite it is very unlikely that swift boxes (if provided) would be taken up and therefore this mitigation would have no additional value and would not be an effective enhancement.</p> <p>As stated in the LEMS updated for Deadline 1 [REP1-016], woodcrete bird boxes will be placed in suitable locations (i.e. mature trees) within the Project Site as a habitat enhancement measure. The number and size of boxes will be agreed in consultation with CCS and NRW when the LEMS is finalised.</p> <p>The Ecological Mitigation Area (EMA) (Work No 4) provides an enhanced area of marshy and acid grassland and scrub with a woodland corridor which has been designed to increase connectivity across the Project Site. Additionally, outside of the EMA, the Project Site will be subject to landscaping planting which will include areas of native trees and native hedgerow planting - providing biodiversity enhancements on the Project Site. The Project Site is currently subject to intensive agricultural management, (as stated in the ES Chapter 8 Ecology [APP-042] the Project Site is dominated by negligible value improved grassland and Low value semi-improved grassland) the EMA will be subject to</p>

		a sensitive management regime designed to maximise biodiversity and provide linkages across the Project Site.
11.47	<p>The Outline LEMS illustrates the mitigation that has been incorporated into the landscape design. However, detail is lacking regarding the Ecological Mitigation Area in terms of how exactly it will be enhanced to mitigate for the loss of a variety of habitats and ensure that the quality of mitigation is appropriated.</p>	<p>The Ecological Mitigation Area includes an area of marshy and acid grassland which will be created by reducing/removing the grazing on site thereby allowing the native botanical species to regenerate. The area will grade into an area of native scrub which will in turn grade into native tree species that will form the western boundary, linking trees lines in the north to the Afon Llan in the south, as illustrated in the Landscape and Ecology Mitigation Plan (LEMP) ES Figure 3.6 [APP-024].</p> <p>The finalised LEMS will include planting schedules, stocking densities and heights of trees. Standard techniques will be used to ensure survival of planted stock and monitoring to replace any areas of poor uptake.</p> <p>Monitoring and implementation of any remedial measures is as per APL's comments in response CCS LIR paragraph 11.39 above.</p>
11.48	<p>CCS considers that the Outline LEMS should be updated to include the following:</p> <ul style="list-style-type: none"> a) Aims and objectives of management. b) Prescriptions for management options. c) Details of the body or organisation responsible for implementation of the plan. d) Reporting and implementation of remedial measures. <p>The management plan should include prescriptions for all species and habitats of local or national importance identified as being present or possibly present on the site to include; native trees, hedgerows, ponds, bats, brown hare, hedgehog, [REDACTED], etc.</p>	<p>The finalised LEMS will include these points; however it not possible to provide specific details as requested as this is subject to confirmed start dates of construction, and contractor(s), in addition to the approval of CCS prior to construction commencing. The LEMS has been updated for Deadline 2 to include paragraphs 1.2.5 and 1.2.6.</p>
11.49	<p>In the ES, there is mention of artificial [REDACTED] setts being created although no details are</p>	<p>ES [APP-042] Chapter 8: Ecology, paragraphs 8.8.29 & 8.8.30 state: "A pre-construction check for [REDACTED] setts and activity will be undertaken where construction works are within 30 m of suitable habitats for [REDACTED] sett creation".</p>

	given of the location of these or any methodology.	<p>Works likely to damage or destroy a [REDACTED] sett will require a licence to close the sett prior to works commencing. The terms of the licence may stipulate the requirement for compensatory setts to be created should any main setts be destroyed and/or temporarily closed.</p> <p>Current understanding of [REDACTED] activity and the Project shows that no [REDACTED] setts are currently predicted to be impacted by the construction works. Should the pre-construction check identify a sett whereby works will require the closure of the sett under licence, the licence application will stipulate the requirement for and details of any compensatory sett.</p>
11.50	Pre-construction checks are required for water vole, otter, bats and [REDACTED] setts. The timing of these prior to site works need to be specified to ensure they are fit for purpose.	Pre-construction checks are detailed in the LEMS [REP1-016] Appendix C, D and E. The finalised LEMS will include timings of pre-construction checks.
11.51	An updated INNS survey is required to be undertaken to accurately assess INNS and extents within the project site boundary.	This is stated in the LEMS [REP1-016] Appendix F and secured by Requirement 10 which secures submission, approval and implementation of an invasive species survey and management scheme.
11.52	The development site is within the larger meta-population area for marsh fritillary. Suitable mitigation is included for the temporary and permanent loss of marshy grassland habitat that will occur as a result of the development. Remaining areas of marshy grassland should be managed for marsh fritillaries.	Section 4.3.1 and 4.7.2 of the updated LEMS, submitted for Deadline 2, state that the finalised LEMS will include management which is in keeping with providing areas of value to marsh fritillary butterfly. The final LEMS is to be approved by CCS under Requirement 9.
11.53	CCS requires further details in terms of hedgerows and trees.	<p>Indicative species of hedgerows and trees to be planted are provided in Section 4.6.8 of the LEMS REP1-016].</p> <p>The finalised LEMS will include planting schedules, stocking densities and heights of trees. Standard techniques will be used to ensure survival of planted stock and monitoring to replace any areas of poor uptake.</p>
11.54	Any works should be undertaken at a time of year when vulnerable species are less likely	Where possible works will be timed to minimise the potential for disturbance of protected species. Where this is not possible, pre-construction checks will be undertaken by an

	to be present. The timing of the works should also minimise the risk of disturbance to protected and other species.	appropriately licensed ecologist. An ecologist or Ecological Clerk of Works will be present to monitor potential impacts and advise on amendment of activity as necessary. This is outlined in the protected species method statements in the appendices of the LEMS [REP1-016] and CEMP [APP-036] (Section 2.1).
11.55	Finally, no comprehensive survey of the sites' green infrastructure provision has been provided. Whilst the scheme involves an ecological mitigation area in the southern part of the site, this is focussed on mitigating for impacts on ecology and biodiversity and gives little consideration of other ecosystem services such as those relating to air quality, landscape, noise abatement amongst others. In addition, it is not considered that the measures proposed would result in an overall enhancement in biodiversity and appropriate management measures need to be agreed. In order to be effective, management measures should be in place prior to the commencement of development.	<p>The Applicant refers to its response to the Examining Authority's First Written Question 1.0.13, submitted at Deadline 1.</p> <p>In addition, although CCS have stated that the mitigation provided "gives little consideration of other ecosystem services such as those relating to air quality, landscape, noise abatement amongst others", the Applicant notes that the topic specific sections for air quality, landscape and noise within the LIR fail to raise concerns about the assessment and mitigation provided and instead confirm that the proposals are compliant with the existing UDP and the emerging LDP policies.</p>
11.57, 11.58	<p>CCS considers that further information is required in order to adequately assess the mitigation measures and have requested additional information in an updated LEMS, which includes both mitigation measures and biodiversity enhancement measures.</p> <p>Detail is lacking regarding the Ecological Mitigation Area in terms of how exactly it will be enhanced to mitigate for the loss of a variety of habitats. Apart from ponds and embedded landscape planting, it is unclear what other newly created habitats will be provided in mitigation.</p>	<p>See APL's comments above in response to CCS LIR paragraph 11.48 in response to additional information to be included within the finalised LEMS.</p> <p>The proposed Project landscaping and ecological mitigation will provide new links which will provide commuting and colonisation routes for a number of species to cross the Project Site such as birds, bats, [REDACTED], reptiles and amphibians. Assessment of habitat linkages was made in species accounts throughout the ES [APP-042] Chapter 8: Ecology and taken into account at the species level. Management measures will be included in the finalised LEMS which will be agreed in consultation with CCS as per Requirement 9.</p>

Geology, Ground Conditions and Hydrogeology		
13.23	<p>However, whilst Requirement 15 seeks to consider the impact on Minerals that could be taken into account in the decommissioning strategy, no assessment has been undertaken to consider compliance with policies R2 and R4 of the UDP. The proposals are therefore contrary to the extant development plan in this regard.</p>	<p>The Applicant refers to its response to the Examining Authority's First Written Question 1.13.1, submitted at Deadline 1.</p>
Traffic, Transport and Access		
15.30	<p>CCS highlight to the applicant that planning applications for strategic sites have been submitted already (prior to the submission of the DCO) and the application at Felindre was anticipated at/ around the same time as the DCO application. The applicants claim that there was insufficient information available is inaccurate.</p> <p>CCS also highlight that the consultants working on this scheme have themselves been preparing the application for a strategic site in advance of the LDP for similar sized development (850 dwellings and a 2.5 form entry school) that is currently out to Pre-Application Consultation and will be submitted prior to the adoption of the LDP.</p>	<p>The Applicant has a Statement of Common Ground (SOCG) with CCS, which agrees that the ES [APP-042] does consider the Felindre application as a cumulative scheme. The assessment within the ES is relative to the information available at the time of writing.</p>
15.34	<p>It is noted that there would be a significant adverse impact on the PROWs in the short term but this is proposed to be mitigated in part through Requirement 21 and with the</p>	<p>The Applicant has updated the draft DCO submitted at Deadline 2 to include reference to PROWs in Requirement 21 (i).</p>

	provision of a financial contribution to temporarily divert/ improve the surrounding footpath network. Whilst the final sum is still being negotiated, with these provisions secured, the proposal is considered to comply with Policy AS3 of the UDP and emerging policy T7.	
Historic Environment		
16.28	GGAT envisage that this programme of work would be an archaeological watching brief during any ground disturbing work, identifying contingency arrangements as detailed in the ES Chapter 13. The written scheme will ensure that a targeted programme of work can be facilitated, with detailed contingency arrangements including the provision of sufficient time and resources to ensure that all archaeological features that are identified are properly excavated, recorded and analysed. It should include provision for any sampling that may prove necessary, post-excavation recording and analysis, and reporting including possible publication of the results. Whilst GGAT have recommended that the Requirement is worded as pre the model condition in Circular 016/2014, this condition is considered to be flawed and revised wording to Requirement 13 is suggested in the Draft DCO section below. This Requirement seeks to cover the further archaeological work.	The Applicant considers that the wording of Requirement 13 is appropriate and meets the guidance for the drafting of requirements. An amendment has been made in response to the request from CCS and GGAT to specify the qualifications that the archaeologist undertaking the necessary works must hold. Please see the amended Requirement 13 in the draft DCO submitted by the Applicant at Deadline 2.
Socio-Economics		
Socio-economics – 17.1 – 17.14	CCS accept the conclusions of the socio-economic impact assessment provided in	With the exception of the assessment of effects on tourism, the scope and adequacy of the socio-economic impact assessment provided in Chapter 14 of the Abergelli Power

	<p>Chapter 14 of the Abergelli Power ES. However, CCS raise concerns regarding the scope of the assessment of likely tourism effects and the parameters of an associated tourism business survey. In particular, CCS consider that:</p> <ul style="list-style-type: none"> • The Tourism Study Area study area should have come further south and beyond the M4 boundary; • The scope of the tourism business survey is “very limited” and should have considered businesses close to the site in Felindre; • The timing and sectoral breakdown of the survey is questioned, whilst the relatively low number of responses is noted. 	<p>ES is agreed between CCS and APL. This followed the submission of a Socioeconomic Chapter Clarificatory Note, included as Annex B of the Statement of Common Ground (Friday 9 November 2018, Examination Deadline 1). The outcome of the socio-economic impact assessment, in terms of the identification of any likely significant effects, is agreed between APL and CCS.</p> <p>Whilst it is noted that CCS consider the scope and parameters of the assessment of tourism effects was too restrictive, the Socioeconomic Chapter Clarificatory Note (Annex B of the Statement of Common Ground) explains the rationale adopted in determining this. In particular:</p> <ul style="list-style-type: none"> • The tourism business survey was completed using parameters agreed in the Abergelli Power DCO EIA Scoping Report and EIA Scoping Opinion. All relevant feedback received from consultees in respect of the Socio-economic Assessment Consultation Method Statement (CMS) and the Abergelli Power PEIR was taken into account in undertaking the tourism business survey; • 58 businesses were contacted in undertaking the tourism business survey. The sectoral breakdown (detailed in the Socioeconomic Chapter Clarificatory Note) is considered to represent a reasonable cross-section of businesses within the 10km Tourism Study Area; this included businesses in Felindre including Shepherds Country Inn; • Whilst the tourism business survey provided local knowledge and context to inform the assessment, the survey results do not themselves present an assessment of likely significant impacts upon any individual receptors. Therefore, it would not have been possible to attach weighting to individual business survey responses and re-doing the survey using an expanded survey area would not alter the impact assessment conclusions presented within Chapter 14 of the ES; • The accommodation capacity assessment included in Chapter 14 of the ES was carried out separately to and not reliant upon the tourism business survey. This assessment considered known visitor accommodation provision, as identified from publicly available data and websites, within a 10km Study Area. The assessment therefore took account of accommodation within locations including Central Swansea; and, • As detailed within section 14.7 of the ES, three tourism and recreational receptors were carried forward to the impact assessment: Cwm Clydach Nature
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		<p>Reserve, National Cycle Route 43 and the Celtic Trail, and Teamforce Paintball and Laser Tag Activity Centre (Llangyfelach). Other potential receptors were identified in the socio-economic baseline but subsequently excluded from the assessment on the grounds of not being likely to experience significant socio-economic effects from the Project. The decision to limit the Tourism Study Area to land north of the M4 and to exclude some potential receptors (including Leisure Centre Swansea and the National Waterfront Museum) from further assessment was made based on evidence including theoretical visibility and taking account of receptor characteristics (e.g. the indoor nature of some visitor attractions).</p> <p>The assessment of tourism effects and findings from the supporting tourism business survey detailed within Chapter 14 of the ES are considered to be adequate for the purposes of assessing likely significant effects from the Project. It should be noted that CCS were consulted on the proposed assessment methodology in Autumn 2014 (in addition to prior EIA Scoping consultations) and provided a response before the tourism business survey took place, however this did not comment on the proposed survey or raise any concerns.</p>
<p>Development Consent Order, Obligations and Requirements</p>		
<p>20.2 – 20.7 Definition of maintain</p>	<p>The Local Planning Authority has significant concerns with regards to the extent of the current definition of maintain as was pointed out to the Examining Authority at the first Issue Specific Hearing session. Firstly, the definition includes the terms “remove”, “reconstruct” and “replace and improve”, which when read together with the whole of the definition, and the DCO, causes some concern. The definition goes on to state that any this includes any part of, but not the whole of the authorised development...</p> <p>The authorised development is fully laid out in Schedule 1 and comprises all of the works</p>	<p>The Applicant refers to its response already provided at Deadline 1. Please see reference 1 of agenda item 4 of the Written Summary of Oral Submissions for Issue Specific Hearing 1 (submitted by the Applicant at Deadline 1).</p> <p>The DCO at Deadline 1 was amended to include additional wording in Requirement 27 to ensure that the decommissioning strategy requirement was triggered by the substantial removal of the generating station.</p> <p>The Applicant considers that deletion of the words "remove" and "reconstruct" would prevent legitimate maintenance work being undertaken which does require the removal of components for maintenance work, and their reinstatement. The Applicant has amended the draft DCO to clarify that the undertaker may not remove or reconstruct the whole of work no. 1. No further amendments to the draft DCO are proposed by the Applicant at Deadline 2 in relation to the definition of maintain.</p>

	<p>required, listed into separate work Nos. The current definition allows for a whole range of works providing that <i>the whole of the authorised development</i> [my emphasis] isn't removed, reconstructed, replaced etc. The current wording suggests that they could reconstruct the whole of the generating equipment site like for like providing that they don't change the access as an example (Work No. 2). Alternately, they could replace and improve individual elements within the definition and have the same effect.</p> <p>As the Authority has indicated in the Relevant Representation, a decommissioning strategy will be required in order to consider the safe removal of the generating equipment and apparatus at a later date. As the current definition also includes the word "remove", the developer could remove items as part of this definition provided it is not the 'whole' rendering the decommissioning strategy somewhat superfluous if they removed all of the generating equipment under the definition of maintenance for example. There would be no controls over this as required in Requirement 27 of the Order, provided the whole of the project is not removed. Buildings could therefore be removed without the requisite surveys and the effects/ mitigation assessed in the Environmental Statement could be bypassed.</p> <p>In addition, allowing various parts to be reconstructed at various points (providing it is not the whole) would enable the plant to</p>	
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	<p>operate indefinitely providing it doesn't give rise to any materially new or different environmental effects from those assessed in the environmental statement.</p> <p>During the Hearing, the applicant suggested that it was a fundamental principle of planning permission that planning permission could only be implemented once. Similarly, the maintenance elements were suitably covered in the ES and the definition states that the proposals would have to be in accordance with this. However, whilst the Authority would agree that an individual "planning permission" can only be implemented once, the current proposal is inherently different. Firstly, this is not a normal planning permission, but a Development Consent Order. As such, it is a new piece of legislation that would (on current drafting) contain within it a wide-ranging definition of maintain that potentially causes the problems identified above (which a normal planning permission would not). It would also be difficult to argue that the replacement of the whole stack, for example, is likely to give rise to any materially new effects from those assessed in the ES and there is little in the ES that specifically refers to the maintenance intended. It is not considered that the end of this definition provides any certainty in terms of reconstruction.</p> <p>Whilst this wording may have been used elsewhere in a substantially similar manner, it does not mean that they have conferred significantly greater scope / power than was</p>	
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	<p>intended. It should be clarified that the Council has no objections to routine repair/maintenance as would normally be allowed / permitted but has concerns over the current terminology used and consider that the definition should be tightened further with the omission of the terms “remove” and “reconstruct”. The remaining terminology would appear to be sufficient to enable the apparatus to be suitably maintained as intended in the Council's opinion.</p>	
<p>20.8-20.9 Commencement</p>	<p>In general, the Council has no comments to make with regards to the terminology used, however, would wish to point out that the definition provides for the erection of temporary means of enclosure as outside of the scope of the commencement of development which is at odds with Requirement 5 which requires permanent and temporary fencing to be agreed prior to the commencement of each work No. If they are expressly included from the definition of the commencement of development, the applicant could install temporary fencing rendering Requirement 5, in so far as temporary fencing is concerned, as somewhat superfluous.</p> <p>It is suggested that this is removed from the definition of commencement of development.</p>	<p>The Applicant does not agree with this comment. Requirement 5 obliges the Applicant to seek approval for temporary fencing erected in connection with the authorised development.</p> <p>The exclusion of temporary fencing from the definition is to ensure that whilst the survey works required to be conducted prior to commencement of development (and which are excluded from the definition of commencement) are ongoing, appropriate safety fencing/barriers can be erected. APL would be left in breach of the DCO if the temporary fencing required during intrusive ground survey or during invasive species remediation could not be erected without triggering commencement of the DCO.</p> <p>The Applicant has not therefore amended the definition.</p>
<p>20.10</p>	<p>Article 2(3) states that all distances used in the order are approximate but this is inconsistent with the parameters used in Requirement 2 Table 2 as these have been assessed in the Environmental Statement. It</p>	<p>The Applicant has amended Article 2(3) as requested. Please see the updated draft DCO submitted at Deadline 2.</p>

<p>Article 2(3) - approximate distances</p>	<p>would be useful to clarify that this Article does not include the parameters identified in this table</p>	
<p>20.11 Article 7 – consent to transfer benefit of the Order</p>	<p>The Council would also wish Article 7 amended to ensure it its notified of any change in development and operator, given the responsibilities of the Authority included within the DCO.</p>	<p>The Applicant has amended Article 7 to require the undertaker to send a copy of any notice sent to the Secretary of State to the relevant local planning authority. Please see new insertion of sub-paragraph 9 in the updated draft DCO submitted at Deadline 2.</p>
<p>20.12 Article 8 – power to alter layout etc. of streets</p>	<p>Article 8(2)(a) would allow the undertaker to alter the level or increase the width of any kerb, footway, cycle track or verge... The Council considers that this would provide significant scope to change levels etc that could have resultant impacts on drainage, ecology etc which haven't been considered as part of the proposals to date. Whilst consent of the Street Authority would be required, it wouldn't necessarily mean that these issues were considered as part of the consent process as the street authority is not likely to concern themselves with these issues.</p>	<p>The drafting of this article is based upon the model provision and has been widely used and considered appropriate within DCOs. The Applicant considers it to be appropriate and necessary to ensure that any minor alterations to streets can be made to facilitate the project. These powers mirror the powers available to statutory undertakers under other enactments, including New Roads and Street Works Act 1991.</p>
<p>20.13 Article 8 – power to alter layout etc. of streets</p>	<p>In addition, Article 8(3) should be amended to delete the word "reasonable". Any works should be to the absolute satisfaction of the Street Authority.</p>	<p>The Applicant does not agree with the proposal to delete the word "reasonable". This word forms part of the model provision and many DCOs granted to date, and any requirements of the Street Authority must be reasonable. No amendments to this article are therefore proposed by the Applicant in response to this comment.</p>
<p>20.14 Article 9 – street works</p>	<p>Article 9 (street works) should include a requirement to reinstate/make good any work undertaken.</p>	<p>Article 9(3) imports the provisions of sections 54 to 106 of the New Roads and Street Works Act 1991. Sections 70-73 of the New Roads and Street Works Act deal with reinstatement. The drafting therefore already makes provision for reinstatement of works where necessary.</p>

<p>20.16</p> <p>Article 42 – Procedure in relation to certain approvals</p>	<p>However, concerns are raised that Article 42(4) provides for a deemed approval after an 8 week period if the authority has not notified the undertaker of its disapproval and the grounds of disapproval. It is not considered that a default approval should be granted in this instance. There are a complete array of circumstances that may result in this deadline not being achieved and a more considered and transparent approach would be to provide for an appeal procedure if the application has not been determined after 8 weeks (similar to a planning appeal). This would provide the applicant with appropriate recourse in the event of not getting approval within the time limit but they may wish to wait until a determination rather than have an application refused and then have to resubmit again.</p>	<p>The Applicant refers to its submissions for Deadline 1, and in particular reference 10 of agenda item 4 of the Written Summary of Oral Submissions for Issue Specific Hearing 1.</p>
<p>20.17</p> <p>Article 42 – Procedure in relation to certain approvals</p>	<p>In any event, Article 42(6) should be amended to include a requirement to clarify precisely what provision/ article that consent is being sought under (to ensure that the request is forwarded on and considered by the relevant person), and provision should also be included for an email address of the contact to be advised of any decision given the current default position of approval if no-one is notified. It should also be clarified that the person submitting the request is also the person who shall be notified of the decision for the avoidance of any doubt.</p>	<p>The Applicant has amended the draft DCO at Deadline 1 to specify that when a request is made, it must state which provision the request is made under (please see Article 42(6)).</p> <p>Article 41 makes provision for how notices and decisions are to be communicated. This applies to decisions to be notified under Article 42, and makes provision for electronic communication by agreement with the recipient.</p> <p>Article 41 allows the approving body certainty that if addressed in accordance with the article, their decision will be validly served.</p>

<p>20.18 Schedule 1</p>	<p>At the current time, the Council has not been provided with any details of either the temporary Bailey's bridge or the permanent bridge that is required over the utility apparatus between the generating site and the electrical substation. It is not to say that this causes any concern in terms of its impact visually or otherwise, but details have not been submitted so have not been considered to date. It is suggested that either details or the parameters of the bridge be included in any subsequent DCO revision.</p>	<p>This is a matter of detailed design which has not yet been determined and there may be no need for the bailey bridge at all, or it may be needed for a shorter period than assessed in the Environmental Statement.</p> <p>The Applicant does not currently have the parameters for the permanent bridge to insert into the subsequent DCO revision. Technical discussions are ongoing with Welsh Water. The Applicant will update the Examining Authority once it is in a position to do so.</p> <p>The ES does explain the parameters used to assess the temporary bridges over the water main at paragraph 3.7.41:</p> <p>"As described in Section 3.6, the Electrical Connection will require temporary bridges (for example temporary bailey bridge) over the Water Main and Oil Pipeline during the construction phase to enable access from the new section of Access Road and Laydown Area. The temporary bailey bridge will be approximately 5m in height from the anchor points on the existing ground level."</p>
<p>20.19 Requirement 3 – provision and maintenance of landscaping</p>	<p>CCS are concerned that this Requirement does not include Work No. 4 which is a significant part of the Landscaping and Ecological Mitigation. There is therefore no ongoing provision for the management, monitoring and maintenance of this landscape area.</p>	<p>The Applicant has amended Requirement 3 to include reference to Work No. 4. Please see the updated draft DCO submitted by the Applicant at Deadline 2.</p>
<p>20.20 Requirement 3 – provision and maintenance of landscaping</p>	<p>In addition, there is currently no provision to secure the ongoing management, monitoring and maintenance of the landscaping. Ongoing monitoring should be undertaken every 5 years for the lifetime of the development and this should be built into the Requirement itself. It is understood that the applicant proposes to do this which is welcomed. However, a review mechanism to ensure that the management can be amended if it is not having the desired results should also be built into this review.</p>	<p>The Applicant amended the draft DCO at Deadline 1 to include a requirement for the landscaping plan to be reviewed by the Applicant every 5 years for the operational life of the development, and for the reviewed plan to be submitted to the relevant local planning authority for approval. The objective of the review is clearly stated to be to ensure that the management and maintenance objectives set out in the outline landscape and ecological mitigation strategy are being met.</p>

<p>20.22</p> <p>Requirement 6 – surface and foul water drainage</p>	<p>Requirement 6 provides for the SW and foul drainage arrangements to be in place for work Nos. 1, 2 and 3 prior to the commencement of these elements. Comments on the drainage strategy itself have been provided above but this requirement makes no on-going provision for the future management and maintenance of these systems and there is no provision built in for this. The Council would suggest that this is amended to include provision for ongoing maintenance and a maintenance plan is submitted as well as part of this requirement.</p>	<p>The Applicant has amended the draft DCO to include specific reference to management and maintenance proposals being required as part of the surface and foul water drainage plan. Please see the revised draft DCO submitted by the Applicant at Deadline 2.</p>
<p>20.23</p> <p>Requirement 6 – surface and foul water drainage</p>	<p>It was originally queried whether Work No. 5 should also be included but the applicant has advised that this is covered in the SW Management Plan required by Requirement 7. What is clear in this document is that this refers solely to SW management during construction and no account has been taken for ongoing management of the systems during operation.</p>	<p>The Applicant amended the draft DCO to include work No. 5 in Requirement 6 at Deadline1.</p>
<p>20.24 and 20.25</p> <p>Requirement 8 - pre-construction ecological constraints survey</p>	<p>As currently drafted, the Council considers that there is no effective mechanism in this requirement (when read in isolation) to ensure that the work Nos. progress in a timely manner following the survey. It is widely accepted that ecological surveys are considered fit for purpose for a 2 year period and there is no implementation timetable to ensure that works progress within sufficient timescale after the surveys have been submitted to ensure that the works are undertaken in a timely manner. The applicant has advised that Requirement 9 provides for</p>	<p>The Applicant has amended the draft DCO at Deadline 1 to require that pre-construction surveys are repeated where construction of the relevant work has not started within 2 years of the date of the survey. The Applicant considers that this provides sufficient certainty and robustness to address the concerns raised by CCS.</p>

	<p>the relevant timeframes but it would be more straightforward to amend this requirement to provide for an implementation timetable.</p> <p>The Council acknowledge that whilst not explicitly stated in Schedule 12 in the Draft DCO, it is acknowledged in the wording of the appeal scenario that the Council could issue any consent subject to conditions which could provide a timeframe but it is considered more appropriate to enable the applicant to suggest the timescales for implementation to be considered in conjunction with NRW and CCS.</p>	
<p>20.26 and 20.27 Requirement 8 - pre-construction ecological constraints survey</p>	<p>Finally, it is queried whether this requirement needs to relate to all work numbers or just work numbers 3, 4 and 5. Work No. 5 refers to the ground works associated with work numbers 1 and 2. Therefore it is likely that once these areas have been surveyed and mitigated for (if required), it is unlikely that they would need to be surveyed following the ground works and prior to the construction of the various work numbers outlined in Works 1A-F and 2.</p> <p>The Council has suggested this to the applicant as reducing the amount of requirements to discharge is in everyone's interest providing that the relevant requirements still cover what they are intended to. If this isn't amended, the applicant would still have the opportunity to cover Work Nos. 1, 2 and 5 in one submission to discharge the requirement but if they are</p>	<p>The Applicant has amended Requirement 8 at Deadline 1 to only relate to numbered works 3, 4 and 5.</p>

	not needed, they should be removed for clarity.	
20.28 Requirement 9 – ecological management plan	There is currently no provision to secure the ongoing management, monitoring and maintenance of the ecological management plan. On-going monitoring should be undertaken every 5 years for the lifetime of the development and this should be built into the Requirement itself. However, a review mechanism to ensure that the management can be amended if it is not having the desired results should also be built into this review.	Please see the Applicant’s comments on paragraphs 11.38 and 11.39 above under section 11 (ecology) for the Applicant’s response to this issue. For the reasons explained above, the Applicant does not consider that any amendments are required to the requirement.
20.29 Requirement 10 – invasive species survey and remediation	The Council has no comments with regards to this requirement, save to query whether the requirement could be amended to cover work Nos. 3, 4 and 5. Again, assuming Work no. 5 covers all areas included within Work Nos. 1 and 2, there should be no requirement for further invasive species survey and remediation once it has been achieved for the development platform contained within Work No. 5.	Requirement 10 has been amended at Deadline 1 to only relate to numbered works 3, 4 and 5.
20.30 Requirement 11 – bat method statement	As noted above for Requirement 8, there is no specific implementation timetable referenced either in the requirement itself or in Appendix C of the Outline Landscape and Ecological Mitigation Plan. This should be clearly specified to ensure that everyone is clear that surveys should be undertaken with a prescribed period from works to areas surveyed.	The Applicant has amended the draft DCO at Deadline 1 to require that pre-construction checks are repeated where construction of the relevant work has not started within 2 years from the date of completion of the pre-construction checks.
20.31	Once again, it is queried whether this Requirement just needs to refer to Work Nos.	The Applicant has amended Requirement 11 of the draft DCO at Deadline 1 to only relate to numbered works 3, 4 and 5.

Requirement 11 – bat method statement	3, 4 and 5 for similar reasons as referenced above.	
20.32 Requirement 13 – archaeology	It is queried whether this Requirement just needs to refer to Work Nos. 3 and 5 for similar reasons as referenced above.	The Applicant has amended Requirement 13 of the draft DCO at Deadline 1 to only relate to numbered works 3 and 5.
20.33 Requirement 13 – archaeology	In terms of the wording itself, Requirement 13(3) is considered imprecise as it is not overly clear who would be classed as a suitably qualified person or body. It is recommended that 13(1) is amended to include details of who will be undertaking/ supervising the works. GGAT have advised the qualification of the person that they consider would be acceptable and it may be in interest of the applicant to include within the Requirement for clarity. A suitably qualified person or body is considered to be an RO or MCIfA accredited within the Chartered Institute for Archaeologists.	The Applicant considers that the wording of Requirement 13 is appropriate and meets the guidance for the drafting of requirements. An amendment has been made in response to the request from CCS and GGAT to specify the qualifications that the archaeologist undertaking the necessary works must hold. Please see the amended Requirement 13 in the draft DCO submitted by the Applicant at Deadline 2.
20.34 Requirement 13 – archaeology	Requirement 13(5) requires re-drafting in the Council’s opinion in the event that archaeological assets are discovered as there are no timescales included within this section to indicate when the interpretive report must be agreed (and in what form) with the Local Authority or when the subsequent report shall be submitted. Provision for this could be included within the written scheme (13(1)) along with a timeframe in the event that these are found.	The Applicant considers that the requirement as drafted contains an appropriate mechanism for the timetable for production of an interpretative report. The Applicant has not mandated a particular number of days or weeks in the draft requirement, as the level of complexity in an interpretative report will depend upon what is found and being reported upon. As such, the Applicant considers that it is proportionate and appropriate for the requirement to provide for the undertaker to propose a programme for the preparation of the report (once its scope is known). The relevant planning authority is to approve the programme under the requirement, and the undertaker must then prepare the report in accordance with the approved timetable.

<p>20.35 Requirement 14 – site investigation</p>	<p>It is queried whether this Requirement just needs to refer to Work No. 5 for similar reasons as referenced above.</p>	<p>The Applicant has amended Requirement 14 in the draft DCO submitted at Deadline 1 to only relate to numbered works 3 and 5.</p>
<p>20.36 Requirement 15 – mineral resources survey</p>	<p>It is queried whether this Requirement just needs to refer to Work No. 5 for similar reasons as referenced above. In any event, the submission of a survey after Consent has been granted may help inform a decommissioning strategy, but as CCS has stated, it is not known when this will happen and the surrounding landscape may have changed significantly so the need for this requirement is of limited value.</p>	<p>The Applicant has amended Requirement 15 in the draft DCO submitted at Deadline 1 to only relate to numbered works 3 and 5. The Applicant has further amended the requirement to refer only to numbered work 5 in the revised draft DCO submitted at Deadline 2.</p> <p>The Applicant also refers to its response to the Examining Authority's First Written Question 1.13.1, submitted at Deadline 1.</p>
<p>20.37 Requirement 16 – peat management plan</p>	<p>It is queried whether this Requirement just needs to refer to Work No. 5 for similar reasons as referenced above.</p>	<p>The Applicant has amended Requirement 16 in the draft DCO submitted at Deadline 1 to only relate to numbered work 5.</p>
<p>20.38 and 20.39 Requirement 17 – construction environment management plan</p>	<p>CCS would suggest that the scope of the CEMP is expanded to include 'biodiversity management measures' in the Requirement, listed in 17(1).</p> <p>In addition to the above amendment, it is suggested that the Outline CEMP is amended to include the following:</p> <ul style="list-style-type: none"> a) Risk assessment of potentially damaging construction activities. b) Identification of biodiversity protection zones. c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction 	<p>Please see the Applicant's comments on paragraph 11.15 and 11.22 above under section 11 (ecology) for the Applicant's response to this issue. For the reasons explained above, the Applicant does not consider that any amendments are required to the requirement securing the CEMP.</p>

	<p>(may be provided as a set of method statements).</p> <p>d) The location and timing of sensitive works to avoid harm to biodiversity features.</p> <p>e) The times during construction when specialist ecologists need to be present on the site to oversee works.</p> <p>f) Responsible lines of communication.</p> <p>g) The role and responsibilities on site of an ecological clerk of works.</p> <p>h) Use of protective fences, exclusion barriers and warning signs.</p>	
<p>20.40</p> <p>Requirement 17 – construction environment management plan</p>	<p>The Outline CEMP should also cross-reference Requirement 10 in terms of the protocols to be agreed so these are understood by all site contractors.</p>	<p>The Applicant has amended Requirement 17 in the draft DCO to include a cross reference to any protocols for dealing with invasive non-native species. Please see Requirement 17(i) in the draft DCO submitted at Deadline 2.</p>
<p>20.41</p> <p>Requirement 17 – construction environment management plan</p>	<p>The Council note that out of hours working is proposed in the ES and in Requirement 23(2). Whilst on a scheme of this nature, it is expected that there may be occasions when this is required, it is considered important to include full details of out of hours working procedures within the CEMP so that the procedures for notifying neighbours and the timescales for doing this are agreed prior to the commencement of development.</p>	<p>The Applicant considers that it is not necessary for this to be included in the CEMP explicitly. Out of hours working is already controlled by Requirement 23, and cannot be undertaken without the prior written consent of the relevant planning authority (which may be issued subject to conditions). It is more appropriate in the Applicant's view to have regard to the particular works proposed to be undertaken out of hours in order to determine which notifications and procedures are appropriate.</p>
<p>20.42</p> <p>Requirement 17 – construction environment management plan</p>	<p>It is understood that the applicant proposes to amend this requirement to take out Work No. 5. This is considered further below.</p>	<p>The Applicant has amended Requirement 17 in the draft DCO at Deadline 1 to remove reference to Work No.5.</p>

<p>20.43 – 20.45 Requirements 18, 19 and 20 – dust management plan, pollution prevention management plan and waste and material management plan</p>	<p>The Council previously queried whether these Requirements were strictly necessary given that they appear to be included within Requirement 18 and raised concerns about duplication of work inconsistencies between what may be agreed in the CEMP and what may be agreed within the plans required for these Requirements. Which would take precedence for example if issues arose.</p> <p>It was explained at the hearing by the applicant that there are drafting errors in these Requirements as they are only intended to relate to Work No. 5 (not the whole of the development). It was explained that from experience, that Requirement 17 is onerous for the earthworks and is an attempt to split up this requirement.</p> <p>The Council does not have any significant concerns with regards to this approach but would suggest that a complaints procedure is incorporated to ensure that any issues arising are dealt with consistently and promptly to rectify issues.</p>	<p>The Applicant amended requirements 18, 19 and 20 at Deadline 1 to only relate to numbered work 5.</p> <p>The Applicant has also included an obligation to provide details of a complaints procedure, as requested by CCS. Please see the draft DCO submitted at Deadline 2.</p>
<p>20.46 Requirement 21 – construction traffic management plan</p>	<p>CCS can see no real provision within this Management Plan/ Requirement for the management of PROWs during the construction of the development. Reference is given within the Outline CTMP to discussions with CCS on PROW but there is no specific mechanism for this aspect to be agreed with the Authority. This Requirement should be amended to include this explicitly.</p>	<p>The Applicant has amended the draft DCO to include in Requirement 21 an obligation to set out the management proposals for affected PROWs during the construction of the authorised development. Please see Requirement 21(1)(i) in the draft DCO submitted by the Applicant at Deadline 2.</p>

<p>20.47 Requirement 23 – construction hours</p>	<p>CCS do not agree with the rating levels set out in Column A of Table 3 in Requirement 25 for both daytime and night time noise as these are above the levels assessed in the Environmental Statement. These should be reduced to those indicated in Table 7-21 of the Environmental Statement. The difference suggested could lead to significant disturbance for neighbouring properties.</p>	<p>The Applicant does not consider that any amendments to Requirement 23 are required. Please see the Applicant's comments above in response to CCS LIR paragraph 10.14 for the response to the matters raised in relation to how the levels set out in Column A of Table 3 have been determined.</p>
<p>20.48 Requirement 23 – construction hours</p>	<p>The Council considers that requirement 23(3) should be deleted as this extends the working day by an hour at time when noise and disturbance to nearby residential properties is considered unacceptable. The proposed operational hours of 8am to 6pm are considered to be of sufficient length and sufficiently reasonable for the operation. The Council has previous issues with start-up and shut down periods due to excessive noise on site.</p>	<p>The Applicant has, as indicated in the first Issue Specific Hearing, included a definition of "shut down period" and "start-up" period in Article 2 of the draft DCO submitted at Deadline 1. Please see the Applicant's commentary in reference 17 of agenda item 6 of the Written Summary of Oral Submissions for Issue Specific Hearing 1 (submitted by the Applicant at Deadline 1).</p>
<p>20.49 Requirement 23 – construction hours</p>	<p>Whilst the applicant has suggested a definition of these activities and has suggested what they would entail, it is still considered extremely generous in terms of people arriving on site to get ready at the start and end of the day in terms of putting personal protective equipment on. It is suggested that this sub-section is removed in its entirety, but failing that, is reduced to a 10 minute window either side of the working day. It should also be noted that machinery could be operated within the definition of the shut</p>	<p>The Applicant considers that the definitions included for start up and shut down periods are appropriate and that there is no evidenced basis to conclude that there would be any noise nuisance to residents.</p> <p>The definition of shut down period included in the DCO at Deadline 1 does not enable any plant or machinery to be operated, other than site maintenance machinery (such as generators, wheel washes and road sweepers). Generators may be required to run outside of construction hours, and wheel washes and road sweepers necessarily need to run until the last vehicle leaves the site to ensure that there is no transfer or deposition of mud on the road. These items of machinery will not result in a noise nuisance to residents.</p>

	down period which results in a noise nuisance to residents.	Start up and shut down periods have been accepted and included in a range of recent DCOs for projects of this type, including the Eggborough Gas Fired Generating Station Order 2018, the Wrexham Gas Fired Generating Station Order 2017, the Meaford Gas Fired Generating Station Order 2016 and the Progress Power (Gas Fired Power Station) Order 2015.
20.50 Requirement 27 – decommissioning strategy	The Council would suggest that the tailpiece (unless otherwise agreed in writing) is removed from this requirement as it has been found to be imprecise and The Use of Planning Conditions in Development Management Circular (016/2014) states in 3.37 that they should not be used. The Court of Appeal has objected to the use of such ‘tailpieces’ as “wholly uncertain” and unlawful. What planning permissions are intended to permit should be clear from what has been granted and what the conditions say and so the above term should not therefore be used.	The Applicant has deleted the wording "unless otherwise agreed in writing" from Requirement 27 in the draft DCO submitted at Deadline 2.
20.51 Requirement 27 – decommissioning strategy	Given what is stated in the Environmental Statement about the effects of decommissioning being similar to the effects of construction (which are mitigated with the embedded mitigation in the Outline CEMP), it is considered that the decommissioning strategy itself also needs to cover the same topics for the assessment in the Environmental Statement to be accepted and secured. These concerns have been relayed to the applicant who is considering revised terminology.	The Applicant amended the wording of Requirement 27 in the draft DCO submitted at Deadline 1 to include a similar list of topics which must be covered in the decommissioning strategy to those included in the CEMP. The Applicant considers this amendment addresses the point raised by CCS.

<p>20.52 Requirement 27 – decommissioning strategy</p>	<p>The current wording provides for a scheme to be submitted to and approved in writing by the Local Planning Authority within 24 months of the Order land ceasing to be used for the purposes of electricity generation. However, the applicant can't necessarily control this as the final stage is outside of their control. This should be revised to provide for a time scale for submission for the written approval and a second trigger point for implementation of the approved scheme following the written approval of the Local Planning Authority.</p>	<p>Requirement 27 has been amended at Deadline 2 to clarify that the decommissioning strategy must be submitted within 24 months. The timetable for approval of the strategy is as set out in Schedule 12 to the Order.</p> <p>Requirement 27(1) requires the submission by the Applicant to include a timetable and Requirement 27(3) requires implementation in accordance with the approved scheme (which includes the timetable), the Applicant therefore considers that the drafting as proposed at Deadline 1 already addresses these points.</p>
<p>20.53 Requirement 27 – decommissioning strategy</p>	<p>Requirement 27(2) states that the site shall be decommissioned subject to obtaining the necessary consents...which the Council has concerns about as there is no requirement for the applicant to seek to obtain said consents. If they don't seek to obtain these necessary consents, they wouldn't be in breach of the requirement. In this scenario, any enforcement sanctions would be redundant. In any event, it is not considered that the enforcement regime is sufficiently robust to ensure the demolition of this project given the current anticipated demolition cost of circa £2,000,000 (which is discussed further in the bond section below).</p>	<p>Please see the Applicant's response to this point in reference 18 of agenda item 6 of the Written Summary of Oral Submissions for Issue Specific Hearing 1 (submitted by the Applicant at Deadline 1).</p>
<p>20.54 Requirement 27 – decommissioning strategy</p>	<p>The Council would suggest that an indicative schedule of what these necessary consents are if the building was to be decommissioned in the current climate should be provided to gain a better understanding of these and the likelihood of obtaining these within a</p>	<p>The Applicant has supplied at Deadline 1 a note explaining the consents currently considered to be required for decommissioning and demolition, including the requirement to surrender the Environmental Permit. This can be found in Appendix 6 of the Written Summary of Oral Submissions for Issue Specific Hearing 1 (submitted by the Applicant at Deadline 1).</p>

	<p>reasonable timeframe. It is understood from the Issue Specific Hearing that the Environmental Permit may have dual control over this aspect but this has not been fully clarified to date or what the suspension of the permit would mean in terms of decommissioning. Finally, it is also unclear what would happen in the event of the company entering liquidation which is why the Council have suggested a bond is introduced to ensure the Project is decommissioned.</p>	
<p>20.55 Schedule 6 – temporary prohibition or restriction of the use of streets (Article 11)</p>	<p>The Council would query whether this section is intended to be updated to reflect the inclusion of Work No. 5 as some of the streets are proposed to be closed for the construction of Work Nos. 1, 2 and 3 (such as the Gallops, Public Footpath LC117, the private access road from the B4489 to the compressor station and Public Footpath LC34). It is considered likely that these would be required to be stopped up for Work No. 5 as well.</p>	<p>The Applicant has amended Schedule 6 to include reference at the relevant locations to Work No. 5. Please see the updated draft DCO submitted at Deadline 2.</p>

<p>20.56 to 20.63</p> <p>Schedule 12 – procedure for discharge of requirements (Article 42)</p>	<p>The Council are firmly of the belief that as stated above, under Article 42(4), the default position should be a right of appeal against non-determination after 8 weeks if no decision has been provided by that stage, not a default approval as stated in Article 1(2) of Schedule 12. The Council would stress that this requirement is more important in this context given the large amount of detail that is still outstanding and needs to be considered to discharge the various Requirements.</p> <p>The current wording provides that if the Council don't agree to a request for consent, agreement or approval, it is automatically conferred after 8 weeks unless it is refused or an extension is agreed.</p> <p>The Council would maintain that it is imperative that a right of appeal against non-determination is conferred if agreement has not been reached within 8 weeks which the applicant could utilise otherwise it may lead to refusals late on and unnecessary appeals if extensions can't be agreed in writing within the relevant timeframe. The applicant would have the right of appeal if a decision has not been given after this time but may wish to wait until a determination rather than have an application refused and then have to resubmit again. The Council would also be open to a mechanism to enable dual jurisdiction following the 8 week period whereby the applicant can appeal a decision and the Council have 4 weeks to determine or the application would have been deemed refused.</p> <p>As noted above, there will be significant time pressures on the Council when looking to discharge the requirements even if a funding stream is guaranteed. The revised approach suggested by the Council would ensure that sufficient scrutiny is provided of a decision and there is transparency in the decision making process.</p> <p>The applicant has contended that they require a degree of certainty given the importance of the project, but it is also considered appropriate that there is scrutiny and transparency prior to a decision being made. The applicant maintains that if a requirement is refused, they can consider whether to appeal or resubmit. However, the proposed amendment would also allow the applicant to consider whether they wish to appeal the</p>	<p>The Applicant refers to its submissions for Deadline 1, and in particular reference 10 of agenda item 4 of the Written Summary of Oral Submissions for Issue Specific Hearing 1.</p> <p>In relation to the application of the EIA Regulations, the Applicant refers to its submissions for Deadline 1, and in particular reference 25 of agenda item 8 of the Written Summary of Oral Submissions for Issue Specific Hearing 1.</p>
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	<p>decision (as per their request) but would reduce the requirement for a further submission if agreement is reached at week 9 for example. This is an even simpler approach than resubmission and would reduce overall end-to-end times in the event that agreement was not reached within an 8 week timeframe. It would also avoid / reduce the need for appeals and associated costs for both parties.</p> <p>It is also considered that there could be issues with the relevant EIA Regulations and the submission of "Subsequent Applications" as the Environmental information will not have been considered if the default position is to approve the application (and may be contrary to Regulation 3 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009)) in any event. The applicant contended at the Issue Specific Hearing that there was provision for consideration of the Environmental Information in Article 1, however, if a decision is made by default (for whatever reason), then the environmental information would not have been considered in the decision making process.</p> <p>In these circumstances, it is considered more appropriate for a default position to be that the applicant has a right of appeal for non-determination if the Council has not determined the application within the required timeframes. It is considered that a degree of scrutiny would still be required should an application/ applications go beyond the prescribed limit without agreeing an extension of time. Third parties could be unfairly impacted upon as a result of this and the relevant decision maker would also ensure the environmental information was considered in accordance with the relevant EIA Regs. This approach is further endorsed by the fact that the appointed appeal body themselves would wish to review the environmental information (Screen the application) irrespective of the applicants or Council's view in an appeal situation highlighting the importance of this analysis.</p> <p>This approach would also ensure that the Environmental information was considered as per the requirements of the EIA Regulations which a default approval would not. A default approval would be contrary to Regulation 3(3) of the Infrastructure Planning EIA Regs 2009. The</p>	
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	<p>Council consider the default approval approach could be unlawful in any event and open to legal challenge.</p>	
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<p>20.64 and 20.65</p> <p>Schedule 12 – procedure for discharge of requirements (Article 42)</p>	<p>In regard to Article 2(2), the Council considers that the 14 day period to request further information should be increased to 28. It is understood that the applicant is willing to amend this arrangement which is helpful.</p> <p>To set out the reasoning behind this, the Council are required to consult (and would in any event) with various parties in order to discharge various requirements. At the current time, it is not clear whether these would be discharged individually (and in part) or as a whole. It is clear from the various requirements that there could be a considerable amount of work that is required to discharge requirements from various bodies. If it is assumed that an application is received and checked (which takes a few days), consultees will be given 21 days to respond which requires additional time to request additional information. 28 days is considered an appropriate timescale to request further information.</p>	<p>The Applicant has amended the period in Schedule 12 Paragraph 2(2) to 28 days. Please see the draft DCO submitted by the Applicant at Deadline 1.</p>
<p>20.66</p> <p>Schedule 12 – procedure for discharge of requirements (Article 42)</p>	<p>Finally, whilst it is suggested implicitly that the Council can approve the discharge of Requirements subject to a condition, it would be useful to have this power stated directly and unequivocally as it is in Article 42(2) which precludes Requirements when read together with Article 42(1).</p>	<p>The Applicant has amended the drafting in Schedule 12 Paragraph 1(5) to clarify that a condition can be imposed on a consent, agreement or approval issued by the relevant planning authority pursuant to a requirement. Please see the draft DCO submitted by the Applicant at Deadline 2.</p>
<p>Issues the Council consider should be included with the DCO</p>		
<p>21.1</p> <p>Time Limit for the Duration of the Consent</p>	<p>The Project has a design life of 25 years and this is stated throughout the Environmental Statement and several management plans are written to last for the duration of the Project based on this design life. In addition, the project has been designed for this design life, for example in terms of the attenuation requirements for surface water discharge which may not be adequately sized to cope with longer durations if the power station is still in operation in 75 years time for example. The Council are therefore of the opinion that there should be a requirement limiting the lifetime of</p>	<p>It is not considered necessary to impose a time limit for the operation of the plant.</p> <p>The selection of the 25 years operational period is a sensible and realistic period included in the ES to provide a basis in which the assessment can be done. It is necessary to make assumptions to allow the assessments to be carried out.</p> <p>At Deadline 1, APL provided a sensitivity analysis to demonstrate, on a topic by topic basis, that in the event that the</p>

	<p>this Order for 25 years as has been assessed in the Environmental Statement.</p>	<p>operational life of the project were to exceed 25 years, the conclusions in the ES would still remain the same.</p> <p>This is further explained in reference 21 of agenda item 6.5 of the Applicant's Written Summary of Oral Submissions for Issue Specific Hearing 1 (submitted by the Applicant at Deadline 1).</p>
<p>21.2</p>	<p>NPS-EN1, Para 5.9.16 states that the IPC should consider whether any adverse impact is temporary (in regard to landscape impact but this is used as an example), such as during construction, and/or whether any adverse impact on the landscape will be capable of being reversed in a timescale that the IPC considers reasonable. The Environmental Statement has been set out on the basis that the alterations are reversible, but no time limit has been set for this despite an assertion that there would have a design life of 25 years. A degree of certainty should be provided within the Order itself.</p>	<p>The DCO provides for the decommissioning of the authorised development in Requirement 27 once the development is no longer being used for the generation of electricity. The Applicant considers that this provides the certainty required that the plant will be decommissioned at the end of its operational life.</p> <p>The EIA clearly sets out that the basis of the assessment contained in the Environmental Statement [APP-042] is a 25 year operational lifetime (section 4.7 Assumptions of Chapter 4 Approach to EIA), and that it assumes the removal of above ground structures at the end of its operational lifetime (section 3.10 of Chapter 3 Project and Site Description). Any below ground structures within the area of Work No. 1 (see Works Plans [APP-053]) such as piles will remain insitu, with the structures excavated to 1m below ground level and the ground reinstated. These below structures will remain in perpetuity, and this has been assessed with Chapter 10 Geology and Ground Conditions.</p> <p>For those above ground structures in Work Area 1, the assessment assumes permanent structures for the duration of the operational lifetime. It is recognised that due to the removal of these structures as part of the decommissioning of Project components in Works Areas 1, that any adverse effects occurring during operation will be reversed, such as those reported in Chapter 11 Landscape & Visual and Chapter 13 Historic Environment. However, the mitigation described in the LEMS that will be implemented to mitigate any adverse</p>

		operational effects will be maintained in perpetuity, such as the loss of habitat which is mitigated by the creation of the Ecological Mitigation Area (Works Area 4) and so by the time of decommissioning, will be long established and thus will have achieved its mitigative requirement.
21.3	<p>The Environmental Statement is misleading if no mechanism is put in place to limit the duration of the Project in that it refers throughout to the 25 year lifetime. If a limit is not included in the DCO, then it could still be operational permanently, even more likely given the current definition of the term “maintain” set out in Article 2 of the Order. The impacts have been assessed in the main as non-permanent and any reasonable reader would consider this to be the lifetime of the plant.</p> <p>Without this time limit, it is considered that the environmental considerations have been misrepresented and the assessment reached inaccurate.</p>	<p>The ES has assessed the operational effects of the project as permanent. Please see the explanation set out in respect of paragraph 21.2 above. This is explained in the methodology section of the ES and in the individual topic chapters. The Applicant therefore considers that the assessment in the ES is robust, complete and accurate.</p> <p>In some topic areas, the planned decommissioning of the power generation plant would result in a reduction in significant effects and this is explained in the decommissioning section of each chapter.</p>
21.4 and 21.5	<p>The Council also considers that provision should be made within the DCO itself for charging for the discharge or partial discharge of Requirements. Each request for partial or full discharge should be submitted along with a covering letter explaining exactly what is being sought at any time and a payment should be received for each partial/ full discharge of each Requirement. The applicant appears to be willing to accede to this request which is welcomed and will ensure that there is funding in place for this work.</p> <p>Some requirements may be discharged for individual phases whereas some may be partially discharged up to 5 times for each work No. and it will be for the applicant to consider how best they submit these requests. Obviously, each request will result in work for the Council which is why each should be funded individually. If the applicant wants to submit information for all work Nos. to save cost, that is at their discretion. As</p>	<p>The Applicant included in the draft DCO at Deadline 1 provisions for the relevant local planning authority to be paid a fee for discharge of requirements. Please see Schedule 12 Paragraph 3 in the draft DCO submitted at Deadline 1.</p>

	noted above, the Council has also suggested reducing the number of individual requirements for discharge there are in order to save time/ money for all parties.	
21.6 Provision of a Bond for Decommissioning	As noted above, the Council has concerns about the requirement to decommission the Project at the current time based on the wording used in Requirement 27. It is unclear what mechanisms are in place to ensure that the applicant applies for the relevant permissions and whether there is any reason why these are likely to be withheld. A separate concern is raised in terms of the applicant going into administration.	The Applicant has supplied at Deadline 1 a list of consents currently envisaged to be required to decommission the plant. This can be found in Appendix 6 of the Written Summary of Oral Submissions for Issue Specific Hearing 1 (submitted by the Applicant at Deadline 1).
21.7	The Council are firmly of the belief that a bond should be provided to cover the full cost of decommissioning, repayable upon completion of this element, to ensure that there is funding available to dismantle/ decommission the project in the future. There have been various instances (for example in mining) whereby restoration works have not been undertaken as a company has entered liquidation and the Council do not consider that the public purse should have to pick up the cost of any decommissioning works.	The Applicant has addressed the issue of a proposed decommissioning bond in its submission at Deadline 1. Please see reference 22 of agenda item 6.6 of the Written Summary of Oral Submissions for Issue Specific Hearing 1 (submitted by the Applicant at Deadline 1).
21.8	The full cost of restoration does not need to be put on deposit at the outset, but it should build up commensurate with the programme of activity.	As set out at Deadline 1, the Applicant does not consider a bond to be necessary.
21.11	Given that the new consent regime introduced under the 2008 Planning Act is relatively new, it is highly unlikely that any issues on other projects will have been faced to date. To be truly sustainable, it is imperative that the Project is decommissioned at the end of its lifespan to avoid blight on the landscape and ensure the land can be used again productively in the future (as well as reducing long term reliance on the use of fossil fuels). This matter is both important and relevant to the determination of this	As set out in its response at Deadline 1, the Applicant considers that Requirement 27 is adequate to secure the obligation to decommission and has had regard to how decommissioning has been addressed in other similar DCO projects in its response. The Applicant considers that its proposed approach accords with that taken by the Secretary of State in other OCGT

	Development Consent Order. The provision of a bond would meet the relevant tests of a condition or a Planning Obligation.	generating stations and no further measures are proposed by the Applicant.
21.12	APL have commented that there is no policy requirement to provide a bond and similarly, there are enforcement powers in place should the decommissioning requirement be breached. In terms of the policy element, it is clear that the proposals are intended to be a short-medium term solution to aid a move towards a low carbon future. APL themselves consider that a decommissioning strategy is required on this basis (notwithstanding comments on a time limit on the permission). Whilst APL consider that the decommissioning strategy itself is enforceable, as noted above, this is subject to them obtaining the relevant permissions (at the current time).	The Applicant reiterates that there is no policy basis for a decommissioning bond. CCS has not in its LIR identified any policy basis for a bond.
21.13	The inference being that if they can't obtain the relevant permission's, they won't be able to decommission the project. In this event, they wouldn't have even breached the Requirement given the current wording. The Council would like to clarify that the application for the Mynydd y Gwair Windfarm (referenced in the applicant's cumulative assessment – 16 wind turbines to a height of 127m Ref: 2012/1221) provides for a bond for decommissioning following similar concerns and the cost of decommissioning was considered to be significantly less than this scheme.	The Applicant's position is on the basis that it should not be criminally liable under the DCO for failure to decommission if in the intervening period between DCO grant and decommissioning, other consent requirements are imposed. There is no suggestion from the Applicant that it will not decommission at the relevant time, but that there is a need to recognise that if other permissions are required, the Applicant must be afforded the opportunity to obtain them.
21.14	In any event, APL refer to Section 161(1)(b) of the 2008 Planning Act which refers to enforcement of requirements. At the current time, the criminal sanction is only a fine, and the Council understands that this fine is currently limited at £50,000 (subject to the SoS's discretion). APL have previously indicated that the cost of the demolition would be circa £2,000,000 (this cost assumes that the pipeline is capped and left in situ, the cable left in situ, and the Generating Equipment Site taken back to	The Applicant refers to reference 22 of agenda item 6.6 of the Written Summary of Oral Submissions for Issue Specific Hearing 1 (submitted by the Applicant at Deadline 1).

	<p>ground level and land re-seeded) and on this basis, the financial penalties for enforcement are not considered satisfactory to require the Project to be decommissioned in a timely manner. APL have suggested previously that the materials that would be salvaged are thought to cover the cost of demolition, however this cannot be verified and with no timescale for demolition, it is not clear what condition the parts would be in, let alone their value at the time. Due to the actual costs of demolition indicated above, direct action would not be an option either as the Council would not recoup this money afterwards given the limited land value. The Council also has concerns about the situation if APL went into administration in terms of seeking to secure funding for the demolition over and above enforcement powers.</p>	
<p>21.15 and 21.16</p>	<p>It is clear at the current time that public bodies are facing ongoing cuts and have been for a considerable period of time. These cuts are likely to continue at least in the short term putting even more pressure on Council budgets. Within this context, it is considered appropriate to require a fully refundable bond that would build up over its lifetime that would only be used in the event of the applicant not decommissioning the Project itself at the end of its lifespan. The bond would be repayable at the end of the projects lifetime if not required.</p> <p>In light of the concerns above about decommissioning, the Council do not consider it to be unreasonable to require the applicant to burden any risk associated with the project rather than the public purse. This could be included within the S106 Agreement.</p>	<p>As explained above and in the Applicant's Deadline 1 submissions, the Applicant does not accept the principle that a bond is required for decommissioning.</p>
<p>Section 106 Agreement</p>		
<p>22.4</p>	<p>As noted in Section 15.23, the Project will have a moderate adverse effect during the construction phase and this is restricted to the three PRoW; albeit these effects will be temporary. The PROW officer has requested financial provision is put in place to improve the various PROW to offset the temporary adverse impact on them. Discussions are still ongoing in</p>	<p>The Applicant notes the request from the PROW officer and is awaiting details and is in discussions in relation to a financial contribution for improvements to the PROW network. The Applicant is awaiting information from the PROW officer in relation to the estimated cost of the measures proposed.</p>

	<p>this regard but the PROW officer has identified a range of measures that could be used to improve the situation to offset the short term impact.</p>	
<p>22.5</p>	<p>The Council considers (as per the Relevant Representation) that on-going finance arrangements should be made for the monitoring and enforcement of the project going forward as well as the discharge of Requirements. This could be included within the S106 agreement to provide for an annual sum to be used to undertake monitoring during the construction period.</p>	<p>As set out above, the Applicant included in the draft DCO at Deadline 1 provisions for the relevant local planning authority to be paid a fee for discharge of requirements. Please see Schedule 12 Paragraph 3 in the draft DCO submitted at Deadline 1.</p> <p>The Applicant does not consider it to be necessary or justifiable for the planning authority to request payment for performing its statutory duties as the enforcing authority for the DCO. This is a public function that the authority receives funding from Central Government to perform.</p>