



Applicant's Comments on Other Parties' Responses to First Written Questions

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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 on other parties' responses to the Examining Authority's first written questions.

2 Applicant's Comments on CCS Responses to First Written Questions

Paragraph reference	First Written Question	CCS FWQ response	APL response
1.0.13	<p>Green Infrastructure:</p> <p>At paragraph 2.11.58 of the ES [APP-042] it states: "Draft Policy ER 2 requires that development seeks to maintain or enhance the County's multi-functional green infrastructure network."</p> <p>How does the Applicant believe it conforms with draft policy ER 2?</p> <p>What is the CCS view?</p>	<p>CCS put forward a description of the policies quoted and their requirements in relation to green infrastructure and ecosystem services, including the requirements for green infrastructure assessments.</p> <p>CCS consider that no comprehensive survey of the site's 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 biodiversity and gives little consideration of other ecosystem services such as those relating to air quality, landscape, noise abatement etc. 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 regarding existing and proposed habitats/ landscaping should be in place prior to the commencement of development.</p>	<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 CCS Local Impact Report 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>
1.3.6	<p>Funding:</p> <p>The draft DCO [APP-014] includes Article 34 requiring security for CA costs (in an</p>	<p>CCS has no objection to the wording of the article but it is queried why the guarantee is only for the first 15 years of the development when landowner</p>	<p>The purpose of the guarantee is to ensure that claims for compensation under the Compensation Code can be met. A claim may arise once the undertaker exercises the powers of compulsory acquisition (with the valuation date being the date</p>

	<p>amount to be approved by the Secretary of State) to be put in place before any powers of CA may be exercised by APL.</p> <p>Are CCS content with the wording of this Article 34?</p>	<p>rights may be affected for the duration of the development.</p>	<p>at which entry onto the land was effected). There is a time limit in the draft DCO for implementation of land acquisition powers of 5 years (see Article 22).</p> <p>In relation to Part 10 claims, a claim can only arise once construction is completed and the authorised development is in operation (estimated to be following a 22 month construction period).</p> <p>There is a limitation period for claims to be brought of 6 years under section 9 of the Limitation Act 1980.</p> <p>The guarantee is therefore designed to cover the period in which the acquisition of land would give rise to claims. It does not need to subsist for the entire operational life of the development, as the ability to bring a compensation claim in relation to the exercise of the land acquisition powers in the draft DCO will be time barred before then.</p> <p>The Applicant's expectation is that the majority of claims would be settled following negotiation without reference to the Upper Tribunal (Lands Chamber) and significantly before the 15 year period of the guarantee.</p>
<p>1.6.5</p>	<p>Trees and hedgerows:</p> <p>At paragraph 2.11.63 of the ES [APP-042] it states:</p> <p>“Draft Policy ER 11 states that “development that would adversely affect trees,</p>	<p>The development area will require the removal of some trees, these are outside of the areas of identified ancient woodland shown on the Lle web pages.</p> <p>The embedded mitigation stated is for all retained trees to be protected from any damage. There will be permanent loss of broad-leaved semi-natural</p>	<p>The woodland planting blocks are primarily designed to screen the Project but have the added value of being connected to existing linear features in the landscape (such as tree lines, and a vegetated track way that have been shown to supporting commuting and foraging wildlife such as birds and bats); they therefore provide additional</p>

	<p>woodlands and hedgerows of public amenity, natural/cultural heritage value, or that provide important ecosystem services will not normally be permitted.”</p> <p>How does the Applicant believe it conforms with draft policy ER 11?</p> <p>What is the view of CCS?</p>	<p>woodland, broadleaved plantation woodland and species poor hedgerow habitat. Some of this loss will reduce connectivity across the site and wider landscape. This is significant so requires additional mitigation.</p> <p>The loss of trees from the hedgerows and from the apparatus site can be adequately mitigated on site by planting trees.</p> <p>The landscape ecosystem services provided by the sparse, unconnected woodland planting and native tree planting outlined in Fig 3.6c is much less beneficial than planting in a large block of woodland or linking the two proposed woodland areas to provide foraging and other habitat connectivity. Much greater detail of the species mix and full planting specification (to include sizes and density) is required to be submitted. A species diverse mixture would be required but this would also ensure a problem affecting one genera/species does not have a large impact on the overall integrity of the landscaping.</p>	<p>areas of valuable habitat for foraging, breeding and sheltering wildlife.</p> <p>Indicative species of hedgerows and trees to be planted is provided in the LEMS [REP1-016] and are of locally native provenance. The finalised LEMS will include planting schedules, stocking densities and heights of trees as appropriate.</p>
1.6.6	<p>Table 8-6 [APP-042] Use of 2014 Survey Data:</p> <p>Are CCS and NRW content with the arguments put forward for the use of 2014 survey data in the ecological assessment?</p>	<p>The use of 2014 survey data is sufficient for e.g. invertebrates. The lack of suitable habitat, particularly devil's bit scabious <i>Succisa pratensis</i> for marsh fritillary (fully protected under the 1981 Wildlife and Countryside Act and a Section 7 species of principal importance under the NERC Act in Wales), indicates that the probability of finding marsh fritillary is low.</p>	<p>An INNS survey (Invasive Species Assessment – ISA) was undertaken in 2014 and submitted as ES [APP-036] Appendix 8.19 in May 2018. As stated in the Landscape and Ecology Mitigation Strategy (LEMS) [REP1-016], Appendix F, an updated INNS survey will be undertaken to accurately assess INNS and extents within the Project Site Boundary prior to the implementation of control measures and a site specific INNS Protocol will be produced. Requirement 10 also secures the submission (by</p>

		<p>However, enhancement of the marshy grassland via planting with devil's bity scabious could enable the local sub populations to improve integration.</p> <p>The 2014 INNS data definitely requires updating and an INNS management plan/biosecurity plan with fresh mapping provided before any development works begin.</p>	<p>APL), approval (by CCS) and implementation of an invasive species survey and management scheme.</p>
<p>1.7.3</p>	<p>Commencement Article 2:</p> <p>Article 2 defines 'commencement' to exclude investigations for the purpose of assessing ground conditions (including investigations necessary for the discharge of requirements 14 (site investigation), 15 (mineral resources survey) and 16 (peat management plan)) receipt and erection of construction plant and equipment, erection of any temporary means of enclosure, the temporary display of site notices or advertisements.</p> <p>Do CCS consider it appropriate to allow for the early completion of this work (without triggering the requirements set out in Schedule 2 of the Order)?</p>	<p>The Council does not have any significant concerns with regards to the exclusion of suggested site investigation works from the definition of the commencement of development.</p> <p>As required by UDP policy, the minerals assessment is required prior to the determination of a planning application, and the other site works are also requested prior to an application on occasion. In light of this, it is considered reasonable to exclude these aspects from the commencement of development.</p> <p>It is unclear precisely what construction plant and equipment would be installed on site in terms of any impact this could have on the surrounding area. Clarity around this would be welcomed from the applicant to enable further comment.</p> <p>The Council however would suggest that the erection of temporary fencing is expressly excluded from this definition.</p> <p>The inclusion of this is at odds with Requirement 5 which requires permanent and temporary fencing to be agreed with the Council prior to the</p>	<p>The mineral resources survey would be undertaken as part of the site investigation works.</p> <p>The works will include trial pits and boreholes, and typically these would require an excavator and possibly a small dump truck, cable percussion rig towed by a landrover, possible cone penetration rig (track mounted), small trailer (for moving bagged materials / water / etc) and other small scale and portable testing equipment. In addition, there would be welfare facilities (one trailer) and some bagged materials used when backfilling boreholes.</p> <p>There would be no intention to fence the whole Order Limits nor the whole area in which surveys are occurring, but as the site is relatively insecure it is likely to be appropriate that the welfare facility and equipment left at site overnight is enclosed by a small Heras fenced compound (8-10 panels total). This is for reasons of safety and security.</p> <p>Any other fencing would only be required if any of the testing locations / trial pits were left open or unattended and this would be for safety reasons.</p> <p>In relation to the suggestion that the erection of temporary fencing is deleted from the definition of commencement, the Applicant refers to paragraph</p>

		<p>commencement of development. Fencing of the site would need to consider access for animals and there are no parameters identified for the temporary fencing so the Council should retain control over this element.</p>	<p>20.8-20.9 of APL's response to CCS' Local Impact Report.</p>
<p>1.7.9</p>	<p>Requirement 3:</p> <p>Requirement 3 secures the landscaping mitigation proposals set out in the ES [APP-042] through the submission of a written landscaping plan (containing certain specified details in relation to hard and soft landscaping works) in respect of numbered works 1 and 2 for the approval of the relevant planning authority. The landscape plan that is submitted for approval must be substantially in accordance with the outline landscape and ecological mitigation strategy appended to the ES Appendix 3.4 [APP036].</p> <p>Are CCS content that the wording of Requirement 3 adequately secures monitoring that will cover 25 years based on the commitment at</p>	<p>CCS have concerns about securing this ongoing monitoring as there is insufficient reference in the Outline LEMS to monitoring and maintenance to this and there is no reference in the Requirement itself at the current time.</p> <p>In addition, this only refers to landscaping for Work Nos. 1 and 2 and omits Work No. 4 (the Landscaping and Ecological Mitigation Area). Ongoing management, monitoring and maintenance of this area will also be required.</p> <p>CCS are aware that the applicant intends to amend the DCO to require a review every 5 years which is encouraging and welcomed as it clearly sets out that ongoing monitoring will be required for the lifetime of the project.</p> <p>However, CCS would suggest that this on-going review also include a mechanism (either within the Requirement of the Outline LEMS) to provide for amendments to the management of the scheme to ensure that deficiencies are rectified in an appropriate manner, if required. Suggested amendments should therefore also be included within the Review envisaged.</p>	<p>The Applicant amended the draft DCO at Deadline 1 to include a requirement for the landscaping plan to be reviewed every 5 years for the operational life of the authorised development.</p> <p>The Applicant has amended Requirement 3 to include Work No. 4 – please see the revised draft DCO submitted at Deadline 2.</p> <p>The Applicant also refers to its response to paragraphs 20.19 and 20.20 of the CCS Local Impact Report, submitted at Deadline 2.</p>

	paragraph 4.7.1 of Appendix 3.4 [APP-036]?		
1.7.10	<p>Requirement 15:</p> <p>Requirement 15 secures the provision of a minerals resources survey should the site investigation report demonstrate the presence of minerals. The minerals resources survey must be submitted to and approved in writing by the relevant planning authority.</p> <p>Are CCS content this requirement complies with adopted local planning policy i.e. UDP Policy R2?</p>	<p>The Council are of the opinion that Policies R2 and R4 of the UDP have not been complied with.</p> <p>CCS considers that a mineral resources survey is required, and that an investigation report must also consider the feasibility of the extraction of any mineral resource found, prior to development.</p>	<p>The Applicant refers to its response to the Examining Authority's first written question 1.13.1 submitted at Deadline 1.</p>
1.7.11	<p>Requirement 25:</p> <p>Requirement 25 requires that, following the final commissioning, site attributable noise arising from the operation of numbered work 1 must be limited to the noise levels set out in Table 3. Noise measurements at or in close proximity to the four identified locations must be submitted to</p>	<p>The wording is acceptable.</p> <p>However, CCS does not agree with rating levels set out in column A of Table 3 of Requirement 25.</p> <p>The dBLAR's stated are higher than those set out in table 7-21 which had already included a +3dB correction; the dBLAR's 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</p>	<p>Please see APL's comments submitted for Deadline 2 in response to CCS LIR paragraph 10.15.</p>

	<p>the relevant planning authority before the end of three months beginning with the date of final commissioning (see Requirement 24). Any remedial works must be carried out in accordance with the programme for implementation and the noise measurements repeated and submitted to the relevant planning authority for approval.</p> <p>Are CCS content with the wording of this Requirement?</p>	<p>context of the area lead to the creation of significant disturbance to the neighbouring land uses.</p>	
<p>1.8.2</p>	<p>Requirement 13 of draft DCO [APP-014]:</p> <p>Are CCS content with the wording of this commencement requirement?</p>	<p>The Council have sought input from Glamorgan Gwent Archaeological Trust in regards to this requirement (as archaeological advisors to the Council).</p> <p>GGAT are satisfied with the requirement in general but have suggested that dependent on findings, any alterations will require an amended WSI. This is not clearly set out in the requirement. In addition, they have requested that a suitably qualified person or body is an RO or MCIfA accredited within the Chartered Institute for Archaeologists – requirement 13(3). The Council would agree that the current wording is imprecise and it should be qualified who a suitable person is.</p> <p>The Council would also suggest that subsection (5) does not provide for any timescales or amendments for the agreement and submission of an interpretive</p>	<p>The Applicant refers to its response to paragraphs 20.33 and 20.34 of CCS' Local Impact Report and to the amendments to Requirement 13 made in the revised draft DCO submitted at Deadline 2.</p>

		<p>report specifically, unless it is implied in 13(1). It is suggested that provision for this and the timescales associated with it (and procedures to be followed) is specifically covered in subsection (1) for clarity.</p>	
<p>1.9.12</p>	<p>Public Rights of Way (PROW):</p> <p>At paragraph 2.11.67 of the ES [APP-042] it states:</p> <p>“Draft Policy T 7 requires that acceptable alternative routes are identified and provided where development “significantly adversely affects the character, safety, enjoyment and convenient use of a Public Right of Way (PROW).”</p> <p>How does the Applicant believe it conforms with draft policy T 7?</p>	<p>The ES states that the proposed management of the PROW is set out in the CTMP, which states that where possible, connectivity will be maintained by the use of temporary diversions and working methods to allow the PROWs to remain open for the majority of the construction period. It goes on to state the potential measures envisaged and states that this will be subject to further discussion with CCS.</p> <p>CCS is unclear at the present time about the full measures proposed to PROW and how these are secured.</p> <p>Requirement 21 makes no reference to PROW in its current construction and how CCS will have the opportunity to consider the PROW proposals at a later stage.</p> <p>CCS consider that Requirement 21 should be amended to specifically include reference to the management of PROWs.</p>	<p>The Applicant refers to its response to paragraphs 15.34 and 20.46 of CCS' Local Impact Report and to the amendments to Requirement 21 in the revised draft DCO submitted at Deadline 2.</p>

3 Applicant's Comments on NRW Responses to First Written Questions

Paragraph reference	First Written Question	NRW response	APL response
1.6.8	<p>Table 8.13 Sensitivity of Ecological Features [APP-042]:</p> <p>Do NRW and CCS agree with the evaluation of sensitivity by the Applicant?</p>	<p>Yes, however Water Voles and Otters should be reclassified as Medium due to the presence of habitats that could support these species.</p>	<p>We disagree with reclassification of water vole and otter from Low to Medium. Although there is some habitat with the potential to support the species, no evidence of either species was identified on site. However, the Applicant notes that any reclassification would not change the outcomes of the assessment: A Low value receptor (otter or water vole) which is affected by a High magnitude effect (killing or injury) gives a Moderate residual effect, which is significant and therefore requires mitigation (pre-construction checks to check for holts or burrows, with stipulation for licences/method statements should holts/burrows be identified). The assessment outcome is exactly the same for a Medium value receptor - a Moderate residual effect (significant) requiring mitigation.</p>