CITY & COUNTY OF SWANSEA

Second Deadline Comments

Abergelli Power Project

PINS REFERENCE: EN010069

CCS EXAMINATION REFERENCE: 20011204

CCS APPLICATION REFERENCE: 2018/1289/DCO

EN010069
Abergelli Power Limited: Proposed gas fired power station at on land adjacent to Felindre Gas Compressor Station, Felindre, Swansea

Deadline 2 Submission

The following document constitutes CCS Deadline 2 Submission. These responses have been prepared to respond to the Deadline 1 submissions primarily submitted by the applicant.

Responses have only been provided elsewhere where the LPA considers it necessary and may aid the examination.

The response comprises the following appendices:

Appendix A) CCS response to Applicant's Relevant Representation Response

Appendix B) CCS response to Applicants Response to Examining Authority's First Written Question

Appendix c) Applicant's Written Summary of Case including Appendices

Appendix D) CCS Response to Draft DCO (Revision 1)

Appendix E) CCS Response to Written Representations submitted by Mr Michael Edwards, Mr Wynne Watkins and Rediplay Ltd

Appendix F) Local Impact Report – Clarification Addendum

Appendix G) CCS comments on No Significant Effect Report

Appendix H) CCS response to Amended Outline Drainage Strategy

Appendix A

CCS Response to:
Applicant's Relevant Representations Response (Deadline 1)

CCS do not consider the need to comment on APL's response to other interested parties Relevant Representations. Comments relate solely to the Paragraph Numbers used by APL in this document.

23.1.19 – Water Quality and Resources

CCS wishes to clarify that the climate change allowance was agreed based on the design life of 25 years. This design life is misleading as the applicant clearly does not intend to decommission after this time. APL have clarified they don't envisage a duration to this permission and the plant could be operational permanently rendering this design life inadequate for the duration of the projects lifetime which could result in flooding incidences. This is part of the reason that CCS has requested a limit to the duration of the permission – to ensure the effects assessed are appropriate. If the anticipated lifetime of the development is likely to be greater or will not be decommissioned and removed after 25 years the applicant must look at a greater climate change allowance in line with the guidance to fully consider the impacts on local fluvial and pluvial flood risk management.

It should be noted that Appendix 7 of the Written Summary of the Applicant's Oral Submission (which is commented on further in Appendix C) advises how this design life was achieved and clarifies that the design life would be applicable for 51 years (up until the year 2069). This approach is adopted for Peak River Flows and Peak Rainfall Intensity. Given that the development may still be in situ in 2069 and beyond with no time limit in place, it is considered that a more robust approach (if no time limit is in place) would have been to consider a longer lifetime which would have required additional mitigation.

23.1.30-32 – Draft DCO Requirements

CCS would maintain the stance set out in the Local Impact Report and the first Issue Specific Hearing (and written summary produced thereafter). It is not considered appropriate for the default position to be an approval given the scale of the project and issues associated with this fall back as well as the impact this could have on 3rd parties who would be disadvantaged by the Council's inaction. The default position should be a right of appeal with a dual-jurisdiction period whereby the Council could still discharge the request for approval.

23.1.36 – Draft DCO – Decommissioning

The last sentence is key to the Council's concerns with regards to ensuring decommissioning is undertaken…"subject to obtaining the necessary consents". As the applicant points out in Appendix 6 of the Written Summary of the Applicant's Oral

Submission, there are potentially 9 other consents that would be required to be obtained (at the current time) in order to allow for the decommissioning.

As currently worded, the applicant doesn't even have to seek to obtain the necessary consents, much less obtain them.

If they don't apply to seek these consents (or one of these consents is refused) then they wouldn't have breached the terms of Requirement 27 and the Council could not take enforcement action. This position is unacceptable to the Council.

The Council would therefore strongly request that "subject to obtaining the necessary consents" is removed from this Requirement to ensure that the applicant has a firm commitment to obtain the necessary consents as it is in their interests to do so to prevent enforcement action. If a consent cannot be achieved at that time 9for whatever reason), the Council would consider the expediency of taking enforcement action in light of the circumstances.

Some of these consents would be required to be obtained prior to the construction of development and there is no other reference in the Draft DCO itself that prohibits work subject to obtaining the necessary consents. The purpose of this sentence is to protect the applicant only. The applicant is confident that they can obtain the necessary consents to construct and operate the generating station and should have the same duty to obtain the necessary consents for decommissioning.

The current wording further reinforces why a bond is imperative, to ensure that the cost of the works can be covered if the Council has to seek relevant consents and then decommission.

Finally, CCS would also query what would happen to the Environmental Permit in the event the company entered liquidation. CCS would welcome advice from NRW on whether this has happened previously and whether the issues were satisfactorily resolved.

23.1.37 – CCS maintain that the Requirement is only enforceable to a degree as pointed out above. Not obtaining one of these permissions may result in the scheme not being decommissioned and resulting in no breach of Requirement 27 as drafted. This is unacceptable to CCS.

23.1.39 – CCS do not consider that precedent means that the Requirement is satisfactory or fulfils its intended purpose.

Whilst it may have been used elsewhere, it does not mean that it is not defective in terms of its construction. These other projects have not got to decommissioning stage and the implications of the wording may not have been fully considered previously.

The current wording would cause significant issues in terms of seeking to enforce against the requirement in the future. If there is no breach of the Requirement because of its drafting, there can be no enforcement action taken to ensure the project is decommissioned.

23.1.40 – Whilst the provisions of the DCO may not be transferable, there is no mention of what would happen if the company went into liquidation. This has been raised previously by the Council (in the Relevant Representation and in the Issue Specific Hearing) and has not been addressed.

23.1.41 – CCS would query whether NRW have ever had a situation where a company has gone into liquidation before surrendering a permit and what has happened in this instance? How has this issue been addressed in the past? Were problems resolved to their satisfaction? The comments of NRW are welcomed in this respect.

23.1.42 – CCS welcomes the revised wording suggested to incorporate the same issues identified within the CEMP, subject to concerns noted above. CCS also maintain that "unless otherwise approved in writing" is omitted as the Conditions Circular is clear that these 'tailpieces' should not be utilised. Case law also supports this. It should also be noted that 27(1)(b) has no timescale and would be dependent upon the CCS noting the removal and being able to advise that the plant cannot operate without said removal.

23.1.43 – The Requirement is not enforceable if the relevant consents are not obtained. The applicant may decide not to apply for any of these permissions or may be unable to get the requisite consent. In these circumstances, the generating equipment would be left in situ and the Council could not take enforcement action.

A bond is therefore required to ensure the funding is in place to enable the Local Authority to undertake decommissioning if required and Requirement 27 amended to include provision for this if the applicant has not obtained the relevant consents and undertaken the decommissioning strategy.

23.1.48 – Draft DCO – Discharge of Requirements

CCS welcome the inclusion of fees for the discharge of Requirements being included within the Order itself. However, The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 would need only to be referenced where any consent, agreement or approval is required attached to a planning permission (article 23 DMPO Wales 2012). As the DCO is not a planning permission, it is not considered that the Fee Regulations would need to be referenced. The fees for the NSIP procedure are not included within the aforementioned Fee Regulations as an example.

CCS do not agree that the fees should be linked to the fee for the discharge of a planning condition. Essentially, given the parameters and scale of development, the

DCO is akin to an outline permission and a significant level of detail would have to be considered by the Local Planning Authority at a later date. CCS will be required to undertake a significant amount of work to discharge the various Requirements (including consultation with various internal consultees) and it is not anticipated that the planning condition fee would cover this.

Planning conditions are generally easier to discharge and follow on from a planning application for which a commensurate fee has been paid.

The discharge of Requirements are more akin to subsequent reserved Matters applications and the fee should be appropriate and commensurate with the level of work required. It is therefore suggested that each Requirement should have a flat fee of £1050 per discharge or £525 per partial discharge which would be more representative of the level of work involved (based on experience of the Tidal Lagoon and an appreciation of the work required to consider the information in the various Requirements).

Fees would need to be payable for each Requirement (or partial discharge) rather than one fee per application as can be achieved with discharge of conditions. Otherwise, the applicant could submit one application covering the whole of the works and only pay one nominal fee.

Based on the current DCO, there are likely to a minimum of 22 Requirements (one of which will be for decommissioning) requiring discharge which could be split into 57 partial discharge applications. It is not likely that these would increase significantly.

Appendix B

CCS Response to:
Applicants Response to Examining Authority's First Written Questions (Deadline 1)

1.0.3 Operating Hours

Whilst CCS does not have an issue with regards to the proposed rolling 5 year total operating hours or the yearly limit indicated, it is considered that without control via the DCO, these hours (and those assessed in the Environmental Statement) could be amended over and above what was intended in the DCO. The Environmental Permit is a separate regime controlled by a separate party and without a limit defined in the DCO itself, could be amended to increase annual hours without any consideration for impacts assessed in the DCO. It is appreciated that overlapping controls are unnecessary at times, but having a limit in the DCO has a planning purpose – to ensure that the operation assessed in the Environmental Statement is actually the worst case scenario for the lifetime of the development.

It should be noted that Limits were specifically included in The Hirwaun Power Station Order 2015, The Progress Power (Gas Fired Power Station) Order 2016 and is proposed in The Milbrook Power Order (undetermined).

As noted in the Appendices of the Written Summary of Applicant's Oral Submission, a site's environmental permit is not static, and its requirements evolve over time in response to changing legislation and policy. The Council would have no input into this and it is unclear whether there is anything limiting NRW to the outline parameters.

1.0.6 Fee Scale

CCS wishes to clarify that the inclusion of the fee within the DCO has been discussed and agreed but not the actual fee payable for the discharge of Requirement.

As such, CCS has not agreed to the level of fee payable. As noted in CCS response to "Applicants Response to Relevant Representations", the DCO is akin to an outline permission and there will be a significant amount of work to consider at a later stage in terms of the discharge or partial discharge of Requirements. The fee payable will need to provide adequate resources for the discharge of the Requirement, which is essential if the applicant is seeking a prompt determination of the information. CCS have suggested that a fee of £1,050 per Requirement or £525 per partial discharge would be more appropriate given the level of work that will be required to discharge these Requirements.

It should be clear that each Requirement will command a fee for its discharge (or partial discharge) to ensure the Authority is resourced to provide the requisite service.

In terms of monitoring and enforcement costs, these issues have been raised in Section 11.9 of the Relevant Representation more recently in the Local Impact Report.

Whilst the comments about Enforcement are noted, given the nature of the proposal, it is likely that complaints will be received and will need to be investigated both during construction and operation. It is suggested that a contribution towards these costs is provided annually in any year that an enforcement complaint is investigated, if there is found to be a breach. Given the nature of the proposal, the Council are likely to be required to consider whether the DCO is being breached

As for monitoring, there will be a requirement to monitor various aspects of the development going forward that have been built into the mitigation measures and as such, financial provision for undertaking these tasks should be built in to the DCO. For example, monitoring of the landscaping and ecology management plans is likely to require a site visit of at least two officers along with subsequent review of the submitted information during the operational phase which could take up significant officer time and it is likely that ongoing monitoring will be required during the build phase to ensure the Requirements are being complied with. Experience of other similar projects has shown this to be the case (such as Mynydd y Gwair Windfarm) and various solar farm developments. This aspect should not be at the public expense.

1.0.9 – Environmental Permit

CCS has one query – why has the permit application got a rating level of 748MW as indicated in the table?

1.9.1 – 5 Year Monitoring

Whilst CCS welcome this statement, we do not consider that it adequately ensures the long term monitoring of the trees as this does not state that APL will monitor the trees for this period. This effectively would require CCS to actively monitor the trees to consider whether they are dead, dying or dangerous as it is worded “in the Council’s opinion”. This should stay in place but clear monitoring provision should be included for the first five years after planting setting out when landscaping was planted to ensure that an appropriate mechanism is in place.

N.B. DCO Version 2 has been amended to include a requirement to maintain the landscape which is welcomed subject to revisions as noted in Appendix D.

Appendix C

CCS Response to:
Written Summary of Applicant's Oral Submission including Appendices (Deadline 1)

1) Maintain:

CCS maintain their concerns about the scope of this provision.

Whilst it is appreciated that planning permission can only be implemented once (and the case law is not disputed), the DCO is a separate consent issued under a separate statutory regime.

It is not planning permission which is clear on the face of the Planning Act 2008 which uses the terms separately (see Sections 32 and 33 for example). This issue was discussed in Powys County Council v Welsh Ministers [2015] EWHC 3284 which related to an application for planning permission. However, the conclusions support the Council's point in that there are different statutory contexts with different subject matters and the decisions (in Wales in any event) are issued by different Ministers with different subject matters.

A DCO combines a grant of planning permission with a range of other separate consents. Section 33 of the Planning Act 2008 states that where a project requires a DCO, it does not require certain other consents including planning permission which further confirms that two separate regimes are in place.

The fact that the DCO is a new piece of legislation and has its own definition of 'maintain' included within it further delineates the DCO from planning permission.

It is therefore respectfully questioned whether these cases are directly applicable to this application for Development Consent Order and in light of the above, it is not considered that they are directly applicable to a DCO.

In Dunnett Investments Ltd v Secretary of State for Communities and Local Government (11/03/2016), Mrs. Justice Patterson referred to a recent decision of Trump International Golf Club Scotland Limited v Scottish Ministers (1st January 2016) on the interpretation of public documents (the planning court have subsequently held that the Trump decision applies to planning decisions and not just consents under the Electricity Act). Lord Hodge held (in relation to the Trump case) that "When the court is concerned with the interpretation of words in a condition in a public document such as a section 36 consent, it asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the relevant words and common sense…"

Whilst Dunnett Investments Ltd relates to a planning permission and Trump referred to the Electricity Act, it is clear that importance should be given to what a reasonable reader would see on the face of the permission/ consent.

In this case, it is considered that a reasonable reader would read the word “maintain” within this context on the face of the consent which gives a wide ranging definition and allows for a large degree of rebuilding.

2) Commence

Whilst CCS did not raise any issues at the time, as has been clarified in the Local Impact Report, the current definition should be amended to exclude fencing as this is secured by a separate requirement. Otherwise, this defeats the purpose of Requirement 5.

17) Requirement 23

The applicant suggests that no noise/ machinery would be operating during the shutdown period but this is at odds with the definition included in the latest DCO. In addition, whilst there won’t be noise and machinery being used per se during the start up period, there is likely to be noise associated with colleagues conversing prior to the start of operations. This extends the working day by an hour and it is considered that these activities could take place during the hours already identified.

18) Requirement 27

CCS welcomes the submission of the documentation to provide an indication of the likely requirements to be covered. This ties in with the assessment in the Environmental Statement.

27) Living Wage

There are no proposals/ policies within the Emerging LDP that relate to the Living Wage.

Appendix 7 – Applicant’s Sensitivity Analysis

Appendix 7 of the Written Summary of the Applicant’s Oral Submission advises how this design life was achieved and clarifies that the design life would be applicable for 51 years (up until the year 2069). This approach is adopted for Peak River Flows and Peak Rainfall Intensity. Given that the development may still be in situ in 2069 and beyond with no time limit in place, it is considered that a more robust approach (if no time limit is in place) would have been to consider a longer lifetime which would have required additional mitigation.

This effectively states that the Environmental Statement only offers an assessment up until 2069, which provides for a design life of 47 years once the project is completed (assuming the indicative schedule is adhered to). The applicant does not intend to restrict the lifetime of the project even to this timescale so the power generating station could be in operation permanently, long beyond 2069. This could result in flooding incidences in the future that have not been properly considered in the assessment unless the lifetime of the consent is restricted to match this timeframe. Alternately, a greater climate change allowance should have been considered to ensure that the drainage infrastructure is appropriately sized for the lifetime of the project.

CCS wishes to clarify that the climate change allowance was agreed based on the design life of 25 years and CCS Officers commented on the basis that this was its lifetime. It was not clear at the time that there was no intention to limit the lifetime of the permission. The Council cannot comment on whether NRW believed the project to be limited to 25 years.

The Council would once again refer back to the definition of “maintain” which suggests various works that can be undertaken to effectively continually replace parts of the apparatus so that it can continue to operate effectively forever.

This is part of the reason that CCS has requested a limit to the duration of the permission – to ensure the effects assessed are robust in relation to the lifetime of the project.

ES Chapter 6 and Chapter 7:

CCS doesn’t raise issue with these chapters but wishes to clarify that both state the following:

“A site’s environmental permit is not static, and its requirements evolve over time in response to changing legislation and policy.”

Concerns have been raised that there is no limit to the operation (hours per annum and 5 year rolling period which are accepted in principle) contained within the DCO itself and this could change rendering the assessments in the ES inaccurate.

ES Chapter 11

The updated LEMS (submitted at Deadline 1) no longer refers to the management period being limited to 25 years, instead referring to the operational period of the Project (if management is still required). This clarification is welcomed.

Appendix D

CCS Response to:
Draft DCO (Revision 1) (Deadline 1)

Issues raised previously by CCS that have not been addressed by the applicant are not repeated below as the Council have made their opinion on these matters clear in previous correspondence.

N.B. The applicant has subsequently sent Draft DCO Revision 2 to CCS for consideration and for ease of reference, where issues have been resolved in the latest revision, this will be clarified in the comments as relating to Revision 2 specifically and included in italics.

Article 2
Definitions

"maintain" (Revision 2) – the applicant has attempted to resolve the Council's issue with regards to the works being undertaken to part of, but not the whole of the development. However, CCS do not consider that this succeeds as it effectively says the same in a different manner and relating it solely to Work No.1 , i.e. 95% of the apparatus can still be removed / reconstructed provided it is not the whole of work No.1 within this definition. This does not overcome the Council's concern.

"Shut down period" – the Council reiterates their concerns about the inclusion of both a start up and shut down period as the working day is deemed sufficient for these activities to take place in. Added to this, the inclusion of use of site maintenance machinery and plant such as generators, wheel washes and road sweepers should be not be allowed outside of "working hours". There will inherently be noise associated with this equipment which has not been assessed and would extend the working day to the detriment of local residents. Providing for a shutdown period itself elongates the day for residents and CCS have previously raised issues with this process (and the start-up period), before additional machinery is proposed to be operated. Half an hour either side of the day is also considered to be excessive for the tasks indicated to be undertaken. 15 minutes would more than suffice, again, if the working day has to be extended.

Article 2(3) (Revision 2) – this clarification is welcomed and resolves the issue CCS raised in the LIR.

Article 7(9) *(Revision 2) – this amendment is welcomed and resolves the issue CCS raised in the LIR.*

Article 35 – Removal of Hedgerows

Article 35 refers to the removal of trees and hedgerows. CCS consider that mitigation planting for these works should include mitigation measures for the loss of habitat. It is also suggested that checks should be undertaken for bats prior to any works and

necessary provisions built in to the Article in the event that bats are found to be present (e.g. mitigation/ method statement and licenses).

Article 42

The additional clarification on the process itself is welcomed notwithstanding CCS concerns about how this Article is framed (as set out previously in the Relevant Representation, Issue Specific Hearing and Local Impact Report).

Schedule 1

Use of “will not” is welcomed to provide certainty.

Schedule 2

Requirement 3 - Provision and Maintenance of Landscaping

Requirement 3(1) (version 2) – the inclusion of the mitigation area within the landscaping requirement is welcomed to address concerns raised in the LIR.

Whilst the insertion of 3(5) is welcomed in principle, it lacks detail in terms of the measures that would be implemented following the review. For example, the review may indicate that the landscaping is not working but it does not clarify how this will be resolved. Whilst the Council’s views will be sought, it doesn’t say how they would be taken into account as the Council may consider work is required when the applicant doesn’t.

Requirement 5 – Fencing and Other Means of Enclosure

It is suggested that clarification is included in this Requirement to ensure that all fencing (temporary and permanent) is ‘wildlife friendly’. As stated elsewhere in the application, access should be allowed for various species and clarification in this point will ensure that it is not overlooked at a later date if considered in isolation.

Requirement 6 – Surface and Foul Water Drainage

Requirement 6(1) (Version 2) – inclusion of management and maintenance is welcomed and addresses concerns raised in the LIR.

It is queried whether Work Nos. 2, 3 and 5 will actually have a foul drainage plan and if not, whether this requirement can be discharged given the current wording of the Requirement. Work No. 5 may have foul drainage works associated with subsequent stages but these may not be designed at this stage.

Requirement 8 – Pre-construction Ecological Constraints Survey

Requirement 8(5) is welcomed but needs to be clarified to a) ensure that they are the "approved" surveys and b) ensure that work can only starts within 2 years of all 3 surveys ([redacted], otters and water voles) having been approved.

Requirement 10 - Invasive Species Survey and Remediation

CCS should have previously pointed out that the current wording is imprecise in terms of the work being undertaken by a "suitably qualified person and experienced person or body" as was previously clarified with Requirement 13 in the Deadline 1 submissions (Response to Examining Authority's Written Questions and Local Impact report). Issues could arise over whether someone is suitably qualified and the level of experience required to make someone "experienced".

Requirement 11 – Bat Method Statement

Requirement 11(4) is welcomed.

Requirement 12 – Reptile Method Statement

CCS would query whether Requirement 12(2) should be re-written to refer to "that numbered work" rather than stating no work shall commence and then referring to each relevant work no. as they are all technically relevant, just not that other phases necessarily.

Requirement 13 – Archaeology (Version 2)

Requirement 13(1) and (3) – amendments to clarify the level of expertise expected of the person/ body expected to undertake these works is welcomed.

Requirement 14 – Site Investigation

Requirement 14(1) (Version 2) – This is noted. CCS has no issue with the inclusion of this if it is required.

CCS should have pointed out that the current wording is imprecise requiring the works to be undertaken by a suitably qualified person or body as who is the arbiter of this?

Requirement 15 – Minerals Resources Survey (Version 2)

Requirement 15(1) – Work No. 3 omitted which is welcomed by CCS

Requirements 17, 18, 19 and 20 – CEMP and Pollution/ Waste Management Plans

Requirement 17(1)(i) (Version 2) – cross-reference to Requirement 10 is welcomed by CCS.

The revised wording clarifies that the CEMP doesn't apply to Work No. 5 and Requirements 18, 19 and 20 only apply to Work No. 5 and the split of these provisions is considered acceptable in principle. However, CCS consider that these works could still result in complaints and a community liaison and complaints procedure should also be included.

(Version 2) – It is noted that a complaints procedure has been included and this could cover the community liaison. CCS is satisfied that the amendments to Requirements 18(1), 19(1) and 20(1) are acceptable and overcome the concerns previously raised with this approach. The inclusion of control of artificial lighting during this phase is also welcomed and addresses concerns.

Requirement 21 – Construction Traffic Management Plan (Version 2)

Requirement 21(1)(i) – the inclusion of management procedures for any PROW affected during construction is welcomed.

Requirement 26 – Control of Artificial Lighting During Operation (Version 2)

Requirement 26(1) – CCS has no issue with the amendment to include consultation with NRW in this Requirement.

Requirement 27 – Decommissioning

CCS welcome the revised wording to clarify the extent of work required to be included within the decommissioning, however concerns remain about the use of "unless otherwise approved in writing" in 27(1) as this is imprecise and could result in the scheme not being implemented or delayed significantly.

Requirement 27(1) (Version 2) – it is noted that "unless otherwise agreed in writing" has been omitted in version 2 which is welcomed. The second amendment within this subsection should read "submitted for the written approval of" the relevant planning authority to clarify that consent is required and the relevant planning authority is the consenting body.

Secondly, use of the term "subject to obtaining the necessary consents" should be deleted as this is imprecise and raises concerns in terms of the enforcement of the Requirement as noted above. If these consents aren't obtained (for whatever reason whether they not be applied for or not approved/ granted), no enforcement action could be taken requiring the actual decommissioning taking place which is unacceptable. This links back to the importance of a decommissioning bond. The applicant should have to seek any necessary consents as would be expected.

Requirement 27(3) should also be amended to refer to the work being undertaken in accordance with the approved scheme *and* the implementation timetable.

Schedule 12 – Procedure for Discharge of Requirements

Section 1(5) (Version 2) – the clarification that consent may be granted unconditionally or with conditions is welcomed and addresses CCS concern in this regard.

The increase of the requirement to provide further information in 28 days in Section 2(2) of this section is welcomed, and the corresponding amendment in 2(3).

Whilst a section on fees is also welcomed, CCS does not consider that it firstly has to reference the T&CPA Fees Regulations 2015. The Fee Regulations relate specifically to applications for planning permission and applications arising as a result of the grant of planning permission. Discharging Requirements are not related to a planning permission so it is queried why this is referenced in a separate piece of legislation.

Secondly, CCS do not consider that the fee that should be included should be commensurate with the 'discharge of condition' fee (£95) and should not be on a 'per application' basis. As stated in the preceding sections, the DCO is akin to an outline permission and a great deal of detail will be required to be considered at a later date by the Local Planning Authority.

It is considered that a flat fee of £1,050 per full discharge of £525 per partial discharge would be more appropriate and commensurate with the level of work required to consider and discharge the Requirements.

Requiring the fee to be returned at the end of the 8 week period is also misguided, as it will not result in an improved decision and if the decision has not been issued in a timely manner, it will be partly due to resourcing issues and a financial penalty will not offset this but will exacerbate the situation in the short and long term.

This approach is also likely to result in decisions being made within 8 weeks but these may not be positive determinations and are likely to lead to refusals rather than agreements when the deadlines approach. A subsequent application following refusal would also incur a fee under the current phrasing which is further likely to drive behaviour. This is not in anyone's interests and should therefore be excluded. Whilst the Fee Regulations do permit for fees to be returned in certain circumstances, this is after a longer period than is proposed by the applicant.

This provision essentially results in both a default approval and a return of the fee irrespective of any work undertaken by the Council or other body. The default approval also renders any input from third parties (such as NRW) redundant as their input won't have been considered in the decision making process. There are also concerns about the lawfulness of this approach which has not been scrutinised by a decision-maker if a default approval is included.

Finally, the Council will not wish to be in a position to hold a fee for a future application at an unspecified date.

Appendix E

CCS Response to:
Written Representations submitted by Mr Michael Edwards, Mr Wynne Watkins and Rediplay Ltd

Mr Edwards comments on A) the validity of the DCO (due to the exclusion of the proposed gas and electrical connections) and B) compulsory acquisition (with reference to access route B)

A) Validity of the DCO

CCS originally queried with APL why these applications were outside of the scope of the DCO as, on the face of it, it does seem illogical that the gas and electrical connections do not fall within the definition of "associated development" given that the development could not go ahead without both of these pieces of infrastructure (and they would be controlled by a different consent regime and a different Secretary of State essentially). The applicant advised that this has been the situation at Hirwaun and other DCO's and the response of APL has been accepted.

The Council has not sought to consider this further as the Council would have control over the determination of these planning applications in any event. Greater control was afforded to the Local Authority as a result of this which is welcomed. The Council has not sought to consider this issue further unless specifically requested to by the Examining Authority as the applicant is likely to respond in detail on this issue.

It is appreciated that the two separate processes could result in a degree of confusion to interested parties but the documentation submitted by APL is considered to be clear on this matter, and has been throughout the process to date. It is also clear that these aspects have been considered in the Environmental Statement submitted with the DCO to provide the true worst case scenario of the development.

Comments have been received to the electrical connection planning application and some of these issues relate to the DCO rather than the application. The respondent was advised that the DCO forum was more appropriate for the comments made. Notwithstanding this, the applications have been considered on their planning merits following public consultation. As with any permission (should they be granted at Planning Committee), the granting of planning permission does not necessarily mean that the works can be implemented without control over the land.

Whilst the processes have been separated, CCS does not consider that anyone has been materially disadvantaged as a result of the two processes as the applications will be determined before the Examination closes and members of the public have been consulted on the planning applications. The applications will also be reported to Planning Committee for determination. Conditions have been phrased in a similar manner to the Draft DCO Requirements for ease of reference going forward.

It is appreciated that Mr Edwards is seeking to amend the line of the electrical connection (and road by association) and this will be considered as part of the DCO process. If the route was amended, a new application for the electrical connection may also be required. Again, if a new planning application was required, this would be considered on its merits.

B) Compulsory Acquisition

The resident raises concern that the applicant has not met the relevant Compulsory Acquisition tests. The Council do not consider that they need to comment on whether the tests are met or not but will provide brief comments on the question of the woodland being qualified as Ancient Woodland.

The woodland being contested touches the identified area of ancient woodland although it is not designated as such. The report prepared by Alison Wheeler MSc, MICF states that the woodland is arguably ancient woodland. "It is not recorded as ancient woodland on the AWR, but this may be debateable as the site is located on the southern edge of the former ancient woodland site to the north and may be surviving woodland edge habitat."

Due to the features present the Council would argue that this is Ancient Woodland whether it is recorded as such on the LLE maps or not.

Appendix F

Local Impact Report – Clarification Addendum

Following the submission of the Local Impact Report, it has come to the Council's attention that certain paragraphs in the ecological section are no longer areas of concern following on-going discussions with the applicant.

The circumstances have changed following original drafting with regards to the following paragraphs:

11.31 With regards to otters, CCS agree that an artificial otter holt is not required, although it would be desirable as part of the enhancement package.

11.37 The statement stands except for the additional 10% of habitat required in the final sentence.

11.49 This is no longer an issue between parties now that it has been explained.

11.52 Marshy grassland to be managed for marsh fritillaries. The food-plant of the butterfly is Devil's bit scabious Succisa pratensis which is absent from the Abergelli site. To enable management of the marshy grassland for marsh fritillary, the mitigation area will need to be seeded or planted with devil's bit scabious. This will enhance the habitat and help provide some connectivity to other similar sites. This should be included in the updated LEMS.

The Council apologise for any confusion this may have caused to all parties.

Appendix G

CCS comments on:
No Significant Effect Report

The Council considers that it would be useful if the NSER submitted by the applicant was updated to reference the Test of Likely Significant Effects and the Appropriate Assessments that the Council undertook for the gas and electrical connection planning applications. These were agreed with NRW and concluded that the proposed development would not have a significant effect on either Carmarthen Bay and Estuaries Special Area of Conservation as the proposal is not likely to undermine the area's conservation objectives, provided the development is undertaken in accordance with a detailed CEMP that has been submitted to, and approved by the LPA.

The conclusion of the Appropriate Assessment was that while potential adverse effects were identified (section 4.4) these can be mitigated for by adopting the measures detailed in Section 5.3 of this Appropriate Assessment Record.

Appendix H

CCS Comments on Updated Outline Drainage Strategy

CCS has no issues with the proposed outline drainage strategy nor the Requirements recommended within the DCO to secure the provision of a detailed scheme for each numbered work in principle (subject to clarification sought in Appendix D).

Comments have been raised above about the precise phrasing of Requirement 6 in Appendix D.

However, CCS can’t see any requirement to consult with the Authority on the culverting of any watercourses in any of the recommended requirements, while the DCO would supersede the Land Drainage Act 1991 we would still like to see the details of any culverts proposed to be submitted to us for review and agreement to avoid any flood risk issues.