



Applicant's comments on Deadline 2 Submissions

PINS Reference Number: EN010069

Deadline 3 – 21 December 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' submissions to the Examining Authority for Deadline 2 on 30 November 2018.
- 1.1.4 The Applicant has reviewed submissions made by other parties at Deadline 2, and has provided below responses to those where necessary. The Applicant has not provided responses where it has already made submissions at previous deadlines on the points made, or where it has provided a response in the Written Summaries of the Applicant's Oral Case put at the Hearings (held on 12 and 13 December 2018), submitted at Deadline 3 alongside this document.

2 REP2-012 City and County of Swansea

Reference	Summary of points made by CCS	Applicant's Response
Appendix A 23.1.36 – Decommissioning	<p>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. If consent cannot be achieved at that time (for whatever reason), the Council would consider the expediency of taking enforcement action in light of the circumstances.</p> <p>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</p>	<p>The Applicant has supplied at Deadline 1 a note explaining the consents currently considered to be required for decommissioning and demolition. Please refer to reference 18 of Agenda Item 6 of the written summary of the Applicant's oral case.</p> <p>In relation to the point made by CCS that the phrase "subject to obtaining the necessary consents" does not appear elsewhere in the DCO, that is because there is a different position prior to construction, compared to decommissioning. APL is in control of obtaining consents required for construction and for triggering the construction of the Project. It can therefore obtain the relevant consents before triggering construction of the Project, where APL considers that appropriate and taking into account the consenting risks. It cannot do that at decommissioning, since once the plant is to cease generation of electricity, requirement 27 kicks in automatically and the obligations under it are not delayed whilst APL seeks to obtain the relevant consents (as it could do at the construction stage).</p>
Appendix A 23.1.40 - Decommissioning	Whilst the provisions of the DCO may not be transferable, there is no mention of what would happen if the company went into liquidation.	<p>The Applicant will, in line with standard industry practice, continue to assess the Project's position through the use of various tools, including a financial model. That will consider the lifetime income and costs of the Project, including during the decommissioning stage. The Project will proceed when the Applicant (and any external funders such as investors or banks) are satisfied with the financial model and that the Project is viable.</p> <p>That ensures that the Project will start on a sure financial footing and that all costs associated with it have been factored in from the start.</p>

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		<p>Once the Project is operational, the board of APL will be under various duties as company directors, including in particular those under the Companies Act 2006. The directors must be cognisant of the company's financial position at all times. The directors' duties are primarily to the shareholders but if there is any doubt about the company's solvency then it is incumbent on the directors to prioritise the interests of creditors (including prospective and contingent creditors) ahead of others, including shareholders.</p> <p>Were the directors to breach these duties then it is possible that payments could be classified as transactions defrauding creditors (and therefore set aside), there may be 'wrongful trading', and directors can have direct personal liability. The latter could include personal claims against them for losses suffered by third parties (such as creditors), and potential actions for director disqualifications.</p> <p>In addition the Applicant must have a generation licence (pursuant to section 6 of the Electricity Act 1989) in order to operate the Project, and that means it and the directors have duties to OFGEM including to comply with the licence conditions. Failure to comply with the generation licence conditions can also carry criminal sanctions.</p> <p>There are therefore already significant processes and rules in place which mitigate against the likelihood of insolvency and provide for the protection of creditors in the event of that occurring.</p>
Appendix A 23.1.42 – requirement 27	Requirement 27(1)(b) has no timescale and would be dependent upon CCS noting the removal and being able to advise that the plant cannot operate without the removal.	It is correct that paragraph 27(1)(b) does not of itself have a specific timescale, but it cannot sensibly provide for one since the removal of Work No. 1D could happen at any time. There is a backstop position, since paragraph 27(1)(b) only applies where Work No. 1D is removed before paragraph 27(1)(a) has been triggered, due to

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		the start of paragraph 27(1)(b) being "if sooner,...". The Applicant does not consider that any further amendments are required.
Appendix B 1.0.9 – environmental permit	Why has the permit application got a rating level of 748MW as indicated in the table?	The reference to 748MW is to the thermal input level for the generating station, not to the electrical output (which is up to 299MW, as per Schedule 1 to the Draft DCO).
Appendix C Requirement 23 – construction hours Appendix D Article 2 – definitions - start up and shut down	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.	Refer to reference 17 of Agenda Item 6 of the written summary of the Applicant's oral case and 20.49 of the Applicant's response to CCS' Local Impact Report. In order to ensure that the on site machinery and apparatus is suitably controlled, both within and outside the core working hours, the Applicant will amend Requirement 17 to include reference to this to ensure the construction environmental management plan covers it. The apparatus anticipated to be required is likely to be very small scale (such as small generators for security lighting) and can be sited and housed so as to ensure no significant effects will occur. The Applicant does not consider that construction staff conversations will be a material noise source.
Appendix D Article 35 – removal of 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).	Refer to 11.47, 11.50 and 11.53 of the Applicant's response to CCS' Local Impact Report, and to 1.6.5 of the Applicant's Response to the CCS' responses to the First Written Questions. The article 35 power (to remove hedgerows) is already subject to the requirements in Schedule 2, as are all works and activities permitted by the Draft DCO. Therefore no amendments are required to article 35 or the requirements since the latter already provide the protections sought by CCS in article 35.
Appendix D Requirement 5 – fencing and other	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	The Applicant has to comply with specified security parameters for certain fences, and those will not therefore be 'wildlife friendly'. Other fences can be designed to accommodate appropriate wildlife.

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means of enclosure	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.	It would not therefore be appropriate for wildlife friendly fencing to be a blanket requirement across the Site. The Applicant will discuss this further with the Council and consider amendments to the Draft DCO for Deadline 4.
Appendix D Requirement 6 – Surface and Foul Water Drainage	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.	Whilst Work Nos. 2, 3 and 5 will not have foul drainage required for them specifically, the Applicant does not consider that Requirement 6 needs to be amended. It is a consolidated drainage requirement, and where there is a submission in relation to a Work No. which has no foul drainage, that can be briefly referenced in the submission by APL pursuant to the requirement.
Appendix D Requirement 12 – Reptile Method Statement	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	The Applicant will discuss the detailed drafting of Requirement 12 with the Council and provide any updates to it at Deadline 4. It is anticipated that this requested update can be made.
Appendix D Requirement 27 – decommissioning	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.	The Applicant will discuss the detailed drafting of Requirement 12 with the Council and provide any updates to it at Deadline 4. It is anticipated that this requested update can be made.
Appendix D Requirement 27 – decommissioning	Requirement 27(3) should also be amended to refer to the work being undertaken in accordance with the approved scheme and the implementation timetable.	The Applicant will discuss the detailed drafting of Requirement 27 with the Council and provide any updates to it at Deadline 4. It is anticipated that this requested update can be made.
Appendix F 11.52 - LEMS	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 Updated LEMS (Revision 3) submitted for Deadline 3 includes at paragraph 4.7.4 a commitment to include devil’s bit scabious within the Ecological Mitigation area as it is an important species for the marsh fritillary.
Appendix G – NSER	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	The Applicant's NSER considered the whole of the Project (not just the development which is included within the Draft DCO), and therefore the Secretary of State has the information required from

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	that the Council undertook for the gas and electrical connection planning applications.	the Applicant to consider the Project under the Habitats Regulations. The Applicant does not consider it appropriate for its NSER to be updated with the Council's assessment for the gas and electrical connections.
Appendix H – land drainage	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.	The Applicant will discuss the detailed drafting of Requirement 6 with the Council and provide any updates to it at Deadline 4. It is anticipated that this requested update can be made.

3 Elenor Rasbridge

Summary of Written Representation

- 3.1.1 The respondent has provided a written representation objecting to the proposed development on the following grounds:
- Location for the Power Station;
 - The loss of agricultural land, approximately 70% of the site;
 - The loss of endangered habitat, approximately 20% of the site;
 - The destruction of an established wild life pond, approximately 10% of the site;
 - The disturbance of protected species; and
 - An industrial development in open countryside.

Applicant's Comments

- 3.1.2 The Applicant acknowledges the comments from Elenor Rasbridge, which were originally provided to the Applicant in February 2018 during the Project's Phase 2 statutory consultation period.
- 3.1.3 The respondent's comments are considered in Volume E of the Consultation Report Appendices [APP-061]. The response appears verbatim in Consultation Report Appendix 11.B, and the Applicant's comments on the various topics are located in Appendix 11.C. The respondent is identified as an anonymised consultee body against their comments within the table provided in Appendix 11.C.

Location for the Power Station

- 3.1.4 In relation to the location of the proposed development, the respondent has expressed concerns about the potential effects from "CO₂ emission" and particularly in relation to a localised temperature inversion. These comments are addressed in Appendix 11.C under the heading of "Air Quality" (page 1 of the table provided in Appendix 11.C).

The Loss of Agricultural Land

- 3.1.5 In relation to the loss of agricultural land, the respondent states that the loss of agricultural land that has been in production for a significant length of time should not be permitted unless development of the land would allow for the continued use of the land for agricultural purposes, such as when sheep can continue to graze in and around solar farm developments.
- 3.1.6 The Applicant has clarified that the land proposed for the Generating Equipment Site is Grade 4 poor quality agricultural land "with severe limitations which significantly restricts the range of crops and/or level of yields, mainly suited to grass with occasional arable crops." As such, the conclusion in the Chapter 10 of the Environmental Statement [APP-042] Geology, Ground Conditions and Hydrogeology assesses the impact of the Project on agricultural land to be negligible. The Applicant's comments are located under the heading "Ground Conditions and Agriculture", page 16 of the table provided in Consultation Report Appendix 11.C.

The Loss of Endangered Habitat and a Wildlife Pond, and Disturbance of Protected Species

- 3.1.7 The Applicant notes the respondent's comments in relation to the loss of "fen habitats" and "an established wildlife pond", which are considered under the heading "Ecology" page 12 of the table provided in Consultation Report Appendix 11.C.
- 3.1.8 The respondent has also noted concerns about potential effects on protected species recorded within or close to the Project Site. These comments are addressed under the heading "Ecology" on page 12 of the table provided in Consultation Report Appendix 11.C. The Applicant's response within the table confirms that survey work has been undertaken to assess the effects on the protected species, these findings are presented in Chapter 8 of the Environmental Statement [APP-042].
- 3.1.9 The DCO Application includes mitigation measures, including reinstatement of habitats impacted by the development, the creation of replacement ponds, and enhancement measures to deliver a net gain of habitat. These measures are set out in the Outline Landscape and Ecology Mitigation Strategy (LEMS). Furthermore, the Outline LEMS includes species specific method statements in Appendices A – G which provide details on mitigation measures.
- 3.1.10 An updated LEMS (Revision 3) has been prepared in response to comments from the City and County of Swansea Council (CCS) Ecologist and submitted to the Examination for Deadline 3 (21 December 2018). The mitigation and enhancement measures are now agreed with CCS, as recorded by the updated Statement of Common Ground between the Applicant and CCS, submitted to the Examination for Deadline 3.

An Industrial Development in Open Countryside

- 3.1.11 The Applicant notes the respondent's comments on the proposed location for the proposed development, which the Applicant has considered under the heading "Site Selection", page 25 of the table provided in Consultation Report Appendix 11.C. The respondent has also indicated an alternative brownfield site that could be considered suitable for the proposed development.
- 3.1.12 The Applicant's response within the table provides information on the site selection process, as well as comments on the suitability of the brownfield site indicated by the respondent.