

**ABERGELLI POWER LIMITED ("the Applicant")**

**WRITTEN SUMMARY OF THE APPLICANT'S ORAL CASE PUT AT THE ENVIRONMENTAL MATTERS ISSUE SPECIFIC HEARING**

**WEDNESDAY 13 DECEMBER 2018 at 14:00**

**1. BACKGROUND**

- 1.1 The Issue Specific Hearing ("**ISH**") on environment matters was held on 13 December 2018 at 14:00 at The Village Hotel, Langdon Road, Swansea, SA1 8QY.
- 1.2 The ISH followed the agenda published by the Examining Authority ("**ExA**") on 6 December 2018 ("**the Agenda**"). The Applicant requested that agenda item 7.2 is dealt with earlier in the agenda. This was agreed by the ExA and was addressed after the section 106 updates in agenda item 5. However, the format of this note follows that of the Agenda. The Applicant's substantive oral submissions commenced at item 2 of the Agenda and therefore this not does not items that are procedural or administrative in nature.

**2. AGENDA ITEM 2 – INTRODUCTION OF THE PARTICIPATING PARTIES**

- 2.1 The ExA: - Planning Inspector, Martin Broderick.
- 2.2 The Applicant:
  - 2.2.1 Speaking on behalf of the Applicant: - Nick McDonald (Legal Director at Pinsent Masons LLP). Kate Jones (Senior Associate at Pinsent Masons LLP), Catherine Anderson (AECOM, consultant for the Applicant)
  - 2.2.2 Present from the Applicant: - Chris McKerrow and Kirstin Gardner (Stag Energy).
  - 2.2.3 The Applicant's consultants and legal advisors: specialist topic authors as set out below.
- 2.3 The following parties participated in the ISH:
  - 2.3.1 City and County of Swansea ("**CCS**"): - Andrew Ferguson (Principal Planning Officer), Jonathan Wills (Senior Lawyer), Sean Hathaway, Catherine Matthews and Chris Dale.
  - 2.3.2 Natural Resources Wales ("**NRW**") – Louise Edwards (Senior Planning Officer) and Hannah Roberts (Case Manager)

3. **AGENDA ITEM 4 – STATEMENT OF COMMON GROUND UPDATES**

Ref	Issue raised by the ExA	Applicant's Response
1	Updates to SoCG with CCS	<p>Mr McDonald confirmed that an updated version is anticipated at Deadline 3. The changes reflect that agreement has been reached in relation to ecology matters and those are therefore moving from the not agreed to the agreed section. Mr McDonald stated that this may be the final form of the SoCG that the parties submit and may therefore be the signed version. The Applicant will though continue to liaise with CCS to seek further agreement.</p> <p>CCS confirmed this is not far from agreement. The ExA urged the parties to seek to agree as much as possible.</p>
2	Updates to SoCG with NRW	<p>The Applicant anticipates that the Deadline 2 version is the final version. The Applicant understands that the reference to matters not being agreed (in Annex A of NRW's Written Representation) is to reflect NRW's wish to record that agreement is in principle and detailed matters cannot be agreed at this stage. The extent of disagreement is solely in relation to matters which are not and cannot currently be known (being details submitted pursuant to requirements in the Development Consent Order ("<b>DCO</b>")).</p> <p>NRW confirmed their agreement with the Applicant's statement.</p>
3	Updates to SoCG with Welsh Water	<p>The latest version confirms Environmental Impact Assessment ("<b>EIA</b>") matters are now agreed. The Protective Provisions have been agreed and the SoCG will be updated accordingly and submitted at Deadline 4.</p>
4	Updates to SoCG with National Grid Gas plc and NGET	<p>No change is anticipated for the NGET SoCG submitted at Deadline 1, save that once the Protective Provisions are agreed this would be recorded and the final version would be submitted.</p> <p>National Grid Gas plc's SoCG is in the same position and will be updated once the Protective Provisions are agreed. There may also be a minor update in relation to the planning permission for the gas connection and AGI.</p>
5	Updates to SoCG with the 3 landowners interested parties	<p>Mr McDonald stated that a revised version is anticipated to be submitted at Deadline 3. The Applicant has had a round of comments since the version previously submitted and the drafts are now with the respondents for them to review.</p>

6	Updates in respect of s106 agreement	The Applicant confirmed that there were no further updates since those reported at the DCO ISH held earlier that day.
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4. **AGENDA ITEM 6 – CCS LOCAL IMPACT REPORT**

Ref	Issue raised by the ExA	Applicant's Response
7	CCS to highlight any major issues	<p>Mr Ferguson summarised the local impact report ("LIR") submitted at Deadline 1. CCS has had regard to section 63 of the Planning Act 2008 and the PINS guidance in preparing the LIR. The LIR follows the topic areas listed in the guidance, It was initially written to inform members so also contains a narrative section setting out that background. The LIR first sets out the relevant local planning policies. It does not consider the NPS. The LIR includes sections addressing adequacy of the ES, the DCO, the acceptability of the proposals as a whole. CCS has issues with all 3 elements, but CCS has been working with the Applicant since the LIR was submitted to overcome these issues. Mr Ferguson indicated that he would make clear where progress has been made in reaching agreement on issues since the preparation of the LIR.</p> <p><u>Relevant planning history</u></p> <p>Mr Ferguson explained the planning history of the site, stating that it is a big site with a lot of applications that fall within it or that are captured by it. The most relevant one relates to the change of use of land for a horse racing training facility ground in 2003 and the construction of a stable block in 2004. The section 106 agreement is flexible that it can be used for persons engaged in agriculture.</p> <p>CCS also considered two strategic development opportunities at Felindre (800 dwellings) and Llangyfelach and considered that the proposals will have a neutral impact on those strategic development sites.</p> <p>Mr Ferguson noted that the planning applications for the gas connection and the electrical connection had been approved on 6 December 2018. [<i>Post hearing note</i>: Please see copies of the decision notices attached at Appendix 1 and 2.]</p> <p>The UDP is currently the extant development plan but given that the DCO application is likely to straddle both plan periods, CCS provided commentary on the emerging LDP. CCS previously gave it less weight that they would today, as they have recently received legal advice that they should now give it more weight given the stage the LDP has reached. The ExA asked if the legal advice on the weight to be given to the</p>

		<p>LDP could be shared with the examination. CCS agreed to check and confirm if this advice can be shared with the ExA.</p> <p><u>Effects of the proposed development</u></p> <p>Mr Ferguson explained that there is no need for the LIR to undertake assessment of compliance with the NPS. There are no UDP policies that support a gas fired power station on greenfield land, and it is contrary to Policies EV21 and EV22. However, the proposals could be considered necessary infrastructure if it complies with the remaining emerging policies in the LDP.</p> <p>In relation to design and layout, Mr Ferguson stated that the site context has been appraised and set out in the LIR. It is generally compliant with the site specific design policies and aims of the UDP and emerging LDP, in light of Requirement 2 which will allow CCS control over the detailed design.</p> <p>In relation to air quality, Mr Ferguson stated that the main pollutant of concern is nitrogen dioxide. The application site is not in an Air Quality Management Area. The policies are compliant with current and emerging policy.</p> <p>In relation to noise and vibration, Mr Ferguson explained that the concern is regarding the start up and shut down period. CCS has concerns regarding the figures used for noise levels in Requirement 25. This was discussed with the Applicant on 12 December 2018. There is a discrepancy with the ES and this will be addressed in further written submissions at Deadline 3.</p> <p>In relation to ecology, Mr Ferguson stated CCS has been in discussions with the Applicant since submission of the LIR and CCS is now satisfied with the outline landscape ecology management plan. Grazing regimes have been incorporated.</p> <p>In relation to water quality, Mr Ferguson stated that CCS does not consider the development raises any significant flooding or drainage issues that cannot be mitigated considering the design life of the development at 25 years.</p> <p>The ExA questioned if CCS took the updated 2018 climate change into consideration.</p> <p>In relation to geology and ground conditions, Mr Ferguson stated that CCS considers the proposals are acceptable in terms of land stability and peat management in both the UDP and emerging LDP context.</p>
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5. **EIA MATTERS**

Ref	Issue raised by the ExA	Applicant's Response
7	7.1 – operation	<p><u>Reprise of the Applicant's and NRW responses to ExA Question 1.0.3</u></p> <p>Mr McDonald stated that in relation to the annual operating hours of the project, it will be permitted by the Environmental Permit to operate up to 2,250 hours in a calendar year, but subject to an additional cap which means that it cannot operate for more than 7,500 hours cumulatively over any 5 year period - that equates to an average of 1,500 hours per year. CCS has sought inclusion of those numbers as a Requirement in the DCO (they will be in the Environmental Permit), and the Applicant has confirmed to CCS that this will be a new requirement at Deadline 4.</p>

		<p><u>Reprise of the Applicant's response to ExA Question 1.0.15</u></p> <p>Mr McDonald stated that the DCO seeks consent for a generating station with a gross rated electrical output of 299MW. This matches the term used in Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013, and that in the Hirwaun Power Gas Fired Power Station Order 2015 and the Wrexham Gas Fired Generating Station Order 2017. This ensures that if the Secretary of State grants the DCO it will be in compliance with those Regulations.</p> <p>Rated electrical output is a standard industry term, meaning the measurement will be done in accordance with the applicable British Standard. This ensures consistency of measurement and procurement of generating stations, and legal clarity in terms of what the DCO is consenting.</p> <p>CCS commented that they welcomed the inclusion of the operating hours limit in the DCO.</p>
8	7.2 – Applicant's LVIA <sup>1</sup>	<p><u>Local Impact Report – Reprise of responses in respect of policies EV21 and EV22</u></p> <p>Mr Ferguson reiterated that since the LIR was prepared, the LDP is continuing to emerge and is now at an advanced stage. CCS is expecting the inspector's binding report in January and CCS has had legal advice indicating it should now give more weight to the LDP. The conclusion reached in the LIR is that there will be a significant effect on the local landscape during construction and operation from the loss of fields and reprofiling of the site resulting in a noticeable alteration in landscape. CCS acknowledged that the project had been designed to reduce impact on the landscape. CCS considers the scheme wouldn't have significant wider adverse effects. CCS recognises that there is existing utility infrastructure in the area. The conclusion is therefore a moderate adverse effect on the local landscape which is a significant effect. Catherine Matthews noted that she had nothing to add to that summary.</p> <p><u>CCS response to ExA regarding FWQ 1.0.7</u></p> <p>Mr Ferguson stated that the 2015 gas engines application was determined considering compliance with the UDP and specifically policies EV1, EV2, EV21 and EV22. Taking all these in consideration, it was not considered that there were overriding benefits to justify development in the open area. In relation to EV21 it is considered that the development would not be beneficial for the rural economy, it is not considered to be essential utility service provision, and no evidence that such provision is necessary to provide electricity in this area. There is no demonstration that the proposal has to be in the open countryside. No information</p>

<sup>1</sup> Agenda Item 7.2 was heard out of order, and followed Agenda Item 4 due to availability of witnesses. This note has followed the order of the Agenda.

		<p>was provided on alternative sites and therefore the impact was considered unacceptable, and it was refused.</p> <p>The ExA questioned how similar the current application is to the 2015 application.</p> <p>Mr Ferguson stated the current application is on a different scale, and is backed by need at a national level set out in the NPS. CCS is now considering the emerging LDP as well as the adopted UDP, and regard must also be had to the NPS. In the current application, the Applicant has provided evidence relating to why it needs to be in this location, which the previous application did not.</p> <p>The ExA queried whether the current application is better.</p> <p>Mr Ferguson stated that this application is different as CCS has to consider the emerging LDP as well. If this application is considered purely under UDP it may be unacceptable. But if CCS look at the policy context and NPS and in light of the LDP, there is more recognition of the need for the infrastructure proposed.</p> <p>Mr McDonald stated the Applicant's position is that this application falls to be considered under a different regime, where section 104 of the Planning Act 2008 sets out the basis upon which the Secretary of State must make this decision. That decision must be taken in accordance with the NPS and taking into account other matters that are important and relevant. Mr McDonald stated that the local planning policy is important and relevant, but that the NPS is the primary policy against which the application must be assessed.</p> <p>The Applicant's position regarding the policy balance is set out in the Planning Statement. Mr McDonald stated that the Applicant is strongly of the view that it is in compliance with the NPS overall, that the NPS notes a strong national need and that consent should be granted.</p> <p>The ExA queried the recent State aid case concerning the capacity market auction and whether it would affect the conclusions.</p> <p>Mr McDonald stated that the process the government set up is known as the capacity auction market. It is one way in which power projects can secure an income, but is not the only way to do so. Mr McDonald understands that the Project is not dependent on having a capacity market auction functioning for it to bid</p>
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	<p>the Project into, and it is not anticipated to make a difference to the viability of the Project. The Applicant will submit a note on this issue at Deadline 3.</p> <p><i>[The Applicant has provided the following regarding the capacity auction market post hearing:</i></p> <p><i>The Applicant notes the ruling of the General Court of the Court of Justice of the European Union in Case T-793/14 and the subsequent actions of the Department of the Business, Energy &amp; Industrial Strategy (“BEIS”) in relation to the Capacity Market.</i></p> <p><i>The Applicant would be anticipating participation in a Capacity Auction subsequent to the award of the Development Consent Order which BEIS in its notice of 17<sup>th</sup> November 2018 (<a href="https://www.gov.uk/government/collections/electricity-market-reform-capacity-market">https://www.gov.uk/government/collections/electricity-market-reform-capacity-market</a>) noted that it is seeking to reinstate. A copy of this is appended to this written summary at Appendix 3.</i></p> <p><i>The Capacity Market is only one of a number of revenue streams available to the Applicant for the Project, others including wholesale energy and ancillary services. The Applicant remains confident of the Project's economic viability, even in the unlikely event that the Capacity Market were to be re-designed or even not reinstated.]</i></p> <p><u>Reprise of Applicant’s response to ExA's FWQs, questions 1.0.13 Green Infrastructure and 1.9.12 (PROW)</u></p> <p>Ms Anderson explained that ‘Green infrastructure’ is a policy term which transcends multiple environmental disciplines rather than being a technical single aspect. The Applicant's response to FWQ 1.0.13 was generated reviewing the submitted ES and Planning Statement as a whole and drawing out key conclusions relating to aspects of green infrastructure (relevant aspects are themselves defined in Draft Policy ER2 as modified). The Applicant considers that the Project is compliant with these policies, on the basis of the EIA conclusions.</p> <p>In relation to Policy T7 (PRoW), the response to FWQ 1.9.12 also cited relevant impact assessment conclusions from the submitted ES (in particular Chapter 12) and relevant parts of the Planning Statement to demonstrate policy compliance (insofar as possible with the available evidence and given some uncertainty regarding path diversions).</p> <p>Ms Anderson stated that whilst the EIA provides mitigation on a topic by topic basis, the in-combination assessment demonstrates potential effects on shared receptors across the topics, and specifically in</p>
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		<p>relation to Green Infrastructure, the Applicant notes that mitigation within the topic sections for air quality, landscape and noise are mainly embedded mitigation such as the LEMS and the CEMP.</p> <p>Ms Matthews confirmed that CCS is now of the view (having reviewed the LEMS) that the proposals comply with CCS' policies and that they are clear, and the modelling programme used is standard.</p> <p><u>Photomontages</u></p> <p>Mr Ferguson added that there have been discussions with the Applicant on view points and CCS has accepted conclusions of why certain view points could not be included. Wire frames have been added where requested by CCS. Mr Ferguson stated that view points are very useful tool to accompany the appraisal of effects.</p> <p>The ExA queried whether moderate effects are significant in EIA terms.</p> <p>Mr McDonald stated that the ES sets out a general methodology, supplemented then by particular methodologies within each topic chapter where necessary. In relation to landscape specifically, Mrs Ruth Mauritzen (a chartered landscape architect, AECOM) stated that the ES considers effects that are moderate or major to be significant.</p> <p>Mrs Mauritzen set out the ES' approach to sensitivity of receptors based on GLVIA3 – the sensitivity of a landscape or visual receptor is a combination of the value of the landscape or value placed on the view (undertaken as part of the baseline study) and the susceptibility of the receptor to the specific type of development being assessed. Landscape and visual sensitivity is based on combining professional judgements on value and susceptibility and defining them as high, medium or low.</p> <p>CCS confirmed that they were in agreement. No other parties wished to comment.</p>
9	7.3 - alternatives	<p><u>Reprise of the Applicant's answer to ExA's FWQs - question 1.1.1</u></p> <p>Mr McDonald stated that chapter 5 of the ES sets out alternatives. Section 5.2 identifies factors which influenced the Applicant's choice of site, and the Applicant considers chapter 5 provides the information required on alternatives considered by the Applicant, as per the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the "2009 EIA Regulations"). There were a range of sites</p>

		<p>considered by the Applicant's previous owner before the Project was acquired by the Drax Group, and the acquisition did not include other potential sites and information on why they weren't taken forward.</p> <p>NPS EN-2 sets out influencing factors on site selection but makes clear government does not seek to direct applicants to particular sites. The factors identified in the ES which were considered in site selection are consistent with the factors identified in NPS EN-2. The Applicant considers that the site as assessed against the NPS and other important and relevant matters is compliant with those policies, that the site is appropriate and that consent should be granted.</p> <p>The ExA queried if the Applicant agrees with 2017 EIA Regulations wording that these are "reasonable alternatives".</p> <p>Mr McDonald stated that the duty for the ES is to comply with the 2009 EIA Regulations, but that the alternatives considered were reasonable as they were considered as potential options for the project and unreasonable alternatives would not have been considered.</p> <p>CCS confirmed that they were satisfied with the treatment of alternatives in the Applicant's ES.</p>
10	7.4 – consideration of mitigation	<p><u>Reprise of Applicant's responses to ExA's FWQs - question 1.9.5</u></p> <p>Mr McDonald stated that the question sought information on two aspects, being OCGT technology and reducing glare from buildings.</p> <p>Regarding OCGT technology, this is inherently secured in the DCO in the works provided for in Schedule 1. In order to build other technology, other works would be needed which are outwith those listed in Schedule 1 and therefore the Applicant would be in breach of the DCO should it construct other technology pursuant to the DCO. This is set out in 1.0.3 of the Applicant's response to the First Written Questions ("<b>FWQ</b>"). The environmental permit will also control the technology type. The Applicant's ES has clearly been written on the basis of OCGT technology.</p> <p>Regarding the design of buildings and reducing glare, this is secured by a combination of Requirement 2 and the design principles statement. Requirement 2(5) states that submissions must be in accordance with the design principles and therefore the Applicant will carry out design with regard to the need to reduce glare (part of principle 8).</p>

		<p>Mr Ferguson questioned if the simple inclusion of OCGT in Schedule 1 of the DCO may be beneficial, for clarity. Mr Ferguson stated CCS is happy with provisions in place regarding glare in Requirement 2 and the design principles submitted.</p> <p>The ExA queried whether the Applicant would consider a definition of OCGT in Article 2 of the DCO.</p> <p>Mr McDonald stated that the Applicant will review Schedule 1 again but that the Applicant's initial position is that Schedule 1 does not need to be amended to ensure the technology is OCGT. Other DCOs closely match the wording in the Applicant's draft of Schedule 1. Mr McDonald also noted that the ES is clearly based on OCGT technology. The Applicant committed to provide a further response in writing.</p> <p>NRW confirmed that the technology type will be constrained in the environmental permit for the Project.</p> <p><i>[Post hearing note: The Applicant has reviewed the Hirwaun Power Gas Fired Power Station Order 2015 and Wrexham Gas Fired Generating Station Order 2017 (as examples of generating stations in Wales) and they do not make reference in Schedule 1, or the DCO itself, to SCGT (OCGT) or CCGT respectively. The Applicant considers that the wording of Schedule 1 adequately secures that the Project will be OCGT technology and that no further amendments are required to secure this.]</i></p>
11	7.5 – biodiversity and nature conservation	<p><u>Reprise of Applicant's responses to ExA's FWQs - question 1.6.3 and 1.6.4</u></p> <p>Mr McDonald stated that in relation to 1.6.3 the Applicant considers the matters set out in the question are embedded mitigation, implicit in the design and integral to it, and reflect where the design has been amended to avoid effects as part of the EIA process, or are matters routinely employed in construction or operation of such projects.</p> <p>Mr McDonald stated that 1.6.4 reflects the different legal position for EIA and HRA. As per the Applicant's response, the approach to NSER differs due to the need to ensure that the Competent Authority complies with the ruling in <i>People Over Wind v Teoranta</i> Case C-323/17. The NSER therefore mentions some items that can be classed as mitigation (in HRA terms) but makes clear that it does not <i>rely</i> on those in reaching its conclusions. It identifies that there are no likely significant effects on European Sites, and the items of (potential) mitigation are not measures which have been included in order to avoid impacts on European sites (as is key in the <i>People over Wind</i> case).</p> <p>NRW confirmed that they had no additional comments and were in agreement with the Applicant's position.</p>

		<p><u>Reprise of CCS and NRW responses to ExA's FWQs - question 1.6.6</u></p> <p>It was noted that the 2014 survey may become out of date, so an up to date invasive species survey is requested prior to the development commencing, and the details of this are set out in the management plans. The Applicant considers these are secured in Schedule 2 to the DCO.</p> <p>NRW stated that it accepts the use of 2014 surveys in the ES, and noted that many were updated in 2017 and 2018. It is content with the proposed requirements that secure the further survey work required in the DCO.</p> <p><u>NRW Written Representation Annex A</u></p> <p>Ms Roberts stated that with the submission of the updated bat surveys, NRW are able to rule out concerns with bats at this stage. The remaining comments regarding habitat management for habitats which may be used by otters, water crossings and lighting impacts - NRW are satisfied that all these matters can be dealt with by DCO requirements.</p>
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6. **AGENDA ITEM 8 - HRA MATTERS**

Ref	Issue raised by the ExA	Applicant's Response
12	8.1 - NSER	<p>Ms Roberts stated that NRW does not have a HRA designated sites officer present at the hearing to discuss in detail these matters, but summarised NRW's position that the aerial emissions was reviewed by the air quality officer and deemed not significant. The same is true for the hydrological aspects in relation to Carmarthen Bay and Estuaries where foul drainage proposals on site were deemed insignificant and not likely to have a significant effect due to the dilution process in the intervening waterway.</p> <p>The ExA asked what impact pathways were and whether there are any to European sites in this case.</p> <p>Dr James Riley (AECOM) stated that impact pathways are linkages between the project and European sites and in this case such pathways did exist (specifically through atmosphere and through the water column). Therefore, the applicant had considered all European sites within 10km of the site. The effects due to this project are de minimus/negligible threshold.</p>

		<p>The ExA asked for 'de minimus' to be explained further.</p> <p>Dr James Riley explained that it meant the dose attributable to the project was too small to be meaningful and was so small that it fell well within the natural limits of variation in air quality/water quality parameters.</p>
13	8.2 – conceptual site model	<p><u>Reprise of Applicant's responses to ExA question 1.13.9.</u></p> <p>Richard Knott (a minerals geologist for the Applicant) explained the conceptual site model with reference to diagrams shown on the screen. He stated that the principal contamination sources considered are almost entirely outside the Project boundary with a minor overlap with the colliery site. Other sources include mine gas from a mine adit and other sources from the construction and operation of the power generation plant. Figure 10.3 shows sources of contamination considered. There are also areas of peat on the site.</p> <p>The block diagram shows the process followed. The process followed for these assessments is a standard process that follows the Model procedures for the Management of Contaminated Land (CLR 11). This is largely desk based and is a conservative assessment. On the basis of the outcomes of the desk study, there is no requirement in line with guidance to look in more detail.</p> <p>Significant sources of contamination would be S1 (waste materials in the landfill), S2 (landfill gas) and S3 (mine gas). Regarding pathways, they have direct contact of shallow water beneath the site, migration of ground gases and surface run off into the local drainage system.</p> <p>These sources are offsite and there is no proposal to disturb the ground in this area. There is a low risk in terms of the proposed development. In terms of mine gas generation, there are only two recorded mine entries. One is a tunnel entrance off site. The mine shaft appears to have been infilled. The mine plans show it is probably not connected to the existing workings. The Applicant attempted to find the mine adit recorded in woodland close to the access road.</p> <p>Other potential sources of contamination include peat (the surveys show none), agricultural uses, radon gases and the use of chemicals in construction and operation.</p> <p>The overall assessment of those sources is that there is a low likelihood of them being present, and exposure to receptors on those pathways are either minor or negligible which is not significant in EIA terms.</p>

		<p>Mr Peter Rasbridge stated that there is contamination from an existing landfill site, but there is no mention of that landfill site under the proposed turbine station. Mr Rasbridge knows it is there from local knowledge.</p> <p>Mr McDonald stated that the ES is based on the information the Applicant was able to establish from available data sources and responses it receives through the Preliminary Environmental Impact Report consultation. To the extent that there is contamination on the site that is not known about, there is protection built into the DCO in the form of Requirements 14 (site investigation) and 17 (CEMP), which require there to be a construction environmental management plan which must expressly include measures and the process for dealing with contamination unexpectedly found on the site during the process of building the plant. If there is something of that nature on the site then the DCO is already primed to be able to control matters.</p> <p>The ExA queried if the Applicant looked at historical maps.</p> <p>Mr Knott confirmed that the Applicant has done so. Mr Knott observed that the ES chapter was based on a review of published and publicly available documents. Data sources included Environment Agency landfill licence / permit data (predecessor to Environment Agency Wales and Natural Resources Wales), British Geological Survey (BGS) landfill / infilled ground records and review of archive topographic map data to identify former quarries, pits or other areas that might have been infilled historically. Mr Knott stated that it is unusual to miss something like a landfill site.</p> <p>Mr Rasbridge stated that it is not a historical landfill – it is an illegal operation undertaken by previous landowners.</p> <p>The ExA noted that Requirement 14 requires investigation before construction begins. This will be approved by CCS.</p>
	Integral development	The Applicant confirmed it had nothing to add on the topic further to the discussion at the DCO Issue Specific Hearing held earlier in the day.

7. **OTHER MATTERS**

Ref	Issue raised by the ExA	Applicant's Response
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14	Ground conditions	<p><u>Reprise of Applicant's response to ExA question 1.13.1</u></p> <p>Mr Knott explained that for sand and aggregate resources, the application area includes localised encroachment. A short section of the south access road would be on the boundary of any mineral extraction and not likely to have a material significance. There is a BGS survey borehole in the northern area of the brown shading and this is close to or within the application boundary. The data from the borehole suggests deposits at a depth of 15 - 16m. The data on coal resources also indicates that such deposits are shallow. The mapped entrances into the previous coal mine workings are quite shallow so there is clearly a limit to the likely resources.</p> <p>The ExA queried if there is any sterilisation of resources for the life of development.</p> <p>Mr Knott explained that a small piece on the access road has minimal sterilisation. Where the gas connection crosses there is a minor impact where there will be sterilisation during operation of development. These are considered to be minor impacts for the life of the development.</p> <p>For sand and gravel resource that mineral remains present on the ground and accessible after decommissioning of the development.</p> <p>Mr McDonald stated that, as indicated by CCS earlier in the hearing, the policy position in relation to coal is changing and at both the local level and nationally (PPW10) the direction of travel is that policy is moving away from coal extraction and its use in generating stations, based on current technology. Any sterilisation needs to be viewed in that context, as well as the existing de facto sterilisation from the various utilities and other infrastructure within and around the Site.</p> <p>CCS had no comments.</p>
15	AOB	<p>Ms Anderson set out further comments on the 25 year design life. For ease, this has been set out in reference 18 of the written summary of oral submissions relating to the DCO ISH submitted at Deadline 3, where this matter was first addressed by the ExA.</p>

## APPENDICES

Appendix	Title
Appendix 1	Decision notice for the gas connection application
Appendix 2	Decision notice for the electrical connection application
Appendix 3	BEIS' notice on the Capacity Market

## Appendix 1

Decision notice for the Gas Connection Application



# CITY AND COUNTY OF SWANSEA

## TOWN AND COUNTRY PLANNING ACT 1990-2004

### GRANT OF PLANNING PERMISSION

TO:  
Mr Matthew Smedley  
Aecom  
1 Callaghan Square  
Cardiff  
CF10 5BT

**DATE VALID:** 25.09.2018  
**APPLICATION NO:** 2018/2020/FUL  
**APPLICANT:** Mr David Ball

The CITY AND COUNTY OF SWANSEA, in exercise of its powers under the above ACT, hereby GRANTS planning permission for:

**SITE LOCATION:**  
Land At Abergelli Farm  
Felindre  
Swansea  
SA5 7NN

**PROPOSAL:**  
Installation of a gas connection in the form of a new above ground installation and underground gas pipeline to bring natural gas from the National Gas Transmission system to the Abergelli Power Station, including access, associated engineering operations and landscaping

as referred to in your application and shown on the accompanying plan(s), subject to the following condition(s):-

- 1 The development hereby permitted shall begin not later than five years from the date of this decision.

Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act, 1990.

- 2 The development shall be carried out in accordance with the following approved plans and documents: Figure 1 Rev 005 (Site Location Plan) and Figure 2 Rev 005 (Site Layout Plan) received on 19th September 2018; Drawing No 287257A-APL-CS-14-0602-2 Rev.2 (AGI Elevation Drawings) and Drawing No. 287257A-APL-CS-14-0603-2 Rev 2 (AGI Elevation Drawings Section Details) received on 11th October 2018; and Drawing No 60542910.001 (Proposed Access Arrangements received on 9th November 2018.

Reason: For the avoidance of doubt and to ensure compliance with the approved plans.

- 3 Prior to the commencement of development, a Surface Water Management Plan shall be submitted to, and approved in writing by the Local Planning Authority. The Surface Water Management Plan shall be in substantial accordance with the principles set out in the Outline Surface Water Management Plan. The development shall thereafter be undertaken in accordance with the approved Surface Water Management Plan.

Reason: To ensure that surface water drainage is effectively drained from the site to prevent flooding.

- 4 Prior to the commencement of development, full landscaping details and implementation timetable shall be submitted to, and approved in writing by the Local Planning Authority. The landscaping details shall be in substantial accordance with the landscaping mitigation proposals set out in the Outline Landscape and Ecological Mitigation Plan (Figure 4.4 Rev 001). The landscaping/restoration works shall thereafter be undertaken in accordance with the approved landscaping details and implementation timetable.

Reason: In the interests of visual amenity to ensure that appropriate landscaping is planted to screen the development, replace vegetation to be removed and to ensure appropriate species are used in the interests of biodiversity.

- 5 Any trees or plants which within a period of 5 years from their completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of visual amenity to ensure the landscaping scheme becomes established.

- 6 Prior to the commencement of development, an Ecological Management Plan (to include an implementation timetable) shall be submitted to and approved in writing by the Local Planning Authority. The Ecological Management Plan shall be in substantial accordance with the ecological mitigation set out in the Outline Landscape and Ecological Management Plan. The development shall thereafter be undertaken in accordance with the approved Ecological Management Plan and implementation timetable.

Reason: To ensure that the ecological interests of the site are protected and or mitigated throughout the course of the development.

- 7 Prior to the commencement of development, a Construction Traffic Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Construction Traffic Management Plan shall be in substantial accordance with the Outline Construction Traffic Management Plan. The development shall thereafter be undertaken in accordance with the approved Construction Traffic Management Plan.

Reason: To ensure that the construction of the development does not have an unacceptable impact on highway safety and to ensure that Public Rights of Way are managed appropriately during the course of the development.

- 8 No development shall take place until the implementation of a programme of archaeological work has been secured in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.

Reason: To identify and record any features of archaeological interest discovered during the works, in order to mitigate the impact of works on the archaeological resource.

- 9 Prior to the commencement of development a Construction Environment Management Plan shall be submitted to, and approved in writing by the Local Planning Authority. The Construction Environment Management Plan shall be substantially in accordance with the Outline Construction Environment Management Plan and shall include the following:

- (a) Community liaison;
- (b) Complaints procedure;
- (c) Nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, noise, vibration and lighting);
- (d) Dust management measures;
- (e) Site waste and materials management measures;

- (f) Pollution control measures;
- (g) Security measures and use of artificial lighting;
- (h) A protocol in the event that unexpected contaminated land is identified during ground investigation or construction; and
- (i) Out of hours working procedures and notification procedure.

All construction works shall thereafter be undertaken in accordance with the approved Construction Environment Management Plan and protocols contained therein.

Reason: To ensure the site is developed in a sensitive manner that respects the surrounding environment with regards to neighbouring amenity, pollution, contamination, water resources and ecology/ biodiversity interests.

- 10 No construction work, or the delivery or removal of materials for construction work, shall take place outside the hours of (a) 0800 and 1800 hours on weekdays (excluding public holidays); and (b) 0800 and 1300 hours on Saturdays and public holidays, unless approved in writing by the Local Planning Authority and residents notified in accordance with the details included within the Construction Environment Management Plan prior to the approved variation.

Reason: In the interests of neighbouring residential amenity to ensure construction work does not have an adverse impact.

- 11 Prior to the commencement of development an Invasive Species Method Statement shall be submitted to, and approved in writing by the Local Planning Authority detailing how invasive plants including Himalayan balsam and Japanese Knotweed would be managed, maintained, monitored and remediated so as to control their spread during construction. The development shall be thereafter undertaken in accordance with the approved Invasive Species Method Statement.

Reason: To control the spread of non-native species during the construction of the development.

- 12 Notwithstanding the details submitted to date, the boundary enclosure to be erected around the Above Ground Installation (indicated as palisade fencing) shall be weld mesh or Paladin fencing.

Reason: In the interests of visual amenity.

- 13 Notwithstanding the details submitted to date, and prior to the construction of development, full details of the surfacing of the new access road / carriageway from the existing access road shall be submitted to and approved in writing by the Local Planning Authority. The access road/ carriageway shall thereafter be constructed in accordance with the approved details.

Reason: In the interests of visual amenity and to ensure that the access is appropriate for the rural locale.

- 14 Prior to the first beneficial use of the Above Ground Installation, a written scheme for the management and mitigation of artificial light emissions shall be submitted to, and approved in writing by the Local Planning Authority. The scheme shall be substantially in accordance with the Outline Lighting Strategy. The development shall be implemented before, and maintained during the operation of the development, in accordance with the approved management and mitigation of artificial light emissions scheme.

Reason: To effectively manage the light emissions from the site to avoid unnecessary light pollution and ensure lights do not impact unnecessarily on biodiversity interests.

## **Informatives:**

**Please view plans on City & County of Swansea website <http://property.swansea.gov.uk>**

- 1 The development plan covering the City and County of Swansea is the City and County of Swansea Unitary Development Plan. The following policies were relevant to the consideration of the application: EV1, EV2, EV12, EV21, EV22, EV24, EV30, EV34, EV35, EV38, EV40, EC13, R2, R4 and AS3.
- 2 The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.
- 3 The Highways Authority has advised that the works to facilitate the new priority junction to the north of the site on Rhydypany Road shall be undertaken under a Section 278 Agreement with the Highway Authority.

Note 1: All off-site highway works are subject to an agreement under Section 278 of the Highways Act 1980. The design and detail required as part of a Section 278 Agreement will be prepared by the City and County of Swansea. In certain circumstances there may be an option for the developer to prepare the scheme design and detail, for approval by the City and County of Swansea. However, this will be the exception rather than the rule. All design and implementation will be at the expense of the developer.

Note 2: The Developer must contact the Highway Management Group , The City and County of Swansea , Guildhall Offices, c/o The Civic Centre , Swansea SA1 3SN before carrying out any work . Please email [networkmanagement@swansea.gov.uk](mailto:networkmanagement@swansea.gov.uk).

- 4 The Drainage Officer has advised that the power connecting routes cross some watercourses, the crossing of watercourses is governed by the Land Drainage Act 1991. Depending on the method of the crossing, the Authority's prior written consent may be required. To avoid any issues please contact the Drainage and Coastal Management function via [Drainage.Consents@swansea.gov.uk](mailto:Drainage.Consents@swansea.gov.uk).
- 5 GGAT has advised that the archaeological work must be undertaken to the appropriate Standard and Guidance set by Chartered Institute for Archaeologists (CIfA), ([www.archaeologists.net/codes/ifa](http://www.archaeologists.net/codes/ifa)) and it is recommended that it is carried out either by a CIfA Registered Organisation ([www.archaeologists.net/ro](http://www.archaeologists.net/ro)) or an accredited Member.
- 6 Due to the presence of Cadent and/or National Grid apparatus in proximity to the specified area, the contractor should contact Plant Protection before any works are carried out to ensure the apparatus is not affected by any of the proposed works.

It is the applicant's responsibility to take into account whether the items listed above may be present and if they could be affected by your proposed activities. Further "Essential Guidance" in respect of these items can be found on the National Grid Website (<http://www2.nationalgrid.com/WorkArea/DownloadAsset.aspx?id=8589934982>).

- 7 The applicant should be aware that the proposals impact on Public Rights of Way and diversions (temporary or permanent) may be required before these works can be undertaken. The applicant is therefore advised to contact the Public Rights of Way department to discuss this issue further.

DATED: 6th December 2018

*P J J Holmes*

**PHIL HOLMES  
HEAD OF PLANNING & CITY REGENERATION**

**PLEASE NOTE:** Your attention is drawn to the attached notes which explain, amongst other things, your right of appeal against this decision.

## THE APPLICANT'S ATTENTION IS DRAWN TO THE NOTES BELOW

1. If the applicant is aggrieved by the decision of the Local Planning Authority to refuse permission or approval of the proposed development, or to refuse to grant a Certificate of Lawful Use or Lawful Proposed Use, or to grant permission or approval subject to conditions, he may appeal to the Welsh Ministers in accordance with Sections 78(1) and Section 195/196 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991.

Appeals must be made within a prescribed time period. For 'Householder Appeals' and 'Minor Commercial Appeals' validated from 22<sup>nd</sup> June 2015 onwards, the prescribed period is 12 weeks from the date of this notice. For all other planning appeals, the prescribed period is 6 months from the date of this notice. The definitions of 'Householder' and 'Minor Commercial' applications are available to view at the following website: <http://www.assembly.wales/laid%20documents/sub-ld10212/sub-ld10212-e.pdf>.

Appeals must be made on a form which is obtainable from the Planning Inspectorate, Crown Buildings, Cathays Park, Cardiff, CF10 3NQ – Tel 0303 444 5940, <http://gov.wales/topics/planning/appeals/appeal-guidance-and-information/?lang=en>

. Further information on the appeals process is also available on this website. The Welsh Ministers can allow a longer period for the giving of notice of appeal but they will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Welsh Ministers are not required to entertain an appeal if it appears to them that permission for the proposed development could not have been granted by the Local Planning Authority or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements to the provisions of the development order, and to any directions given under the order. The Welsh Ministers do not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by them.

2. If permission to develop land is refused or granted subject to conditions, whether by the Local Planning Authority or by the Welsh Ministers, and the owner of the land claims that the land has become incapable or reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner may serve a purchase notice on the local planning authority in whose area the land is situated. This notice will require the local planning authority to purchase the owner's interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990. (The local planning authority may accept the notice and proceed to acquire the land; or reject the notice in which case they must refer the notice to the Welsh Ministers.)
3. In certain circumstances, a claim may be made against the Local Planning Authority for compensation, where permission is refused or granted subject to conditions by the Welsh Ministers on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are out in Section 114 of the Town and Country Planning Act 1990.
4. Further correspondence regarding this application should bear the reference number quoted on the top of the form.

## Appendix 2

Decision notice for the Electrical Connection  
Application



# CITY AND COUNTY OF SWANSEA

## TOWN AND COUNTRY PLANNING ACT 1990-2004

### GRANT OF PLANNING PERMISSION

TO:  
Mr Matthew Smedley  
Aecom  
1 Callaghan Square  
Cardiff  
CF10 5BT

**DATE VALID:** 25.09.2018  
**APPLICATION NO:** 2018/2021/FUL  
**APPLICANT:** David Ball

The CITY AND COUNTY OF SWANSEA, in exercise of its powers under the above ACT, hereby GRANTS planning permission for:

**SITE LOCATION:**  
Land At Abergelli Farm  
Felindre  
Swansea  
SA5 7NN

**PROPOSAL:**  
Installation of an electrical connection in the form of a new 400kV underground cable to export power from the Abergelli Power Station to the National Grid Electricity Transmission System at the Swansea North Substation, including associated engineering operations and landscaping

as referred to in your application and shown on the accompanying plan(s), subject to the following condition(s):-

- 1 The development hereby permitted shall begin not later than five years from the date of this decision.  
  
Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act, 1990.
- 2 The development shall be carried out in accordance with the following approved plans and documents: Figure 1 Rev 005 (Site Location Plan) and Figure 1 Rev 005 (Site Layout Plan) received on 19th September 2018.  
  
Reason: For the avoidance of doubt and to ensure compliance with the approved plans.
- 3 Prior to the commencement of development, a Surface Water Management Plan shall be submitted to, and approved in writing by the Local Planning Authority. The Surface Water Management Plan shall be in substantial accordance with the principles set out in the Outline Surface Water Management Plan. The development shall thereafter be undertaken in accordance with the approved Surface Water Management Plan.  
  
Reason: To ensure that surface water drainage is effectively drained from the site to prevent flooding.

- 4 Prior to the commencement of development, full landscaping details and implementation timetable shall be submitted to, and approved in writing by the Local Planning Authority. The landscaping details shall be in substantial accordance with the landscaping mitigation proposals set out in the Outline Landscape and Ecological Mitigation Plan. The landscaping /restoration works shall thereafter be undertaken in accordance with the approved landscaping details and implementation timetable.

Reason: In the interests of visual amenity to ensure that appropriate landscaping is planted to screen the development, replace vegetation and to ensure appropriate species are used in the interests of biodiversity.

- 5 Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of visual amenity to ensure the landscaping scheme becomes established.

- 6 Prior to the commencement of development, an Ecological Management Plan (to include an implementation timetable) shall be submitted to and approved in writing by the Local Planning Authority. The Ecological Management Plan shall be in substantial accordance with the ecological mitigation set out in the Outline Landscape and Ecological Management Plan. The development shall thereafter be undertaken in accordance with the approved Ecological Management Plan and implementation timetable.

Reason: To ensure that the ecological interests of the site are protected and or mitigated throughout the course of the development.

- 7 Prior to the commencement of development, a Construction Traffic Management Plan shall be submitted to and approved in writing by the Local Planning Authority. Construction Traffic Management Plan shall be in substantial accordance with the Outline Construction Traffic Management Plan. The development shall thereafter be undertaken in accordance with the approved Construction Traffic Management Plan.

Reason: To ensure that the construction of the development does not have an unacceptable impact on highway safety and to ensure that Public Rights of Way are managed appropriately during the course of the development.

- 8 No development shall take place until the implementation of a programme of archaeological work has been secured in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.

Reason: To identify and record any features of archaeological interest discovered during the works, in order to mitigate the impact of works on the archaeological resource.

- 9 Prior to the commencement of development a Construction Environment Management Plan shall be submitted to, and approved in writing by the Local Planning Authority. The Construction Environment Management Plan shall be substantially in accordance with the Outline Construction Environment Management Plan and shall include the following:

- (a) Community liaison;
- (b) Complaints procedure;
- (c) Nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, noise, vibration and lighting);
- (d) Dust management measures;
- (e) Site waste and materials management measures;
- (f) Pollution control measures;

- (g) Security measures and use of artificial lighting;
- (h) A protocol in the event that unexpected contaminated land is identified during ground investigation or construction; and
- (i) Out of hours working procedures and notification procedure.

All construction works shall thereafter be undertaken in accordance with the approved Construction Environment Management Plan and protocols contained therein.

Reason: To ensure the site is developed in a sensitive manner that respects the surrounding environment with regards to neighbouring amenity, pollution, contamination, water resources and ecology/ biodiversity interests.

- 10 No construction work, or the delivery or removal of materials for construction work, shall take place outside the hours of (a) 0800 and 1800 hours on weekdays (excluding public holidays); and (b) 0800 and 1300 hours on Saturdays and public holidays, unless approved in writing by the Local Planning Authority and residents notified in accordance with the details included within the Construction Environment Management Plan prior to the approved variation.

Reason: In the interests of neighbouring residential amenity to ensure construction work does not have an adverse impact.

- 11 Prior to the commencement of development, a detailed method statement for crossing the strategic watermain to include a risk assessment, detailed cross-section drawing, protection measures for the duration of the construction works and operational period and restoration work, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.

Reason: To ensure the high pressure watermain is protected both during the course of the works and the operational period.

#### **Informatives:**

**Please view plans on City & County of Swansea website <http://property.swansea.gov.uk>**

- 1 The development plan covering the City and County of Swansea is the City and County of Swansea Unitary Development Plan. The following policies were relevant to the consideration of the application: EV1, EV2, EV12, EV21, EV22, EV24, EV30, EV34, EV35, EV38, EV40, EC13, R2, R4 and AS3.
- 2 The applicant should be aware that the Invasive Non-Native Species (Himalayan Balsam) is located in close proximity to the site boundary according to the BSG ecology report dated 22/7/14 fig 1 INNS plant survey. Himalayan balsam is listed under schedule 9 of the Wildlife and Countryside Act 1981. It is an offence to plant this species or to cause it to grow in the wild. If this species spreads to the wild or to a neighbour's property then landowners could be liable.
- 3 The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.
- 4 The Highways Authority has advised that the works to facilitate the new priority junction to the north of the site on Rhydypany Road shall be undertaken under a Section 278 Agreement with the Highway Authority.

Note 1: All off-site highway works are subject to an agreement under Section 278 of the Highways Act 1980. The design and detail required as part of a Section 278 Agreement will be prepared by the City and County of Swansea. In certain circumstances there may be an option for the developer to prepare the scheme design and detail, for approval by the City and County of Swansea. However, this will be the exception rather than the rule. All design and implementation will be at the expense of the developer.

Note 2: The Developer must contact the Highway Management Group , The City and County of Swansea , Guildhall Offices, c/o The Civic Centre , Swansea SA1 3SN before carrying out any work . Please email [networkmanagement@swansea.gov.uk](mailto:networkmanagement@swansea.gov.uk).

- 5 The Drainage Officer has advised that the power connecting routes cross some watercourses, the crossing of watercourses is governed by the Land Drainage Act 1991, depending on the method of the crossing the Authority's prior written consent will be required, to avoid any issues please contact the Drainage and Coastal Management function via [Drainage.Consents@swansea.gov.uk](mailto:Drainage.Consents@swansea.gov.uk).
- 6 Due to the presence of Cadent and/or National Grid apparatus in proximity to the specified area, the contractor should contact Plant Protection before any works are carried out to ensure the apparatus is not affected by any of the proposed works.

It is the applicant's responsibility to take into account whether the items listed above may be present and if they could be affected by your proposed activities. Further "Essential Guidance" in respect of these items can be found on the National Grid Website (<http://www2.nationalgrid.com/WorkArea/DownloadAsset.aspx?id=8589934982>).

- 7 The applicant should be aware that the proposals impact on Public Rights of Way and diversions (temporary or permanent) may be required before these works can be undertaken. The applicant is therefore advised to contact the Public Rights of Way department to discuss this issue further.
- 8 The Council's Ecologist has advised the following:

The proposal may affect foraging and commuting bats, nesting birds, reptiles, amphibians, otter, and hedgehog. There will also be temporary loss of broad-leaved woodland and trees. Temporarily removed habitats must be re-instated. The following issues will need to be assessed in the CEMP:

#### Protected species

- Pre-construction checks for bats are required on any trees scheduled for removal as part of the development.
- Pre-construction checks are required for otters and water voles. Should these species be recorded, and displaced from the site, then a mitigation strategy is required, detailing the alternative habitat provided for them. The condition must state that the final LEMS will include details of potential displacement and mitigation for protected species.
- Clearance of the site with regard to reptiles must not be undertaken during the winter hibernation period i.e. between November and March.
- No clearance of trees, shrubs, scrub (including gorse and bramble) or empty buildings/construction should be undertaken during the bird nesting season, March to August
- Any trenches on site should be covered at night or be fitted with mammal ramps to ensure that any animals that enter can safely escape. Any open pipework with an outside diameter of greater than 120 mm must be covered at the end of each work day to prevent animals entering/becoming trapped
- Lighting details during the construction phase.

DATED: 6th December 2018

*P J J Holmes*

**PHIL HOLMES  
HEAD OF PLANNING & CITY REGENERATION**

**PLEASE NOTE:** Your attention is drawn to the attached notes which explain, amongst other things, your right of appeal against this decision.

## THE APPLICANT'S ATTENTION IS DRAWN TO THE NOTES BELOW

1. If the applicant is aggrieved by the decision of the Local Planning Authority to refuse permission or approval of the proposed development, or to refuse to grant a Certificate of Lawful Use or Lawful Proposed Use, or to grant permission or approval subject to conditions, he may appeal to the Welsh Ministers in accordance with Sections 78(1) and Section 195/196 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991.

Appeals must be made within a prescribed time period. For 'Householder Appeals' and 'Minor Commercial Appeals' validated from 22<sup>nd</sup> June 2015 onwards, the prescribed period is 12 weeks from the date of this notice. For all other planning appeals, the prescribed period is 6 months from the date of this notice. The definitions of 'Householder' and 'Minor Commercial' applications are available to view at the following website: <http://www.assembly.wales/laid%20documents/sub-ld10212/sub-ld10212-e.pdf>.

Appeals must be made on a form which is obtainable from the Planning Inspectorate, Crown Buildings, Cathays Park, Cardiff, CF10 3NQ – Tel 0303 444 5940, <http://gov.wales/topics/planning/appeals/appeal-guidance-and-information/?lang=en>

. Further information on the appeals process is also available on this website. The Welsh Ministers can allow a longer period for the giving of notice of appeal but they will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Welsh Ministers are not required to entertain an appeal if it appears to them that permission for the proposed development could not have been granted by the Local Planning Authority or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements to the provisions of the development order, and to any directions given under the order. The Welsh Ministers do not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by them.

2. If permission to develop land is refused or granted subject to conditions, whether by the Local Planning Authority or by the Welsh Ministers, and the owner of the land claims that the land has become incapable or reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner may serve a purchase notice on the local planning authority in whose area the land is situated. This notice will require the local planning authority to purchase the owner's interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990. (The local planning authority may accept the notice and proceed to acquire the land; or reject the notice in which case they must refer the notice to the Welsh Ministers.)
3. In certain circumstances, a claim may be made against the Local Planning Authority for compensation, where permission is refused or granted subject to conditions by the Welsh Ministers on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are out in Section 114 of the Town and Country Planning Act 1990.
4. Further correspondence regarding this application should bear the reference number quoted on the top of the form.

## Appendix 3

BEIS' notice on the Capacity Market

## **17 November 2018: Further information on the judgment**

Thursday's State aid judgment against the European Commission on the Tempus case was decided on procedural grounds. The Court held that the Commission should have consulted more fully before granting State aid approval in 2014. It was not a challenge to the nature of the Capacity Market mechanism itself. The judgment removes State aid approval for the Capacity Market, preventing the UK Government from holding any capacity auctions or making any capacity payments under existing agreements until re-approval.

### **Impact of the judgment:**

National Grid has confirmed that they do not believe the judgment will cause any risk to security of supply this winter. We are working closely with them to ensure that market participants are informed of the judgment.

### **Next steps:**

We are now considering the judgment in detail alongside the European Commission, and are working to support the Commission as they consider the legal options available to them.

We believe the Capacity Market is an effective mechanism that is designed in such a way as to minimise costs to consumers. The design of the Capacity Market has not been called into question, and our focus is therefore on ensuring it can be reinstated as soon as possible.

As part of this, we are seeking immediate State aid approval for a T-1 auction that will cover winter 2019/20. Alongside this, we are working to reinstate the full Capacity Market regime and are discussing the swiftest means of doing so with the Commission.

The Government and National Grid will ensure that market participants are kept updated.