



## **CITY & COUNTY OF SWANSEA**

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# **Deadline 3 Submission**

**Abergelli Power Project**

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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 3 Submission**

The following document constitutes CCS Deadline 3 Submission. These responses have been prepared to respond to the Deadline 2 submissions primarily submitted by the applicant and following the Issue Specific Hearings last week.

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) Issue Specific Hearing 2 on the Draft Development Consent Order (DCO) – Post Hearing Submission – 13<sup>th</sup> December 2018
- Appendix B) Issue Specific Hearing 3 on Environmental Matters – Post Hearing Submission – 13<sup>th</sup> December 2018
- Appendix C) CCS response to Draft DCO (Version 2) submitted at Deadline 2
- Appendix D) Summary of Local Impact Report (referred to in Issue Specific Hearing 3)
- Appendix E) Council's Response to Applicants Deadline 2 Response to Local Impact Report

## Appendix A

### Abergelli Power Examination

#### Issue Specific Hearing 2 on Draft DCO

#### POST SUBMISSION HEARING – WRITTEN SUBMISSION OF ORAL CASE 13<sup>th</sup> December 2018 – The Village Hotel, Swansea

PINS REFERENCE: EN010069

CCS EXAMINATION REFERENCE: 20011204

CCS APPLICATION REFERENCE: 2018/1289/DCO

#### 1 and 2. Introductions

The City and County of Swansea (CCS) were represented by Andrew Ferguson (Principal Planning Officer) and Jonathan Wills (Senior Lawyer).

#### 3. Request to Question a Person making Oral Representations Directly under S94 of the Planning Act

No request made.

#### 4. DCO Articles

##### DCO Articles

##### Part 1 – Definition of Commence

CCS raised concerns regarding the provision of temporary fencing that is excluded from the definition of the commencement of development and the relationship with Requirement 5 which requires approval of both temporary and permanent fencing.

Further clarification is sought with regards to what types of fencing this will comprise, why it will be required, the duration it will be required for and the mechanism for removal to ensure that it does not circumvent Requirement 5.

##### Definition of Maintain

The Local Authority have concerns with regards to the extent of the current definition of maintain. Firstly, the definition includes the terms “remove”, “reconstruct” and “replace and improve”, which when read together with the whole of the definition, and the DCO, causes some concern. The definition goes on to state that any this includes any part of, but not the whole of the authorised development...

The authorised development is fully laid out in Schedule 1 and comprises all of the works required, listed into separate work items. The current definition allows for a whole range of works providing that the whole of the authorised development isn't removed, reconstructed, replaced etc. The current wording suggests that they could

reconstruct the majority of the generating equipment site like for like providing that they don't change the *whole* of Work No. 1. This amendment (introduced at deadline 2) aimed to overcome the Council's concerns but it still fails in this regard. Work No. 1 still includes various works and would still enable 95% to be removed/ replaced without breaching this definition.

As the Authority have indicated in the Relevant Representation, a decommissioning strategy will be required in order to consider the safe removal of the generating equipment and apparatus at a later date. When you include the word "remove" in the definition, the developer could remove items as part of this definition provided it is not the 'whole' rendering the decommissioning strategy superfluous if they removed all of the generating equipment under the definition of maintenance for example. There would be no controls over this as required in Requirement 27 of the Order, provided the whole of the project is not removed. Buildings could therefore be removed without the requisite surveys for example.

In addition, allowing various parts to be reconstructed at various points (providing it's not the whole) would enable the plant to operate indefinitely providing it doesn't give rise to any materially new or different environmental effects from those assessed in the environmental statement.

'Reconstruct' implies by its very definition that something will be rebuilt despite the applicant stating that permission can only be implemented once. This definition extends beyond the scope of what is considered to be maintenance.

'Remove' refers to taking something away. There is no requirement to put something back in its place so it is not clear how this forms part of general maintenance.

Whilst the Council has raised concerns about "replace and improve" in previous correspondence (and maintains these concerns as they also permit significant changes), they are more akin to what would be expected as routine maintenance.

CCS maintain that a DCO is not akin to planning permission and in line with case-law, should be clear on the face of the permission. The inclusion of a definition of "maintenance" within the legislation further reinforces the distinction between DCO and planning permission that the Council previously raised in the Deadline 2 submission.

CCS queried whether it would be beneficial if the applicant provided an indication of the planned maintenance schedule to enable further consideration of this issue. It is appreciated that unplanned outages cannot be predicted at this stage.

#### Definitions of Shut down and Start Up Period

The Council reiterates their concerns with regards to the inclusion of both of these elements as the working day is deemed sufficient for these activities to take place in. These essentially add 6 hours to what is already a 55 hour working week.

Added to this, the inclusion of site maintenance machinery and plant such as generators, wheel washers and road sweepers should 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. CCS have previously raised issues with this process (and the start up period specifically given that it would be quiet at this time), 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.

The Council have had experience with construction sites and complaints relating to vehicles arriving and workers shouting etc. causing disturbance before 8am. Given the quiet nature of the immediate area it is possible that activity on site from 7:30, albeit not plant/machinery noise, has the potential to cause disturbance and harm to amenity. The shut down period is less of a concern.

#### Part 2 – Article 6 and 7

CCS had no comments

#### Part 4 – Authority to survey and investigate the land

CCS had no comments.

#### Part 5 – Powers of Acquisition

CCS had no comments.

#### Part 6 – Operations

CCS had no comments.

#### Part 7 – Article 40 – Certification of Plans

CCS had no comments.

#### Article 42(6) – Notification

CCS welcomed the amendment to Article 42(6) to include a requirement to clarify precisely what provision/ article that consent is being sought under (to ensure that the request is considered by the relevant person).

### **5. Schedule 1 – Authorised Development**

#### OCGT

CCS could not confirm whether the any other type of generating station could operate within the items defined in Schedule 1.

CCS queried whether it would help if Open Cycle Gas Turbine was included within the definition at the start of Schedule 1 for clarity.

## Integral Development

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 see the issue with regards to the exclusion of the gas and electrical connections.

However, CCS have accepted the decision of the secretary of state and has not considered this issue further.

However, it is considered that the documentation submitted by APL is clear on the matters of what have been included and what have been excluded. It is queried whether anyone has been materially disadvantaged as a result of the inclusion of the access as “associated development”

CCS would admit to overlooking the access road element in terms of not considering why this was not “associated development”.

## **6. Schedule 2 – Requirements**

### 6.1 Requirements

#### Requirement 3 – Provision and Maintenance of Landscaping

CCS confirmed that the inclusion of the mitigation area in 3(1) was welcomed to address concerns raised in the LIR.

CCS also welcome the intention of the applicant to update Requirement 3(5) to build in a review mechanism with written approval of Local Authority required.

#### Requirement 8 – Pre-Construction Ecological Constraints Survey

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

For clarity, this would need to be within 2 years of the earliest survey date.

An additional subsection would also be required and had been discussed with the applicant in advance of the Hearing (to split implementing works and re-survey work if the 2 year deadline is missed).

#### Requirement 10 – Invasive Species Survey and Remediation

CCS welcome the change to remove “suitably qualified person” suggested and replacement with a specific accreditation.

#### Requirement 11 – Bat Method Statement

Requirement 11(4) is welcomed.

#### Requirement 12 – Reptile Method Statement

CCS queried whether Requirement 12(2) should be re-written to refer to “that numbered work” as each individual work item may also be relevant and it would provide the applicant with more flexibility when they come to undertake the works.

#### Requirement 25 – Control of Noise During Operational Phase

CCS advised that the Pollution Control Officer was not in attendance and comments in this regard would be covered at Deadline 3.

had requested that Requirement 23(3) be deleted from the Draft DCO. This provision extends the working day by an hour and goes beyond the reasonable working hours normally anticipated on a site such as this. The Authority have received numerous complaints from other sites when people are setting up beforehand and finishing up for the day.

#### Requirement 27 – Decommissioning

CCS welcomes the revised wording to clarify the extent of work required to be included within the decommissioning and the exclusion of “unless otherwise approved in writing” in 27(1) and 27(2).

However, CCS maintain their concerns with regards to Requirement 27(3) in that it still says “subject to obtaining the necessary consents” and is therefore considered to be unenforceable and imprecise. This should be deleted.

The applicant in their Deadline 2 submission notes that it is included so that they are not criminally liable in the event that they can’t obtain consent. This clearly highlights that this provision is unenforceable if these other consents are not obtained. On this basis, there is no guarantee whatsoever that the project would be decommissioned. This links back to the importance of the decommissioning bond to be able to pay for the decommissioning strategy. These provisions work against decommissioning and do not provide any guarantee that it will happen.

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

#### 6.2 Status of Environmental Permit

The Council had no comments to make.

#### 6.3 Time Limit for Operation

CCS concerns were twofold in this respect. Firstly, the operational time life indicated in the ES is considered misleading as it was considered by CCS staff that this is the lifetime of the development when providing comments and this is not now the case. CCS could not comment on whether NRW viewed it this way or whether this

impacted on members of the public. The applicant acknowledged as much when referring to it as a 'red herring'.

Secondly, concerns are raised with regards to drainage attenuation which has only been designed for a specific lifetime when climate change allowances are not as conservative as they are in future years (as indicated by the sensitivity analysis extending up to 2069). When considered in conjunction with no time limit on the permission and the definition of "maintain" as currently worded, the plant could be in operation in perpetuity, significantly beyond the 25 year operational period, the 35 year period indicated in the sensitivity analysis and the design life of the drainage attenuation.

Whilst the ES may have assessed the effects as permanent, it also referred to the 25 year design life throughout the document. Drainage is one area of concern that the design has not assessed beyond 2069.

The development has not been considered with the inclusion of a 30% climate change allowance as would normally be expected for a permanent development with no lifetime.

#### 6.4 Bond for Decommissioning

The Council are still firmly of the belief that a bond should be provided to cover the full cost of decommissioning, repayable upon completion of this element to ensure that there is funding available to dismantle/ decommission the project in the future.

There have been various instances (for example in mining) whereby restoration works have not been undertaken as a company has entered liquidation and the Council do not consider that the public purse should have to pick up the cost of any decommissioning works as noted in PPW. The applicant has not provided any assurances in the event of liquidation.

Whilst there may not be a policy basis for this<sup>1</sup>, the Council are firmly of the belief that this issue is both important and relevant. Further weight is added to these issues given concerns over the current definition of maintain, no time limit included within the draft DCO, the cost of decommissioning and issues over enforceability of Requirement 27 (subject to obtaining the necessary consents).

As previously noted, the current definition of decommission is not enforceable. The applicant, as they have admitted, wishes to avoid criminal liability in the event that certain consents are not obtained. There is no requirement to seek these consents and no incentive to do anything if the applicant has trouble obtaining them.

The provision of a bond is considered to be a safeguard/ guarantee that the works will be decommissioned as the Council could seek to obtain the necessary consents

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<sup>1</sup> As noted in Appendix E, Planning Policy Wales (Edition 10) was introduced on 4<sup>th</sup> December and states that the 'polluter pays' principle is a key planning principle. In addition, Paragraph 5.2.24 states that energy related developments should be decommissioned and sites restored...LPAs should use planning conditions or obligations to secure decommissioning and remediation of the site. This further reinforces the Council's position.



and seek to decommission if not. The bond would be fully repayable as well upon completion.

The current wording of the Draft DCO is defective and a bond is therefore relevant and important to ensure decommissioning takes places.

### 6.5 Enforcement Costs

The Council wishes to clarify that Enforcement is a non-statutory function and so it is therefore discretionary and no specific funding is allocated towards it and austerity is increasingly resulting in reduced budgets for Local Authorities. The provision of funding towards a dedicated Enforcement Officer, especially during the construction period would result in enforcement issues being resolved quickly in a manner that won't delay development and should result in better public relations for the applicant.

CCS do not consider that the public purse should have to cover enforcement costs which are likely to arise as a result of this proposal given experience of other similar proposals.

### **7. Schedule 8 – Modification of Compensation and CP Enactments**

CCS had no comments to make.

### **8. Schedule 11 – Provision for the Protection of Specified Undertakers**

CCS has no comment to make.

### **9. Schedule 12 – Procedure for the Discharge of Requirements**

#### Article 2(2)

CCS welcome the amendment in Article 2(2) to increase to 28 days.

#### Fees

CCS do not consider that refunding any fees submitted for applications that exceed the 8 week period is appropriate as the Council will have still undertaken work in their consideration. It is likely that this will drive behaviour and applications could be refused to ensure that fees are not refundable. This presents a risk to the Council.

CCS would refer to their Deadline 2 comments with regards to charging. It remains imperative that funding is put in place to cover the costs of discharging Requirements and ongoing monitoring and enforcement.

Prior to the Issue Specific Hearings, APL and CCS agreed to discuss this issue in further detail to see whether agreement could be reached on the funding mechanisms to be included and this will be considered further in the new year.

### **10. S106 Agreement**

CCS confirmed that since the previous Hearings, the applicant has met with Council Officers to discuss the Education and Employment schemes which were with the applicant for further consideration and the PRow contribution is with the Council for further consideration.

CCS expects to reach agreement before the close of the examination.

CCS also clarified that the bond and payments could also be included within the S106 if required.

## Appendix B

### Abergelli Power Examination

#### Issue Specific Hearing 3 on Environmental Matters (including the Environmental Impact Assessment and Habitats Regulations Assessment) and Other Matters

#### POST SUBMISSION HEARING – WRITTEN SUBMISSION OF ORAL CASE 13<sup>th</sup> December 2018 – The Village Hotel, Swansea

PINS REFERENCE: EN010069

CCS EXAMINATION REFERENCE: 20011204

CCS APPLICATION REFERENCE: 2018/1289/DCO

*N.B. The following comments follows the agenda and not the actual order that the topics were discussed in.*

*As part of the discussion, the Examining Authority queried whether the legal advice referred to by the Council (regarding weight to be given to the Emerging LDP could be supplied). It has subsequently come to light that the response was given verbally. The Inspectors Binding Report is expected on 10<sup>th</sup> January 2019.*

#### **1 and 2. Introductions**

The City and County of Swansea (CCS) were represented by Andrew Ferguson (Principal Planning Officer), Jonathan Wills (Senior Lawyer), Chris Dale (Countryside Access Team Leader), Sean Hathaway (Environment Officer) and Catherine Matthews (Landscape Architect).

#### **3. Request to Question a Person making Oral Representations Directly under S94 of the Planning Act**

No direct cross-examination.

#### **4. Statement of Common Grounds Update**

Since the Deadline 2 submission, the applicant has been in discussion with CCS and the Statement of Common Grounds has been progressed in terms of the ecological matters (4.C.1 and 4.C.2) on the basis of a revised Outline Landscape and Ecological Mitigation Plan (Version 3 dated 10<sup>th</sup> December 2018).

#### **5. S106 Agreement Update**

Since the previous Issue Specific Hearings, the applicant and CCS have been in discussion and had various meetings to progress the Education Scheme,

Employment scheme and PROW improvements. This was clarified at the end of the morning session (see appendix A) and no further updates.

## **6. CCS Local Impact Report Summary**

The summary is included in full at Appendix D.

## **7. EIA Matters**

### **7.1 Operation**

- **Reprise of Applicant and NRW's Response to ExA Question 1.0.3 (Secure Annual Hours Permitted)**

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 serves 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 are proposed in The Milbrook Power Order (undetermined).

As noted in the Apendices 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.

- **Reprise of Applicants response to ExA Question 1.0.15 (Output exceed 299MWe)**

CCS has no comments to make on this issue.

### **7.2 The applicant's Landscape and Visual Impact Assessment**

Differences of opinion about the robustness of the applicant's methodology and findings for landscape assessment with comments on:

**CSS LIR:**

The proposed development would have a significant impact on the local landscape character during construction and operation arising from the loss of fields, extensive ground re-profiling and would be a noticeable alteration in the landscape, more apparent as a result of its solid mass. It is appreciated that the development has been sited as far as practicable to reduce its impact (within the site) and there is other energy infrastructure in the surroundings.

CCS considers that the scheme would not have a significant adverse effect on the character and quality of the wider landscape. However, there would be a moderate adverse effect on the local landscape character of the project site itself and views from surrounding footpaths/ properties.

### **Reprise of CCS Response to ExA question 1.0.7 (Previous Application)**

The previous application was determined in accordance with the UDP policies and specifically EV1, EV2, EV21 and EV22. EV22 seeks to protect the countryside for its own sake and EV21 provides criteria for where a proposal for non-residential development within the open countryside would be acceptable.

Policy EV1 states that development should be appropriate to its local context, not result in significant detrimental impact on local amenity and sensitively relate to existing development patterns. EV2 is a siting policy states that development must have regard to the character of the area and should avoid locations that would have a significant adverse impact on landscapes.

Taking all the above into consideration, it was not considered that the positive merits of the development would be so overriding as to justify this development within the countryside which, it considered, would result in significant visual harm at a local level. The application was not submitted with a LVIA, but policies EV1 and EV2 are complementary in that they refer to the siting and impact at a local level.

“The proposed development would constitute an unjustified form of development within the countryside that would not accord with the criteria of Policy EV21 and would result in significant visual harm to the character and appearance of the countryside in the area, contrary to Policies EV1, EV2, EV21 and EV22 of the City and County of Swansea Unitary Development Plan (2008).”

In respect of Policy EV21, it was considered the development would not:

- Be beneficial for the rural economy or rural employment
- Meet any overriding social or economic need of the local community. The community is already served by adequate electricity infrastructure.
- Provide appropriate farm diversification
- Be sited on previously developed land and would not constitute essential utility service provision.
- There was no evidence that such provision was essential in order to provide electricity to local residents in this area.

Moreover, under this policy it must be demonstrated that the development needs to be located within the countryside rather than a nearby settlement and that it accords with the Council's conservation and design policies. No information was provided regarding alternative sites within the area, which the applicant asserts would need to be in the countryside given the location of the sub-station. However, the Council approved similar applications on industrial estates further indicating the site did not have to be located in the countryside.

CCS clarified that the current proposal was significantly different to the aforementioned planning application and raised different issues in terms of scale and operation. The Council accepts the reasoning behind the location but would have concerns if this application was considered solely against UDP policies. However, the Council recognise this is considered under a different statutory regime and as such, NPS's are given greater weight.

### **Reprise of Applicant's Response to ExA questions 1.0.13 (Green Infrastructure) and 1.9.12 (PROW)**

#### Green Infrastructure:

CCS accepts the response from the applicant.

#### PROW:

The latest Draft DCO includes provision within Requirement 21 to include details for the Management of PROW during the construction phase as 3 PROWs crossing the site are expected to be temporarily stopped up to ensure public safety.

Provision for improvements to the PROW are also proposed as part of the S106 agreement to enhance the PROW network and CCS are currently considering this issue further.

### **Photomontages, including Interested Parties' opinions of them, in the context of their use as a tool**

The Council had input into the location of the various viewpoints and made suggestions to improve the usability of the photomontages as a tool with the inclusion of wireframes and indicative images to provide clear context and scale to the proposals. These comments were taken on board by the applicant.

Where CCS suggested additional viewpoints or clarification, the applicant has provided this and CCS has no issue with the APL response.

CCS are of the opinion that the proposals are a useful tool for interested parties', including the Council to form an opinion on the visual impact of the development.

### **Significance/ Significant Effects**

CCS agree with applicant's assessment.

### **Value and Interrelationship with Sensitivity**

CCS agree with applicant's assessment.

### **7.4 Reprise of Applicant's answer to ExA question 1.1.1 (Range of sites looked at)**

Whilst it is unfortunate that the intellectual property in relation to the other sites is not owned by Drax Group plc, CCS has no issues with the response. Information on the other sites could benefit the decision-making process but the explanation given is satisfactory.

It is known that the nearby Council/ WG owned Business Park was considered but the Council maintain aspirations for this as a high-tech business park providing significant employment opportunities and were therefore reluctant to consider the proposal further.

### **7.5 Consideration of Mitigation**

**In the process of designing the project, mitigation has taken two forms. There is:**

- 1) Embedded mitigation**
- 2) Additional mitigation, which is to address potentially significant effects**

### **Reprise of applicant's response to ExA question 1.9.5 (OCGT for Lighting and Glare)**

#### OCGT

The Council wouldn't be in a position to question the technology used in any great detail or clarify whether a closed-cycle gas turbine could operate within these parameters. For clarity, it is suggested that the technology type is included in Schedule 1.

CCS originally had concerns about the inclusion of additional buildings but considers this to be less of an issue providing it does not give rise to any materially greater impacts than has been assessed.

#### Glare

The Council are satisfied that the provisions within DCO Requirements and the Design Principles Statement give sufficient control to ensure that glare is reduced as far as is practicable in the detailed design stages of the development.

## **7.6 Biodiversity and Nature Conservation**

### **Reprise of Applicant's Response to ExA Question 1.6.3 and 1.6.4 (Embedded Mitigation)**

No comments raised.

### **Reprise of CCS and NRW responses to ExA question 1.6.6 (survey data) and REP01-26**

The 2014 INNS data requires updating and an INNS management plan/biosecurity plan with fresh mapping provided before any development works begin. This is controlled via Requirement 10.

### **NRW Written Representation Annex A**

#### EPS Licenses:

CCS do not consider that reference needs to be made within the DCO itself. As the applicant has stated, the Outline LEMS refers to the potential requirement for licenses and these would not normally be required as part of a planning condition. Sufficient controls are in place to ensure that the applicant is aware that licenses may be required.

#### Lighting Strategy:

CCS does not have any issues with consulting NRW on the lighting strategy or the amended wording of Requirement 26 or 19.

#### Protected Species Crossings:

CCS have no issues with the revised Outline Drainage Strategy in relating to ensuring the protection of species.

## **8 HRA Matters**

### **8.1 No Significant Effect Report**

#### **Reprise of NRW Responses to ExA questions:**

- **1.6.10 Crymlyn Bog SAC and Ramsar;**
- **1.6.11 Carmarthen Bay and Burry Inlet SAC and Ramsar;**
- **1.6.18 and 1.6.20 NSER**

CCS are satisfied with the comments provided and has no further issues to raise.

### **8.2 Conceptual Site Model**



- **Reprise of Applicant's responses to ExA questions 1.13.9**

CCS has no comments to make on the conceptual site model but welcome the explanation provided.

## **9. Other Matters**

### **9.1 Integral Development**

- **The applicant will be asked to detail its arguments on why it believes the Work No. 2 Access Road in particular is integral to the development**

CCS does not consider it is suitably qualified to respond to this query as a consultee on this NSIP as it is for the Secretary of State to decide on a case-by-case basis. This issue was addressed in Hearing 2 and was not reprised.

### **9.2 Ground Conditions**

- **Reprise of Applicant's response to ExA question 1.13.1 (Sterilisation of mineral resources)**

CCS maintain that the applicant can't demonstrate that mineral resources won't be sterilised without a defined lifetime on the project as otherwise the site could keep generating electricity. In any event, this sterilisation will be in the long term and permanent for some aspects where infrastructure will be left in situ.

As for compliance with UDP policy, the applicant clearly hasn't complied. They have sought to utilise policies for the working of minerals to state that mineral extraction wouldn't be acceptable in that area. The policies do not consider this as justification for not submitting a minerals survey. The aim to be able to assess the impact of the development in relation to the quality and quantity of the minerals that would be potentially sterilised.

The proposals are therefore not UDP compliant, however as stated in the LIR, there is a case that the proposals could be compliant with the Emerging LDP which is being given greater weight in the determination of applications given the advanced stage it is at.

## **10. Any Other Business**

None.

## Appendix C

### CCS Response to: Draft DCO (Revision 2) (Deadline 2)

*Issues in italics previously raised by CCS in the Deadline 2 submission in regards to version 2 have been retained for ease of reference against the current version.*

#### Article 2 Definitions

**“Commence”** – CCS maintain concerns regarding the provision of temporary fencing that is excluded from the commencement of development and the relationship with Requirement 5 as it has not been clarified what this fencing refers to. If it is only required for the items listed within the definition (site investigation, mineral resources survey and peat management plan) then it should be clearly stated as such along with provision for these fences to be removed after these works have been undertaken to ensure that Requirement 5 serves a useful purpose.

**“Maintain”** – *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.*

It is considered that the term “replace and improve” is sufficient to encapsulate what is likely to be required as part of any maintenance works. As has been noted before, there is little reference within the ES to what maintenance works are expected and it may aid the Examination to have a schedule of anticipated maintenance works to consider this further.

‘Reconstruct’ implies by its very definition that something will be rebuilt despite the applicant stating that permission can only be implemented once. This definition extends beyond the scope of what is considered to be maintenance.

‘Remove’ refers to taking something away. There is no requirement to put something back in its place so it is not clear how this forms part of general maintenance.

Whilst the Council has raised concerns about “replace and improve” in previous correspondence (and maintains these concerns as they also permit significant changes), they are more akin to what would be expected as routine maintenance.

CCS maintain that a DCO is not akin to planning permission and in line with case-law, should be clear on the face of the permission. The inclusion of a definition of “maintenance” within the legislation further reinforces the distinction between DCO

and planning permission that the Council previously raised in the Deadline 2 submission.

**“Start up” and “Shut down period”** – The Council have had experience with construction sites and complaints relating to vehicles arriving and workers shouting etc. causing disturbance before 8am. Given the quiet nature of the immediate area it is possible that activity on site from 7:30, albeit not plant/machinery noise has the potential to cause disturbance and harm to amenity. The shut down period is less of a concern.

The working day on site already extends to 10 hours a day during the week and 5 hours a day on the weekend which are considered sufficient time to ensure no detrimental impact on residential amenity as a result of noise and disturbance.

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

*Article 7(9) – 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).*

The applicant has clarified that this Article only refers to works specifically required later on in the DCO, not additional works to trees/ hedges etc and this clarification is accepted.

### **Schedule 2**

#### **Requirement 3 - Provision and Maintenance of Landscaping**

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

Concerns remain from Deadline 2 submission about the review mechanism in 3(5) but CCS understands that the applicant intends to include a review mechanism within the next draft which is welcomed.

#### **Requirement 5 – Fencing and Other Means of Enclosure**

The applicant has indicated that not all of the fencing will be “wildlife-friendly” (allow access for species such as badgers, otters, etc) as security fencing around the Generating Site would have to meet strict standards. This may be the case, but further clarification should be provided on which fences won’t be able to include these features and they should be included where possible. It is again suggested that wording to this effect is included for clarity.

### **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.*

CCS previously 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. The applicant has advised that it is their intention to state that no foul drainage is required in each application to discharge the Requirement for these work items which is accepted.

### **Requirement 8 – Pre-construction Ecological Constraints Survey**

Deadline 2 comments remain – 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 start within 2 years of the earliest of all 3 surveys (badgers, otters and water voles) having been approved.

It was also suggested that sub-section (5) is split into two parts with (5) requiring implementation within specified timetables and a new subsection (6) requiring the steps in (2) to (5) be repeated as currently, any re-surveys would not have to be implemented within 2 years.

This has been discussed with the applicant and has been agreed in principle.

### **Requirement 10 - Invasive Species Survey and Remediation**

CCS previously requested further precision rather than the use of the term “suitably qualified person and experienced person or body”. It is understood that the applicant will change this in due course which is welcomed.

### **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 previously requested further precision rather than the use of the term “suitably qualified person and experienced person or body”. It is understood that the applicant will change this in due course which is welcomed.

### **Requirement 15 – Minerals Resources Survey**

*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.*

*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 25 – Control of Noise During the Operational Phase**

The comments from the applicant regarding operational noise levels being set at 5dB above background e. g. 39dB nighttime at Cefn Betingau, would be characterised as being indicative of having an adverse impact (BS4142).

Whilst CCS understands what the applicant is trying to say about setting operational noise levels (rating levels) at the lowest minor effect and so resulting in negligible effects; the exact wording of the Requirement potentially allows an adverse impact to occur.

The response goes on to state that there is the potential to lower plant noise if acoustic characteristics require. CCS maintain that if this is possible, limits should be lowered to ensure there is no adverse impact in the first instance.

As suggested at the Issue Specific Hearings, it is suggested that the applicant’s consultants and the Council’s Pollution Control department liaise further on this issue to try and reach agreement.

## **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**

*Requirement 27(1)– 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. The applicant has indicated a new subsection outlining that they would “seek” the necessary consents but this is still imprecise and safeguards the applicant’s position.

The applicant acknowledges this in their Deadline 2 Response to the Council’s Local Impact Report (21.13) where they state:

“The Applicant's position is on the basis that it should not be criminally liable under the DCO for failure to decommission if in the intervening period between DCO grant and decommissioning, other consent requirements are imposed.”

This reiterates the importance of the provision of the bond under the “polluter pays” principle identified in Planning Policy Wales (10<sup>th</sup> Edition – December 2018). This links back to the importance of a decommissioning bond in the event that the site is not decommissioned. The applicant should have to seek any necessary consents as would be expected and the bond would provide a further safeguard to the public purse in the event of the company entering liquidation or not seeking the consents.

The Council are of the view that if one of the necessary consents could not be obtained for any legitimate reason (such as the presence of European Protected Species for example), then the Council would have to take a pragmatic view in the public interest as to whether to proceed with enforcement action as well as consider whether it would itself comply with relevant legislation/ duties in its actions.

Decommissioning should not be left to the Environmental Permit as it forms part of the DCO application, has been assessed as such in the ES and it is imperative that Requirement 27 can be enforced.

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.*

CCS would refer to their Deadline 2 comments with regards to charging. It remains imperative that funding is put in place to cover the costs of discharging Requirements and ongoing monitoring and enforcement.

Prior to the Issue Specific Hearings, APL and CCS agreed to discuss this issue in further detail to see whether agreement could be reached on the funding mechanisms to be included and this will be considered further in the new year.

However, CCS will continue to liaise with the applicant in this regard.

The applicant has also indicated that they will remove the provision for holding fees in response to Deadline 2 comments which is welcomed by the Local Planning Authority.

## **Appendix D**

### **Local Impact Report Summary**

The following is a summary of the Council's Local Impact Report providing a brief overview and an update where required.

- 1.1. The following is a summary of the Local Impact Report of the City & County of Swansea.
- 1.2. The report was prepared in accordance with s60(3) of the Planning Act 2008 (as amended) and the Planning Inspectorate's Advice Note One, Local Impact Reports (April 2012).
- 1.3 The Local Impact Report has been prepared to incorporate the topic areas suggested in the Advice Note, the subject areas in the Environmental Statement, and the obligations and proposed requirements submitted with the application for DCO.
- 1.4 The Local Impact Report was written for the benefit of Members of Planning Committee so included details on the purpose and structure of the report and details of the site / surroundings and process which will not be reiterated here where people will be aware of the situation/ legislative context.

### **2.0 Purpose and Structure of the LIR**

- 2.1 The purpose of the LIR is to provide details of the likely impact of the proposed development on the administrative area of the City & County of Swansea (CCS).
- 2.2 The LIR in the first instance considers the principle of the development before working through the topic issues identified in the Environmental Statement by:
  1. Identifying relevant development plan policy and supplementary guidance;
  2. Identifying relevant local issues where appropriate;
  3. Providing a commentary on the adequacy of the application.
- 2.3 The LIR also includes commentary on the adequacy of the draft Development Consent Order (DCO), including the draft Heads of Terms for a Section 106 Obligation and the requirements. Where it has been logical to do so, these comments have been made under the relevant topic area. In other cases it has been specifically addressed under the DCO section of the report.

### **3.0 Relevant Planning History**



- 3.1 Due to the nature of the extent of the “red edge” application site, several planning applications cover the application site although most are not of direct relevance to the proposal given the extent of Abergelli Farm.
- 3.2 The most relevant application in terms of planning history relates to the change of use of land from agricultural use to a horse racing training facility ground (Ref: 2003/0561).
- 3.3 Planning permission was subsequently granted for the construction of a stable block in August 2004 (Ref: 2004/0415) and for the constructions of two detached dwellings to provide horse trainer and stable hand accommodation (Ref: 2004/0329).
- 3.4 The project site at Abergelli Farm currently comprises fields and farmland used for sheep and horse grazing as well as horse training and breeding.
- 3.5 Given the siting of the apparatus across ‘the gallops’ and the incorporation of ‘the teardrop’ mitigation area to the south of the Generating Equipment, it is considered that the proposals would have an adverse impact on the horse training facility.
- 3.6 However this is considered to have a local impact on their business. Whilst two dwellings were approved to provide accommodation for a stable hand and horse-trainer, the S106 agreement provided that they could also be used for persons employed in agriculture within the vicinity so the impact is considered to be neutral on this permission.
- 3.7 The Authority are also considering two strategic residential led applications in the surrounding area (at Felindre for 800 dwellings and at Llangyfelach for 1,950 dwellings but consider the proposals would have a neutral impact on these applications.
- 3.8 *Update: The gas and electrical connection planning applications were approved at Planning Committee earlier this month.***

#### **4.0 Statutory Development Plan**

- 4.1 The City and County of Swansea UDP was ‘time expired’ on the 31st December 2016. The UDP however remains the extant development plan for the City and County of Swansea Council and, under the provisions of the Planning and Compulsory Purchase Act 2004 (as amended); planning decisions must be made in accordance with the UDP unless material considerations indicate otherwise.

- 4.2 Given that the DCO application is likely to be considered during a period that straddles the adoption period of the LDP (assuming that it is found to be sound), both policy contexts are given.
- 4.3 Update: Since the LIR was prepared, the LPA have been giving the Emerging LDP more weight given the advanced nature of its preparation in line with legal advice the Authority has received. The Inspectors Binding Report is expected in early January 2019. [The Inspector queried whether he could have a copy of this legal advice but CCS can subsequently confirm that it was given verbally following advice on a different aspect of the LDP and it was not considered necessary to follow this up in writing.]
- 4.4 As stated in the Local Impact Report Guidance Note, there is no need for the LPA to undertake an assessment of compliance with National Policy Statements. This commentary relates to extant, emerging and national policy only where relevant to the principle of development and site-specific issues.

## **ASSESSMENT OF IMPACTS AND ADEQUACY OF RESPONSE**

### **5.0 Principle of Development**

- 5.1 In terms of the current UDP policy the proposals are considered to be contrary to policy in principle with regards to Policies EV 21 and EV22 as a fossil-fuel powered energy generating station on greenfield land and this is the extant development plan at the current time for the reasons set out above.
- 5.2 In terms of the Emerging LDP policy (which is to be afforded less weight at the current time), the proposals could be considered necessary infrastructure development if they comply with the remaining policies of the Emerging LDP.
- 5.3 Within this context, the positive, negative and neutral impacts of the proposal are considered further below in light of current and emerging policy.

### **6.0 Design and Layout**

- 6.1 Overall, it is considered that the site context has been comprehensively appraised as explained within the application and set out above and the proposal is generally compliant with the site specific design aims of the UDP and emerging LDP policies. It is difficult to assess overall compliance with the UDP / emerging LDP policies referenced (EV1, EV2 and PS2) above as they also include various other topics considered below and some of the criteria are less important given its nature, scale and siting. Requirement 2 subsections (4) and (5) ensure that the Council would have further consideration of the detailed design of the proposal and ensure it complies with the Design Principles document which is welcomed.

## **7.0 Air Quality**

### Local Issues

7.1 The main pollutant of concern for CCS is nitrogen dioxide (NO<sub>2</sub>). There are two standards/objectives set within the Air Quality (Amendment) (Wales) Regulations 2002 (the EU Limit Values mirror these standards):

- The hourly NO<sub>2</sub> concentration shall not exceed 200ug/m<sup>3</sup> on more than 18 occasions in any one calendar year;
- The NO<sub>2</sub> annual mean shall not exceed 40ug/m<sup>3</sup>.

7.2 CCS declared parts of the lower Swansea Valley an AQMA in 2001, for exceedance of annual mean NO<sub>2</sub> objective. The originally declared AQMA was amended in 2010 due to further exceedance of NO<sub>2</sub> objective occurring within the Sketty and Fforestfach areas.

7.3 In terms of air quality, the proposals are considered to be compliant with Policies EV1 and the emerging LDP policies referenced.

## **8.0 Noise and Vibration**

8.1 CCS have raised concerns with regards to the figures used in Requirement 25 (Control of Noise During Construction).

8.2 CCS are also concerned about the inclusion of start-up and shut down periods of half an hour each side of the working day. [Given that this point had been made / discussed in the Morning Issue Specific Hearing, it was not elaborated on again].

8.3 Provided the Requirements are firstly amended, and secondly adhered to during construction and operation, the proposals are considered to be compliant with both UDP policy EV40 and the LDP policies referenced above.

## **9.0 Ecology**

9.1 The Environmental Statement incorporates inherent mitigation integral to the design of the scheme and states that it has taken into consideration the effects of the impact and identifies measures required to mitigate adverse impact.

9.2 CCS considers that further information is required in order to adequately assess the mitigation measures and have requested additional information in an updated LEMS, which includes both mitigation measures and biodiversity enhancement measures. CCS maintain that these should seek to deliver a net ecological gain rather than simply being designed to only achieve damage limitation and/or like for like replacement. Mitigation measures have

been discussed between the applicant and CCS and further discussion is expected on this.

9.3 The Outline Landscaping and Ecology Mitigation Strategy seeks to illustrate the mitigation that has been incorporated into the landscape design. However, detail is lacking regarding the Ecological Mitigation Area in terms of how exactly it will be enhanced to mitigate for the loss of a variety of habitats. Apart from ponds and embedded landscape planting, it is unclear what other newly created habitats will be provided in mitigation. In 4.3.1 of the LEMS habitat enhancement measures will apparently provide valuable habitats for a very wide range of species from invertebrates to mammals. There is no detail of exactly how this will be achieved, nor how this will be managed or monitored. In the ES, there is mention of artificial badger setts being created, although no details are given of the location of these or any methodology.

9.4 Recent discussions have confirmed that the gallops use in the 'teardrop' mitigation area would cease and further detail around permitted grazing regimes will be incorporated into an Updated Outline LEMS. This is welcomed and CCS will continue to liaise with APL in this regard to ensure that Outline LEMS is suitably detailed and fit for purpose.

9.5 CCS are also of the opinion that amendments are required to the Requirements themselves and these are suggested below in Section 20.

## **10.0 Water Quality and Resources and Flood Risk**

10.1 The Council does not consider that the development raises any significant flooding or drainage issues that cannot be mitigated and the proposals are therefore considered to comply with UDP policies EV2, EV33, EV34 and EV35 and emerging LDP policies in this regard.

## **11.0 Geology, Ground Conditions and Hydrogeology**

11.1 A Site Investigation, Mineral Resources Survey and Peat Management Plan are proposed as requirements within the draft DCO (14 and 16) and would be sufficient to ensure that these issues are investigated further and remediated if required. The proposals are therefore considered acceptable in terms of land stability and peat management in both the UDP and emerging LDP context.

11.2 However, whilst Requirement 15 seeks to consider the impact on Minerals that could be taken into account in the decommissioning strategy, no assessment has been undertaken to consider compliance with policies R2 and R4 of the UDP. The proposals are therefore contrary to the extant development plan in this regard.

11.3 Unlike the assessment within the UDP, the proposals could be compliant with Emerging Policy RP 12 if there is considered to be an overriding need for the development, but this needs to be considered with the scheme as a whole.

## **12.0 Landscape and Visual Effects**

12.1 The proposed development would have a significant impact on the local landscape character during construction and operation arising from the loss of fields, extensive ground re-profiling and would be a noticeable alteration in the landscape, more apparent as a result of its solid mass. It is appreciated that the development has been sited as far as practicable to reduce its impact (within the site) and there is other energy infrastructure in the surroundings.

12.2 CCS considers that the scheme would not have a significant adverse effect on the character and quality of the wider landscape. However, there would be a moderate adverse effect on the local landscape character of the project site itself and views from surrounding footpaths/ properties.

## **13.0 Traffic, Transport and Access**

13.1 In terms of the impact on the highways network, it is accepted that there would be a short term minor adverse effect during the construction period. However, the proposals include embedded mitigation and the level of traffic generation during operation is likely to be low. The Council are satisfied with the locations of the access road and the traffic generation and the proposals are considered compliant with Policies EV3, AS2, AS6, AS10 and EV12 of the UDP and compliant with the Emerging policies referenced above.

13.2 It is noted that there would be a significant adverse impact on the PROWs in the short term but this is proposed to be mitigated in part through Requirement 21 and with the provision of a financial contribution to temporarily divert/ improve the surrounding footpath network. Whilst the final sum is still being negotiated, with these provisions secured, the proposal is considered to comply with Policy AS3 of the UDP and emerging policy T7.

## **14.0 Historic Environment**

14.1 Subject to the necessary Requirement being included within any DCO, and subject to any CADW comments that are submitted directly to the Examining Authority, the proposal is considered to comply with UDP policies EV1, EV2 and EV6 and the emerging LDP policies referred to above.

## **15.0 Socio-Economics**

15.1 Concern was raised about the scope of the Tourism Business Survey which was considered to be very limited as it is based on only 17 business replies

the majority of which are some distance away in Brynorch (12 miles via road and the other side of A4067).

15.2 Penllergaer Woods and Morryston businesses have been discounted as they are south of the M4, yet the applicant feel it is appropriate to consider surveying businesses in Brynorch.

15.3 The Council also raised concern that the timing of the survey was undertaken (November and December) during a traditionally very quiet time of the year for accommodation and visitors, although this may not be the case for pubs and restaurants.

15.4 Whilst the response rate is good, the sample is small when you consider what it could have been had the geographic area been wider.

15.5 Notwithstanding the above comments on the survey, it is appreciated that the comments of the Council appear to have been sought in 2014 on the approach and methodology of the business survey but it is unclear whether a response was submitted. In light of this, the applicant has assumed that the survey is sufficient and the overall outcome is not questioned by the Council.

15.6 The overall effects of the Socio-Economic chapter are accepted notwithstanding concerns about the limited nature of the original survey methodology.

## **16.0 Other Effects Considered**

16.1 No issues were raised with regards to other effects considered or residual and cumulative impacts which were commented on in individual sections.

## **17.0 Development Consent Order, Obligations and Requirements**

17.1 The comments referred to the original Draft DCO and given that we are now on version 2, are somewhat outdated.

17.2 As a result, I will not focus on these but will instead provide a brief outline of the key issues which include:

- the definitions of maintain
- Procedure for approvals and the default 'approval' approach
- Review of landscaping and ecological mitigation
- Concerns around the CEMP and Requirements 18-20 have been clarified by the applicant

17.3 The main areas of concern that remain outstanding are the enforceability of the decommissioning Requirement (27), a Requirement limiting the lifetime of the development, the Council's request for a repayable bond to ensure

provision is made and request for funding to discharge Requirements, and review and monitor any consent.

- 17.4 As I have advised on the situation with regards to the S106 agreement in the morning session, I won't comment on this further.