



CITY & COUNTY OF SWANSEA

Fifth Deadline Comments

Abergelli Power Project

PINS REFERENCE: EN010069

CCS EXAMINATION REFERENCE: 20011204

CCS APPLICATION REFERENCE: 2018/1289/DCO

EN010069

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

Deadline 5 Submission

The following document constitutes CCS Deadline 5 Submission. These responses have been prepared to respond to the Deadline 4 submissions primarily submitted by the applicant.

Responses have only been provided elsewhere where the LPA considers it necessary and may aid the examination. Issues raised previously that have not been addressed have not been reiterated below.

The response comprises the following appendices:

Appendix A) CCS Response to Applicant's Comments on Deadline 3 submission (Deadline 4)

Appendix B) CCS Response to Planning Statement Addendum

Appendix C) CCS Response to Draft DCO (Revision 4) (Deadline 4)

Appendix D) CCS Response to Updated Landscape and Ecological Mitigation Strategy (Revision 4)

Appendix E) CCS Response to Outline CEMP (Revision 2)

Appendix F) CCS Response to Illustrative Elevation of Road Structure Over Utilities

Appendix A

CCS Response to: Applicant's Comments on Deadline 4 Submission

Appendix C - Requirement 5

The amendment to clarify that permanent fencing for Work Nos. 2, 3 and 4 will allow free passage of otters, badger and water vole is welcomed. It is accepted that it is not reasonable to require provision in the fencing for Work No. 1.

Appendix E – Air Quality (9.12)

CCS raised this as a query, to ensure that the dispersion modelling was accurate irrespective of the internal diameter of the stack. Whilst this has not been answered directly, the responses indicates that the velocity is the key issue and NRW has not raised any issue with the modelled data. On this basis, CCS are satisfied that the internal stack diameter does not need to be controlled in the DCO.

Appendix E – Noise and Vibration (10.14)

CCS has no further issue with regards to Requirement 25.

Appendix E – Commencement (20.8 -20.9)

Clarification in the definition is welcomed.

Appendix E – Requirement 3 (20.20)

The LPA considers that the review mechanism as phrased is acceptable and the revision would require an update to the timetable of implementation (secured under subsection 3(1)) should it be required so this is adequately secured.

Appendix E – Ecological Management Plan (20.28)

CCS maintains that Requirement 9 should be amended in a similar manner to Requirement 3 to require ongoing review of the management, monitoring and maintenance of the ecological management plan as was stated in the Local Impact Report. This issue has not been addressed.

Section 4.7.2. of the Outline LEMP sets out the management aims of the LEMP which include:

- Create, maintain and enhance habitats of value to wildlife to provide benefits for the local environment and biodiversity;
- Create marshy habitats in conjunction with the attenuation areas for amphibians and invertebrates (including the marsh fritillary); and,

- Establish a flexible management and maintenance regime able to respond to changing needs or objectives.

These aims are not secured currently.

Section 4.8.2 states that management of habitat enhancement measures during the operational phase will be secured by requirement in the DCO and via appropriate grazing and management agreements but this is clearly not the case.

Sections 8.8.36 – 8.8.38 of the ES refer to monitoring and management but these are not secured without a review mechanism included in this Requirement. The review would allow for amendments if the mitigation is not working as intended.

Without this review mechanism, the LPA would have no control to ensure that the ecological mitigation is functioning as intended and could not require changes if there are issues with the LEMS.

Appendix E – Decommissioning Strategy (20.52)

The inclusion of subsection 28(4) by the applicant clearly acknowledges that subsection 28(3) is defective as currently worded.

Requirement 28(3) is not sufficient to ensure decommissioning for the reasons previously pointed out by CCS. It is imprecise and fails the requisite tests set out in the Circular - The Use of Planning Conditions for Development Management (016/2004).

The inclusion of Requirement 28(4) does not however advance this issue further or resolve the issue previously highlighted. The applicant is under no obligation to adequately pursue any such application and again, as with the “subject to obtaining the necessary consents” phrase within subsection 28(3), the applicant is seeking to limit liability in the event they can’t obtain the necessary consents. Submitting an application for said consents does not ensure they are actively pursued or the application is of sufficient quality in the first instance.

The only way to resolve the Council’s issue with the construction of 28(3) is to remove “subject to obtaining the necessary consents”. This is a clear and simple measure to overcome the issue of enforceability.

Appendix E – Time Limit for the Duration of the Consent (21.1)

CCS accepts that whilst the duration of the development indicated in the ES is misleading, the applicant has provided further clarification that the attenuation ponds are suitably sized to accommodate increased climate change allowances in the longer term.

CCS maintain their concern about the open nature of the DCO however given the terminology used in the definition of maintain and the fact that the proposal is considered to be acceptable in the medium term during the transition to a low carbon economy – the development is not low carbon itself.

CCS maintain that a time limit should be included on the permission.

Appendix E – Bond for Decommissioning (21.12)

CCS disagrees with the applicant's interpretation of PPW in this regard. This is expanded upon in full below in Appendix B – CCS Response to Planning Statement Addendum and is not repeated in this section.

Appendix B

CCS Response to: Planning Statement Addendum

1.2.2. The Council agrees that PPW 10 and the Swansea LDP should be treated as relevant and important policy considerations by the Examining authority and the Secretary of State.

1.5.2. CCS does not agree that the proposals accord with both PPW 10 and the Emerging LDP with the exception of 6.3.4 of the former and Policy ER5 of the latter and this is expanded upon further below.

2.2.2. CCS disagrees that there has been a limited number of changes to local and national policy since the submission of the DCO application but accepts the substantive changes listed in Paragraph 3.3.3.

At a national level, PPW 10 is not just another revision of Planning Policy Wales as previous versions were. The whole structure of the document has changed from 13 topic based chapters to a focus on the Well-being of Future Generations Act and placemaking. The Foreword indicates that this is a completely revised version of PPW.

At a local level, there have been some amendments to the Emerging LDP as a result of the Examination but the weight to be attributed to the Emerging LDP has increased significantly since the submission of the DCO application. The LDP Examinations have been completed, Matters Arising Changes/ Inspectors Matters Arising Changes have been incorporated and consulted upon and the Inspector has issued their Binding Report into the LDP. It is expected that this situation will further change within the next month as the LDP will, all being well, be adopted at Full Council on the 28th February 2019.

If it is adopted, it will replace the extant UDP as the development plan for Swansea (Section 38(6) purposes).

2.5.2. CCS wishes to clarify that the position in respect of the Emerging LDP has changed since the submission of the Applicant's Planning Statement Addendum at Deadline 3 in that CCS has now received the Inspector's Binding Report which has essentially found the Emerging LDP to be sound. The LDP now needs to be formally adopted by CCS but the submission of Inspector's Report adds further weight in the planning balance to the LDP at the current time.

3.4.2. CCS has previously included relevant policies of the Emerging LDP in the Local Impact Report. In general, the content of the policies has not changed significantly however the weight to be afforded to them has increased given the advanced stage of the LDP and following the submission of the Inspector's Binding Report into the LDP.

3.4.5. CCS considers the substantive policy changes to the Emerging LDP to be accurate but Policy ER 6 stresses the need to *enhance* as well as maintain areas of ecological importance (that is reflected in PPW 10 – including paras 6.2.4, 6.2.11, 6.4.2, 6.4.3 and 6.4.4).

3.4.7. CCS agrees that the Emerging LDP should be afforded considerable weight until it is adopted later this month.

3.4.8. CCS wishes to clarify that at the current time, the statutory starting point for decisions is the extant UDP although it is acknowledged that it is “time-expired”. Notwithstanding this, until the LDP is formally adopted, and supersedes the UDP, consideration still needs to be given to the UDP. CCS acknowledge however that this is likely to change in the near future.

4.3.2. This section provides a citation ⁽²⁾ to a footnote about the Well-being of Future Generations (Wales) Act 2015 which raises two important points about PPW as a whole which seeks to incorporate the 4 pillars of sustainable development (environmental, social, cultural and economic) and the public duties contained within the Act into national planning policy. In this regard, as noted on P25 Para 2.2, environmental considerations require high standards of restoration and decommissioning to be achieved.

It is imperative that a decommissioning bond is provided to ensure that the needs of future generations are not compromised in the event that the generating equipment is not decommissioned (due to the construction of Requirement 28 and the inability to enforce or the applicant entering liquidation). The apparatus would have a detrimental long term impact on the landscape if it is left to deteriorate as a result of not being decommissioned and future generations may have to cover the cost of decommissioning if it is not secured at the current time. This would fall on the public purse which a) doesn't accord with the “polluter pays” principle and b) would impact on future generations as a result of an omission/ oversight in a decision taken at the current time so would not be sustainable.

4.3.26. CCS wishes to point out that the proposed gas-fired power station itself is not low carbon as there is no carbon capture and storage. This is clarified in paragraph 3.34 and section 3.6 of National Policy Statement – Overarching National Policy Statement for Energy (EN1). Therefore, whilst it is acknowledged that fossil fuel power stations have a vital role in providing reliable energy supply in NPS, this does not mean they are low carbon or the policies in PPW support them per se.

4.3.28. The applicant refers to paragraph 5.9.24 and states that conditions/ legal agreements should be used to secure decommissioning, however it does not support financial bonds unless it is specifically for mineral developments. Whilst this section does not specifically state that a bond has to be provided, it is clear that there will be circumstances where a decommissioning condition (or Requirement in this instance) is not sufficient and therefore a legal agreement needs to be used to secure

decommissioning and site remediation. CCS considers that this is one such instance and a bond should be provided for within a S106 agreement. This approach accords with policy but notwithstanding this, a bond is considered to be both an important and relevant consideration.

CCS has already clearly explained why Requirement 28 is insufficient on its own. The applicant concedes this when they admit that it has been phrased as such to limit criminal liability (see applicant's Response to CCS Local Impact Report – Reference 21.13 on P44– Deadline 2 submission). This is not consistent / compliant with the “polluter pays” principle.

The applicant also appreciates that the cost of decommissioning and site restoration is significant, running into millions of pounds at the present time. In these circumstances, it is considered essential for the developer to provide a decommissioning bond.

PPW 10 is clear throughout that the “polluter pays” principle is integral to sustainable development. CCS has suggested that a bond secured via legal agreement should be in place to ensure that this principle is carried through into this development.

The applicant then refers to footnote 97 which doesn't form part of the policy itself but provides a point of clarification and source of further information. Footnote 97 follows the first sentence of para 5.14.46 of PPW which states “Planning conditions should be able to secure the restoration, aftercare and after-use of mineral sites^{97,98}”. The policy states that planning conditions *should* be sufficient, however the footnote indicates that there are times when bonds will be legally required on coal sites either by virtue of a local Act or condition/ legal agreements. As has been referenced previously (evidenced in “The Restoration and Aftercare of Coal and Aggregate Workings” submitted at Deadline 4), conditions alone aren't always sufficient and there are very significant costs associated with decommissioning of this development, some of which will be unforeseen at the current time.

Paragraph 9.5.24 states that energy related developments have to be decommissioned. To achieve this, planning conditions or legal agreements should be secured which goes further than the policy requirement for coal/ aggregate developments referenced above. This aligns with the “polluter pays” principle. The Examining Authority has queried precedent as part of the Examination and CCS can point to a legal agreement being secured for the wind farm at Mynydd y Gwair to secure decommissioning.

CCS has set out clearly why a bond is required in this instance and is both **relevant** and **important** to the determination of this DCO which can be summarised below:

- 1) The cost of decommissioning is significant (circa £2,000,000+ at the current time).

- 2) PPW emphasises the importance of the “polluter pays” principle in order to achieve sustainable development, considering the long term impact of the proposals for the lifetime of the development.
- 3) PPW requires decommissioning to be secured through conditions or legal agreements.
- 4) There is precedent for this at a local level on Mynydd y Gwair Windfarm.
- 5) Requirement 28 (Decommissioning) is currently defective in construction as it states that it is “subject to obtaining the necessary consents”.
- 6) The applicant appreciates that Requirement 28 (Decommissioning) is unenforceable as they seek to limit liability (see applicant’s Response to CCS Local Impact Report – Reference 21.13 on P44– Deadline 2 submission).
- 7) Notwithstanding that Requirement 28 should be amended so that it is enforceable, there remains a risk in the current economic climate that the applicant could enter liquidation prior to decommissioning which would result in the public purse having to cover the significant cost of decommissioning.
- 8) CCS has requested a fully refundable bond that builds up commensurate with the lifetime of the development to ensure that sufficient finance is provided in line with the “polluter pays” principle and the sustainable development principle. This is a safeguard to ensure that future generations are not burdened (financially, environmentally and socially) as a result of meeting current needs.
- 9) The approach suggested is considered to share the risk of decommissioning as it would be built up during the lifetime of the development. CCS would still be at some risk until the bond is sufficient to cover the cost of the works.
- 10) Assuming the development is decommissioned, the bond would be returned to the applicant. The applicant is therefore no worse off in the long run but shares the risk of the development.

4.3.30. CCS wishes to clarify that Requirement 28 does not set out a firm legal commitment to decommission the generating station. The construction is currently flawed so that requirement 28 is unenforceable in the event that a “necessary consent” is not obtained. T

he applicant has previously accepted this when they have stated that it seeks to limit their liability (see applicant’s Response to CCS Local Impact Report – Reference 21.13 on P44– Deadline 2 submission).

Whilst the Environmental Permit may provide further controls, what happens to the permit in the event of liquidation has not been clarified, and in any event, would still

fall on the public purse to resolve which does not accord with the “polluter pays” principle.

4.3.32. The applicant states that only a small part of the access road is located within a mineral buffer zone as identified in the LDP. Whilst CCS accepts that there is a presumption against extraction of coal except in wholly exceptional circumstances, CCS wishes to clarify that the generating equipment site itself is located in an aggregate safeguarding area as defined on the LDP proposals map (this was submitted at Deadline 1 at the end of CCS’ response to the Examining Authority’s First Written Questions).

4.4.7. CCS just wishes to clarify that without a time limit on the lifetime of the permission, it cannot be stated that effects are only temporary in nature as there is no guarantee that the proposed operation would cease. Weight is added to this given concerns over the definition of “maintain” as currently drafted.

4.4.11. CCS wishes to clarify that Policy RP2 has been split into RP2A (Noise pollution) and RP2B (Light and Air pollution) but the changes the applicant identify are considered to be accurate in respect of the content changes.

4.4.18. The applicant has advised that no weight should be provided to the specific requirement to incorporate environmentally sympathetic flood risk mitigation as there is no requirement to do so in statute or national policy. CCS advises caution in this approach. Whilst approval from the SuDS Approving Body (SAB) will not be required, the principles of SuDS were contained in PPW 9 and remain in PPW 10 although it has been clarified that SAB approval will be required for new developments submitted after 7th January 2019. The applicant’s drainage scheme has been prepared in accordance with the CIRIA SuDS Manual and consideration has been given to the SuDS Management Train. Therefore, CCS maintain that the correct approach is to give the policy weight and consider how the applicant has sought to address SuDS issues, which CCS has raised no issues with.

4.4.30. CCS maintains that policy EU1 is not applicable as this proposal is not renewable or low carbon (as clarified in NPS – EN1) as stated in para 7.51 of the Local Impact Report.

5.1.3. The applicant considers that there are only 2 sections of national / Emerging LDP policy that the proposal is not consistent with and therefore these should be given limited weight in the determination of the application.

CCS is mindful that it is for the Examining Authority and Secretary of State to apportion weight to the relevant policies contained within PPW 10 and the Emerging LDP and therefore has limited comments to what it considers to be key issues within the DCO examination, specifically the decommissioning bond.

To that end, whilst CCS may disagree with certain minor aspects / interpretations of the current policy situation, it is not considered helpful to the Examination to explicitly set these out individually, unless they are considered to result in a potential point of challenge. The Local Impact Report assessed general compliance with the Emerging LDP (as well as the extant UDP) and whilst changes have been incorporated subsequently during the LDP Examination process, CCS does not consider that the substance of comments has changed significantly.

The main issues that CCS does not consider has been addressed by the applicant is the importance of the “polluter pays” principle which has been introduced in PPW 10 and the overall change in focus of PPW to embed the Well-being of Future Generations (Wales) Act 2015 into national planning policy in a clear manner. In addition, the applicant provides limited acknowledgement of the policy stance that a legal agreement may be required to secure decommissioning even if the word “bond” is not specifically included in this policy.

In this regard, CCS maintains that there is clear policy support to ensure that high standards of restoration and decommissioning are achieved and conditions or legal agreements can be used to achieve these ends. In terms of sustainability, environmental, social, cultural and economic considerations need to be weighed up in the balance, with a focus on future generations needs as well as our own (thinking long term as advocated in the 5 ways of working).

It is accepted that the proposal has significant support at a UK-wide level, but the long term environmental, economic and social impacts also need to be considered to comprise sustainable development (as defined in the WBFG Act). The Decommissioning Requirement alone is not considered suitably robust to secure adequate decommissioning to ensure that the cost of decommissioning does not fall to future generations to resolve/ pay for.

A fully refundable bond, secured via a legal agreement, is considered to accord with the “polluter pays” principle enshrined in PPW 10, ensure the development is “sustainable development” when considered for its lifetime and is both an important and relevant consideration in the determination of the DCO.

Appendix C

CCS Response to: Draft DCO (Revision 4) (Deadline 4)

The applicant provided Draft DCO Revision 4 to CCS for consideration prior to Deadline 4 and comments were provided in italics to aid the Examining Authority in their consideration.

As the document has now been formally submitted, CCS will provide formal comments below, although nothing substantive has changed with the exception of the inclusion of Table 3 and the omission of the amendment to Requirement 15.

Article 2 Definitions

“commence ” – CCS are agreeable to the revised terminology and welcome the clarification on the temporary fencing.

Schedule 2

Table 3 – Parameters of Road Structure over Water Main

CCS has no issues with the parameters identified for the road structure over the water main but would query whether the maximum height of the structure includes the 1.2m safety barrier or not. It is assumed that it won't but the safety barrier would form part of the “structure” as defined in Table 3.

This isn't a significant issue as far as CCS is concerned but clarification is sought as to whether the 5m maximum height includes or excludes the 1.2m rail from the outset.

CCS would also suggest that it needs to be specifically included within the definition of Work No. 2 in Schedule 1.

Requirement 2 – Detailed Design

Requirement 2(6) – CCS understand the rationale behind the inclusion of this provision and has no issue with its inclusion or construction.

Requirement 3 - Provision and Maintenance of Landscaping

Requirement 3(5) – The amended version is agreeable to the construction of this subsection.

Requirement 5 – Fencing and Other Means of Enclosure

CCS welcomes the provision of new subsection 3(4) and raises no issues with content or construction.

Requirement 6 – Surface and Foul Water Drainage

Requirement 6(1) – inclusion of water crossing details is welcomed.

Requirement 8 – Pre-construction Ecological Constraints Survey

Requirement 8(1) – the amended subsection is acceptable.

Requirements 8(5) and 8(6) are welcomed and their construction is acceptable to CCS.

Requirement 10 - Invasive Species Survey and Remediation

Requirement 10(2) – the amendment to provide for the qualifications and experience of the relevant person(s) is considered appropriate to overcome concerns raised above and will aid interpretation of the surveys.

Requirement 12 – Reptile Method Statement

Requirement 12(3) – the same approach to Requirement 10 has been adopted and is accepted.

Requirement 14 – Site Investigation

Requirement 14(3) – the same approach to Requirement 10 has been adopted and is accepted.

Requirement 15 – Minerals Resources Survey

Requirement 15(2) – CCS previously indicated that the survey is intended to inform the Decommissioning Strategy which was originally Requirement 27. However, following the inclusion of the Operation of the Authorised development Requirement at 27, the Decommissioning Requirement is now 28.

Requirement 15(2) therefore needs to be updated to reflect this.

It was included in the Draft sent to CCS but has not been included in Draft DCO Version 4 submitted at Deadline 4.

Requirement 17 – Construction Environment Management Plan

As noted in Appendix E (below), CCS welcomes the inclusion of the out of hours procedure that is contained within the Outline CEMP submitted at Deadline 4.

However, CCS considers that this should be explicitly referenced in the Requirement to ensure this is retained post consent so that all parties are clear on the process that will be followed and how nearby residents will be notified.

Requirement 25 – Control of Noise During Operation Phase

Following the receipt of further clarification, CCS do not consider that the table needs to be changed.

Requirement 27 – Operation of Authorised Development

The inclusion of this Requirement with the DCO itself is welcomed by CCS.

Requirement 28 – Decommissioning

Requirement 28(1) and (3) – CCS has queried why the Decommissioning Strategy does not include Work No. 2 (the access road). Once the development is complete, CCS does not want the road to be left in situ in what is a rural countryside area. The road (post decommissioning) will serve no practical purpose and could encourage further development on what is greenfield land, in the open countryside.

It is appreciated that removing the road could result in further environmental damage in the future, but it is suggested that this item is included within this Requirement to ensure that the road is soiled over/ narrowed to allow it to revegetate naturally over time. If circumstances have changed (in terms of the designation of the land or alternate need for the road, this can be considered further at that time in light of circumstances but the starting point should be that it is left to revegetate in an appropriate manner.

The amendment to Requirement 28(3) to include the implementation timetable is welcomed in isolation.

Requirement 28(4) – This subsection does not overcome CCS concerns with regards to the overall enforceability of this condition. This provision indicates APL are willing to go a bit further than currently in that they would apply for the necessary consents but applying for the necessary consents does not mean that they will be actively pursued to ensure they are appropriately provided. There is no further guarantee that decommissioning would be undertaken than is currently provided.

The applicant could still seek these permission but that could be in any form and does not mean that the requisite information is submitted or that approval will be granted.

Appendix D

CCS Response to: Updated Landscape and Ecological Mitigation Strategy (Revision 4)

CCS welcomes the amendments to Revision 4 of the Updated LEMS relating to the natural revegetation of the newly created ponds (excluding the attenuation ponds).

CCS is satisfied with the content of the Outline LEMS.

Appendix E

CCS Response to: Outline CEMP

The applicant has amended the Outline CEMP to include provision for an out of hours procedure associated with construction works required outside of the times specified in Requirement 23.

The content of Section 9.3 of the Outline CEMP (Revision 2) is considered acceptable in principle and includes details that would be required to make an informed decision.

CCS considers that Requirement 17 needs to be amended to specifically include the out of hours working provision within the Final CEMP.

Appendix F

CCS Response to: Illustrative Elevation of Road Structure Over Utilities

CCS welcomes the submission of the Illustrative Elevation and has no issues with regards to the indicative design.