



# The Planning Inspectorate

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Mr Dermot Scanlon  
Abergelli Power Limited  
By email

Your Ref:  
Our Ref: EN010069  
Date: 7 January 2015

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Dear Mr Scanlon

Further to your email of 17 November 2014, please find attached to this letter the Planning Inspectorate's comments on the draft documents submitted for the Abergelli Power Project as follows:

**Annex 1** – Draft Consultation Report

**Annex 2** – Draft DCO

**Annex 3** – Draft Plans

These comments are without prejudice to any decision made under section 55 of the Planning Act 2008 (as amended) or by the Secretary of State on any submitted application. However, I hope you will find them useful.

Please do not hesitate to contact me if you have any queries.

Yours sincerely

*Tom Carpen*

**Tom Carpen**  
**Infrastructure Planning Lead**

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.

## Annex 1

### EN010069 Abergelli Power Project

#### Comments on the draft Consultation Report (Working Draft 01) issued to PINS on 17 November 2014.

Please note the comments below refer to areas of compliance as well as areas for consideration. They relate solely to the draft document and not the merits of the proposal, and are provided to assist in preparation of the next iteration.

Overall the structure of the report seems logical, including good use of tables, for example Table 2.1.

The final Consultation Report (CR) must be explicit and clearly identify which consultation was carried out as a part of non-statutory consultation and statutory consultation, under the relevant sections of the Planning Act 2008 (PA 2008) (as amended):

- Section 42: duty to consult
- Section 43: local authorities for purposes of section 42(1)(b)
- Section 44: categories for purposes of section 42(1)(d)
- Section 45: timetable for consultation under s42
- Section 46: duty to notify Secretary of State of proposed application
- Section 47: duty to consult local community
- Section 48: duty to publicise
- Section 49: duty to take account of responses to consultation and publicity
- Section 50: guidance about pre-application procedure

#### General comments:

The text of the Report should correctly refer to all relevant appendices and tables throughout the whole document, and ensure all cross referencing is correct. Also, Tables and Figures need to be consistent in terms of numbering and naming for accuracy and the ease of cross referencing. For example we note the following:

- Paragraph 2.5.5 on page 17 in Chapter 2, refers to Table 2.2 which is currently numbered 2.1 (a summary of consultation activities undertaken in chronological order, the corresponding consultation strands and relevant sections within the CR). We note that the Table is in a draft form and will be updated.
- In Chapter 4: Summary of Feedback and Responses on page 69 the applicant presented consultation findings in the same format but named them differently: *Table 11* (Statutory Section 47 Consultation – Local Community – Proportion of respondents who commented during previous non-statutory consultation phase) and *Figure 11* (Section 47 Statutory Consultation – Local Community – How did you find out about the exhibition today?).

- There are two Tables 4.1 (both named: Number of attendees at the June 2014 non-statutory public exhibitions) on pages 59 and 65 which provide different information. Second table refers to the events held in October 2014.

It is noted that Appendix 2.M is to include a list of prescribed consultees contacted during s42 consultation as per Schedule 1, The Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 (as amended). When referring to s42 within the Consultation Report, it would be useful to refer to Advice Note 3 and its Annex which reflects post April 2013 amendments made to the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 by the Infrastructure Planning (Prescribed Consultees and Interested Parties) (Amendment) Regulations 2013 (the Amendment Regulations). The purpose of this is to explain how the applicant identified relevant parties post changes to fulfil the requirements of the s42 consultation.

At present the CR does not provide any information regarding the land interests for the purpose of s42(1)(d) of the PA 2008 ('each person who is within one or more of the categories set out in section 44'). If the compulsory acquisition is being sought for the proposed development the applicant is encouraged to provide evidence to demonstrate that 'diligent inquiry' was made for the purpose of completing the Book of Reference which would be submitted with the application.

S42(1)(b) refers to 'each local authority that is within section 43'. The definition provided in s43 of the PA 2008 includes 'A', 'B', 'C' and 'D' authorities; therefore the applicant is encouraged to provide a list of all relevant LAs identified and consulted for the purpose of s42(1)(b). This could be supported by a map showing the site and identifying the boundaries of the relevant local authorities.

In line with the Planning Inspectorate's Advice Note 6, in preparing for the submission of the application, the applicant may find a helpful exercise to complete a version of the s55 checklist which is used to assess whether the application can be accepted for examination. The applicant may also choose to submit this appended to the application if it would assist the parties during the acceptance stage. Please see the attached link:

<http://infrastructure.planningportal.gov.uk/legislation-and-advice/advice-notes/>

The following comments refer to specific issues in the Chapters which at present are within the CR:

1. Executive Summary – not included
2. Introduction
  - a. Provides clear information relating to the applicant and the project, and clear description of each element of the proposal that the applicant wishes to apply for.

- b. Paragraph 2.4.2 'Statutory Requirements & Guidance', page 15, and then on further pages – sections 42(b) and 42(d) are mentioned. Please note the relevant sections of the PA 2008 are s42(1)(b) and s42(1)(d). Although it might be a typing error we would encourage that all references to these sections are reviewed.
- c. S49(2) is mentioned in paragraph 2.1.2 on page 9, Chapter 2 (*'information explaining how APL has taken into account consultation responses in developing the application from proposed to final form, as required by s49(2) (provided in Section 4 and Section 5 of this Report)*) but there is no further reference to the relevant section.
- d. Table 2.1 on page 18 is very helpful. It provides the summary of Consultation Activities and Corresponding Sections within the CR which, when completed will make it easier to navigate the main document and understand how the project has evolved, following non-statutory and statutory consultation activities. It seems that on page 20 in the box 'EIA Scoping – Regulation 11 Notification' the correct date should be 'August 2014' rather than 'July 2013'.

### 3. Description of Consultation Activities

- a. In paragraph 3.2.2 on page 25 the applicant refers to guidance: *'APL has sought to ensure that its approach to consultation is 'thorough, effective and proportionate', such that it is 'proportionate to the size and scale of project and where its impacts will be felt' (DCLG, The Planning Act 2008: Guidance on the pre-application process, 2013, paragraphs 15 and 17)*. We would encourage that the applicant explicitly states the relevant section of the Planning Act 2008 on guidance about pre-application procedure (s50 PA 2008).
- b. Paragraph 3.2.7 on page 26 refers to the draft SoCC. Although the abbreviation 'SoCC' is explained in the Glossary it would be helpful for the applicant to include term 'Statement of Community Consultation' at the beginning of the paragraph when providing information on the consultation process under s47 of the PA 2008 in the relevant chapters of the Consultation Report.

### 4. Summary of Feedback and Responses

- a. It would assist if the applicant explained the term 's42 targeted additional consultation', used in paragraph 4.4, and the reasons why additional parties with an interest in land have been identified.

### 5. Key Outputs and Next Steps

- 6. Appendices are listed but not provided. The applicant has already included an index of various consultation documents but for the sake of completeness we would suggest that there is a clear distinction between non-statutory and

statutory consultation and copies of relevant documents (as identified further below) are provided.

7. The applicant is advised to ensure that once completed, the hard copies of the CR should match the electronic version, for example in terms of page numbers, referencing and overall content.

It is noted that the Consultation Report is currently incomplete in its first working draft as the applicant is reviewing and completing its contents, and does not include appendices. The Inspectorate encourages the applicant to provide the documents listed below in its completed version of the Report. The applicant may wish to consider providing additional appendices that it considers are relevant to evidence the non-statutory and statutory consultation undertaken.

The Inspectorate recommends providing the following:

- Original copies of s48 notices. The applicant may consider including the front page of newspapers (including the date) used to place the notices,
  - Copies of notices within these papers itself, and
  - Copies of the Statement of Community Consultation (SoCC) advertisement including the original date as it appears on the newspaper.
- A copy of the original SoCC. Additionally, as the applicant refers to a draft Consultation Plan in paragraph Para 3.6.10, on page 45, including a copy of the document would be helpful.
- Copies of consultation correspondence and responses from local planning authorities who were consulted and responded with regards to the content of the SoCC (at both non-statutory and statutory consultation stages).
- Original copies of any press releases and media coverage.
- Copies of correspondence and/or leaflets sent to persons for the purpose of s47.
- A copy of any letters sent to s42 consultees.
- A copy of the s46 notification letter along with a copy of the acknowledgement letter issued by the Inspectorate.
- A complete list of consultees identified and consulted by the applicant for the purpose of statutory consultation under s42 – this is strongly encouraged.
- Copies of materials from exhibition events such as posters, photos of display boards etc.
- Copies of extracts from the project website during consultation which would demonstrate that the site was functioning at the time.
- Copies of consultation feedback forms.

The Glossary at the beginning of the CR is very helpful; however, we would suggest that the applicant makes some amendments in relation to two terms listed on page 6:

- *Planning Act 2008* – as the Planning Act 2008 (PA 2008) was amended by the Localism Act 2011 we would suggest that when referring to the PA 2008, the applicant may in the first instance wish to state ‘as amended’.
- *The Planning Inspectorate (the ExA)* – there is a clear distinction between the Planning Inspectorate (PINS) which is a government’s executive agency and the ExA. The Examining authority (ExA) is appointed under PA 2008 and The Infrastructure Planning (Examination Procedure) Rules 2010, to examine the application for the Development Consent Order (DCO). The ExA may be a single Examining Inspector or a Panel of up to five Examining Inspectors.

## **Annex 2**

### **EN010069 Abergelli Power Project**

Initial comments on early draft DCO submitted by the applicant.

#### **General**

The applicant should review the new PINS advice note on drafting Development Consent Orders and ensure that the DCO is drafted in the SI template.

#### **Definition of 'maintain'**

Recommend reviewing the definition against the advice note, and providing justification in Explanatory Memorandum where the definition requires it.

#### **Request for additional information:**

- Operation of authorised development – Advise the applicant to submit a draft list of consents required that do not form part of the DCO.
- Understanding of potentially affected statutory undertakers and where protective provisions have been included or are under discussion.

#### **Power to alter layout etc of streets; Street works**

In revised DCO and Explanatory Memorandum, the applicant may wish to consider the definition of Street Authority.

#### **Temporary prohibition or restriction of use of streets**

The applicant may wish to consider whether there needs to be greater clarity on terms 'any reasonable time' and 'any street' and whether this definition potentially affects statutory undertakers.

#### **Discharge of water**

In the next iteration of draft documents, it would be helpful to understand the extent of discussions with current owners of the water courses, the expected discharge of water and any permit required?

#### **Felling or lopping of trees and removal of hedgerows**

In the next iteration of draft documents, it would be helpful to understand any discussions with landowners on this aspect of the draft DCO and on the draft article.

#### **Requirements**

As a general point, the applicant should ensure that there is a tie up between outline strategies and detailed approval within the parameters of what would be approved, in particular for the travel plan.

## Annex 3

### EN010069 Abergelli Power Project

Comments on draft **plans** submitted by the applicant:

- Site Location Plan – scale 1:10,000, A3. Not required by the PA 2008; however, helpful in identifying the location of the proposed development.
- Works Plan Key Plan – scale 1:5000, A1. Reg 5(4)
- Works Plan (Sheet 2 of 3) – scale 1:2500, A1. Reg 5(2)(j)
- Works Plan (Sheet 3 of 3) – scale 1:2500, A1. Reg 5(2)(j).

General comments:

1. Red line boundary and limits of deviation (as applicable) are clearly shown.
2. The information on the draft plans refers to the requirements under The Infrastructure Planning (Applications: Prescribed Forms and procedures) Regulations 2009 (APFP Regulations).
3. All three Works Plans appear to include scale, direction to the north and the scale in which the plans are to be produced on.
4. Schedule 1 of the draft DCO lists parts of the Authorised Development comprising of Works 1A, 1B, 1C, 1D, 1E, 1F, 2, 3A, 3B and 4 which have all been included in the Works Plans.
5. All plans have separate reference numbers/titles.
6. Once a full set of plans is ready it would be helpful if, in their title, plans made reference to the Application Document Reference Number for ease of navigation.