



The Planning Inspectorate Yr Arolygiaeth Gynllunio

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Mr Dermot Scanlon

Your Ref:

Peter Brett Associates LLP

Our Ref: EN010069

By email

Date: 16 March 2015

Dear Mr Scanlon

I am writing in response to your email of 6 March 2015 requesting comments on a draft copy of your No Significant Effects Report (NSER), and your email of 4 March 2015 submitting draft copies of the appendices to the draft Consultation Report.

The Inspectorate welcomes the opportunity to comment on draft documents as this enables us to provide advice about any omissions or procedural risks for the acceptance or examination stages. This advice forms parts of our pre-application service, details of which are available in the Inspectorate's pre-application prospectus which outlines the structured and facilitative approach to support the Inspectorate can offer during the pre-application stage. These comments are without prejudice to any decision made under section 55 of the Planning Act 2008 (as amended) (PA 2008) or by the Secretary of State on any submitted application.

Please find attached to this letter the Planning Inspectorate's comments on the draft documents submitted for the Abergelli Power Project as follows:

1. No Significant Effects Report
2. Appendices to the Consultation Report

Review of these documents brought a number of issues to the Inspectorate's attention that, without prejudice to any examination, may present concerns for acceptance, particularly given the tight timeframe anticipated before the applicant's intended submission date.

With respect to the NSER, the primary risk is that, for a number of issues, agreement should be reached between the applicant and Natural Resources Wales (NRW) prior to the submission of the application. In particular, the Inspectorate recommends that the applicant provides evidence of the agreement concerning the sites and features identified for inclusion in the NSER assessment. In addition, the Inspectorate recommends that the applicant provides evidence of agreement with NRW over which developments will be included in the in-combination assessment. When seeking this agreement it is important that NRW have sufficient time to analyse and consider the issues at hand. In light of this, we would like to invite the applicant and NRW to

discuss these outstanding issues with PINS in a teleconference at a convenient time this week.

The applicant should also ensure that it demonstrates it has properly consulted all statutory consultees and had regard to correspondence received. The appendices submitted contained the main bulk of evidence to support assertions made in the draft Consultation Report regarding the quality and outcomes of the consultation process. However, there are a number of places within Appendices 6B and 6D where it is not clear that the applicant has taken comments received in consultation into account, particularly suggestions made for alternative sites.

These points have led the Inspectorate to conclude that the applicant should consider whether it needs further time to ensure that it produces a sound application.

Yours sincerely

Stephanie Newman

Stephanie Newman
Case Manager

Appendix I: Review of No Significant Effects Report
Appendix II: Comments on Appendices of Draft Consultation Report

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.

Review of the Abergelli Power Project

No Significant Effects Report (NSER)

(17 March 2015)

The information contained within this note follows a request by Abergelli Power Limited (the applicant) on 6 March 2015 for the Planning Inspectorate (Inspectorate) to review the draft No Significant Effects Report (NSER). At a Project Update meeting held on 25 February 2015 the applicant initially indicated that they did not intend to provide a draft NSER either to the Inspectorate or Natural Resources Wales (NRW). The Inspectorate requested that a draft of the NSER be provided prior to submission of the application and the applicant confirmed on 28 February 2015 that a draft NSER would be provided to the Inspectorate.

Please see below the Inspectorate's comments on the applicant's draft NSER. Please note that the comments provided are without prejudice to any decisions taken by the Secretary of State during acceptance or the Examining Authority during examination, if the proposed development is accepted for examination.

These comments are not intended to be a detailed review of the draft NSER and its findings, but are a high level review intended to provide helpful comments/observations as appropriate.

Please note that reference to 'European sites' within this document is to Special Areas of Conservation (SAC), candidate SACs (cSAC), Special Protection Areas (SPA), potential SPAs (pSPA) and Ramsar sites.

Introduction (section 1 of the draft NSER)

Section 1.8 of the draft NSER identifies the plans and projects to be included in the in-combination assessment. The location of these plans and projects is provided in Figure 3.1; however an explanation of how plans and projects have been screened in and out of the assessment has not been presented in this section. The Inspectorate recommends that an explanation of how plans and projects were screened in and out of the in-combination assessment is either included in this section or alternatively clearly referenced in this section. This may include presentation of quantitative data for other projects which are proposed to be screened out.

Project and Site Description (section 2 of the draft NSER)

It is noted that paragraph 2.2.12 cross refers to Chapter 3 of the ES for further details of the project and its components. However, it would be useful if a brief description could be provided in the NSER of project components and activities relevant to the assessment. For example, later sections of the draft NSER refer to the operations water supply to the development being by bowser. There is at present no reference to any aqueous discharges from the proposed development. Confirmation of the main emissions resulting from the operation of the proposed development would assist in providing the context for the assessment that follows, and confidence that all relevant potential impacts have been addressed.

Relevant European Designated Sites (section 3 of the draft NSER)

Sites to be included in the NSER assessment are all those within 10km of the proposed project, as this is the distance over which the Environment Agency's H1 guidance indicates potential air quality impacts of the proposed development should be considered. The applicant has also indicated that this distance will be sufficient to address any potential movement of migratory species along hydrological links or flight paths between the European sites, though no evidence or guidance has been referred to in making this assertion. The Inspectorate recommends that more clarification is provided regarding this assertion in the final NSER.

At paragraph 3.3.6 it states that Carmarthen Bay is also a pSPA. Consideration of the potential impacts to the pSPA, including the submission of matrices as appropriate would therefore also be needed in the report.

The Inspectorate recommends that the applicant provides evidence of the agreement of the relevant statutory nature conservation bodies with the sites and features that have been identified for inclusion in the assessment.

HRA Screening Assessment (section 4 of the draft NSER)

In section 4.3 of the draft NSER the assessment of the significance of effects on European sites is discussed but no information is provided to explain how they have been assessed. The Inspectorate advises that the NSER should include a methodology section with details of the criteria used to determine whether there would be a likely significant effect.

The main impacts considered in the draft NSER are emissions to air, water and also noise and vibration. Each phase of the development, construction, operation and decommissioning has been considered. The Inspectorate understands and supports the aspiration to restrict duplication within the application. However, the Inspectorate considers that a summary of the details of the air quality modelling, water assessment and noise and vibration assessments should be included in the final NSER. This should include:

- an overview of the assessment methodology and an explanation of how significance has been determined with reference to any guidance used;
- clear identification of whether each of the qualifying features of the European sites is sensitive to the emission in question.

The screening matrices (Appendix 1)

The screening matrices have been used as the primary method to present the outcome of the NSER. All footnotes should contain a robust justification to the conclusion drawn with cross reference to specific paragraphs in other application documents as appropriate (i.e. either to the NSER itself or specific paragraphs of the ES). Some of the assumptions made do not appear to be fully evidenced at present, for example regarding the presence / absence of sea and river lamprey at the site.

The applicant is also requested to provide both a PDF and Word copy of the matrices

with the application.

Mitigation

Mitigation referred to in the draft NSER is for the most part that embedded in the scheme design. Reference should be made to the relevant requirements within the draft DCO securing this mitigation. For ease of use during examination the Inspectorate would find it helpful if this information is provided in a Table.

The report also places reliance on mitigation measures that would be delivered through a Construction Environmental Management Plan (CEMP) (for example with regards to mitigating potential impact on otter.) Any draft CEMP submitted should include clauses specifically detailing mitigation in respect of otter if this is to be relied upon in the NSER.

Where reference is made to accepted mitigation from adherence to best practice guidelines these should be fully explained and detailed in the CEMP and draft requirements in the DCO as appropriate.

Consultation with Natural Resources Wales

The Inspectorate notes that the draft NSER does not make reference to consultation with NRW. The Inspectorate recommends that any consultation or agreements made between the applicant and NRW to date are recorded within the final NSER. This would include consultations on mitigation measures including those which may be included in the draft CEMP.

The Inspectorate recommends that agreement is sought with NRW over which developments have been included in the in-combination assessment and over the conclusions of the in-combination assessment.

Presentation

It is recognised that it is a draft report, however there are several numbering issues throughout. The Inspectorate recommends that these issues are amended in the final version of the NSER.

The acronym HRSA is used in the draft report but no definition of this is provided in the Project Glossary and Abbreviations.

Please also check for spelling of place names throughout; in particular spelling of Crymlyn (not Crmllyn).

The ExA will find it useful to have common names stated alongside Latin names (for example in Table 2.4).

17 March 2015

Abergelli Power Project

Comments on Appendices of Draft Consultation Report

(17 March 2015)

The following information follows a request from Abergelli Power Limited (the applicant) on 4 March 2015 for the Planning Inspectorate (Inspectorate) to review the draft appendices to the Consultation Report. These comments are not intended to be an entirely comprehensive review of the draft appendices, but are intended to provide high-level, helpful comments/observations as appropriate. The comments are structured in the same order as the Volumes in the appendices.

The appendices submitted contain the main bulk of evidence to support assertions made in the draft Consultation Report regarding the quality and outcomes of the consultation process. The majority of this evidence is clear and well presented; nevertheless, the appendices contain some gaps where it's not clear whether the applicant has had regard to representations as required by section 49 of the Planning Act 2008.

Table of Contents

- It would be helpful to have a table of contents for all volumes of the appendices upfront, instead of separating them by volume.

1.A Compliance Checklist

- It would be helpful throughout to cross reference the relevant appendices as well as the relevant sections in the Consultation Report. This is not done consistently and reduces the accessibility of the report.
- s42 – Note the typo 'Duty to consult' (not *consultant*)
- DCLG Guidance
 - 14, Row 2: Complete highlighted section
 - 57: It states that APL re-consulted with identified prescribed consultees. This isn't strictly true as the applicant did not undertake a second 28 day consultation – rather, it informed them of the changes to the proposal. This needs to be clarified in the submitted version.

6.B Statutory Section 47 Consultation Feedback and APL Response

Site selection

- The APL response given to suggestions of alternative sites is insufficient, as it is not clear that the applicant has had sufficient regard to these representations. Text explaining the "detailed site assessment in the initial phase of the Project from 2010-2013" refers to activity undertaken prior to the consultation. There is no indication in this draft version that the applicant has considered the alternative sites suggested.

Community benefit

- The APL response expressing intent to realise suitable opportunities for the local

area, referring to discussions with City and County of Swansea Council (CCSC) as to how local employment opportunities can be secured, is useful information and would be a good addition to the Consultation Report itself.

Socio-economics

- The issue of loss of value to people's property (and potential compensation) has not been covered in the response column.

Ecology

- A specific reference in response to the comment about the decline of bat population would be helpful, the text in place currently is a bit vague in this regard.

Design

- There is no indication in this draft version that the applicant has considered the suggestion of a third road option.

Water

- One comment in the water section expresses concern about a private water supply. The response refers to meeting the objectives of the Water Framework Directive. It is our understanding that the Water Framework Directive relates to water quality from an ecological perspective and meeting its objectives would not necessarily be sufficient for ensuring sufficient quality for drinking.

Generating equipment

- No response is given to the final comment regarding accesses capable of supporting the grid transformers.

6.D Statutory Section 42 Consultation Feedback and APL Response

Site selection

- The APL response given to suggestions of alternative sites is insufficient, as it is not clear that the applicant has had sufficient regard to these representations. There is no indication that the applicant has considered the alternative brownfield sites suggested.

Consultation

- There is currently no response provided in relation to the comment calling for consultation with the Food Standards Agency, Environment Agency, Clinical Commissioning Groups, NHS commissioning boards.
- There are questions about whether the correct noise expert at NRW has been consulted, and the Ecologist at CCSC also.

EIA

- The comment expressing concern about reduced water quality in the Lower Lliw reservoir has not been responded to in this section.

Socioeconomics

- The issue of loss of value to people's property (and potential compensation) has not been covered in the response column.

Noise

- The 12 comments regarding requirements of the baseline of existing environment and assessment and future monitoring have not been responded to.

Transport

- Comment regarding the structural integrity of Llangelyfelach Tunnel has not been responded to.

Safety

- Comment stating that the consultation does not contain any information on the extent and severity of known hazards from the proposed generating station, has not been responded to.

Permits

- There are a lot of gaps in responses to comments raised in relation to permits and consents.

Policy

- Comment stating that the development is contrary to the Swansea Unitary Development Plan, specifically Policies SP1, SP2 and SP3, has not been responded to.