

Kirstin Gardner
Project Manager
Abergelli Power
49 York Place
Edinburgh
EH1 3JD

Your Ref:

Our Ref: EN010069

Date: 20 April 2018

Dear Ms Gardner,

Thank you for your e-mails dated 21 March 2018, and Chris McKerrow's subsequent e-mail of 23 March 2018, enclosing Abergelli Power Limited's draft documents for review.

As advised in our e-mail to Dermot Scanlon, dated 27 February 2018, we were unable to agree a comprehensive review of the documents. As such only a high level check has been carried out. Our comments are attached to this letter in the following Annexes:

- Annex 1: Comments on the draft Development Consent Order**
- Annex 2: Comments on the draft Explanatory Memorandum**
- Annex 3: Comments on the draft Statement of Reason**
- Annex 4: Comments on the draft Book of Reference**
- Annex 5: Comments on the draft Consultation Report**
- Annex 6: Comments on the draft Environmental Statement (Chapters 1-5)**
- Annex 7: Comments on the draft Plans**
- Annex 8: General Comments**

Please note that the comments are without prejudice basis to any decision made under Section 55 of the Planning Act 2008 (as amended) or by the Secretary of State on any submitted application.

Hopefully our comments are helpful but if anything is unclear, or should you wish to discuss any matter, please do not hesitate to contact us.

I note that it had previously been your intention to submit the application during week commencing 28 May 2018. I would be grateful if you could confirm as soon as possible whether this date remains accurate or whether a new date is proposed. We are required to submit a 'warm-up' letter to Local Authorities (LAs) to advise them of the submission and advising them on what is expected of them around 4 weeks before an application is due to be submitted. As such, if the application is due to be submitted at the end of May, we will need to write to LAs by the end of April.

I look forward to hearing from you.

Yours sincerely

Hefin Jones

Mr Hefin Jones
Case Manager

Annex 1: Comments on draft Development Consent Order (DCO)

Point number	Paragraph number	Question/ Comment
1	General	There should be no unpopulated gaps.
2	Article 38	Refers to s65 of the Control of Pollution Act 1874; this has been repealed. The Applicant should ensure <u>all</u> legislative references in the DCO are to extant provisions. Paragraph 38 of the EM also relates to this article.
3	General	Applicant should ensure all Schedules refer to the correct articles (at the top right of each Schedule).
4	General	Has the Applicant considered most recently made DCO's in terms of changes to statutory provisions made by the Housing and Planning Act 2016 when preparing its draft DCO? This would also be relevant to paragraph 40 of the EM.
5	General	The Explanatory Note (at the end) – where does the Applicant intend copy documents can be viewed and has it been agreed with whoever controls that location?
6	Requirement 8	Requirement 8(1) of the dDCO refers to the findings of a 'pre-construction ecological constraints survey' – but does the dDCO adequately secure that this survey will be undertaken?
7	Requirement 11	The CEMP would be approved by the relevant planning authority, but should Natural Resources Wales have a consultation role? Is this something that the Applicant feels may be prudent to add in?

Annex 2: Comments on draft Explanatory Memorandum (EM)

Point number	Paragraph number	Question/ Comment
1	General	Applicant should ensure that every explanation appearing in this EM is both accurate and comprehensive in terms of what the corresponding DCO provision provides (and that all references to other documents/ legislation are accurate).
2	31	Has the Applicant considered s146 of PA2008?
3	34	Says it 'broadly follows the model provision' – please can the Applicant explain where it does not (rather than simply appending a track change version) and to identify the exact model provision. This comment also applies throughout the EM wherever the Applicant does not do either of those things.
4	36	Has the Applicant considered whether or not s203 Housing and Planning Act 2016 would apply to them and, if so, would it obviate the need for the DCO article?
5	40	See comment under 'DCO' heading.
6	45	If the article provides for a maximum period of temporary possession, please explain.
7	53	See comment under 'DCO' heading.
8	55	Would the Applicant be well advised to list all plans etc. fully in the DCO article itself? – Article 40.
9	60.3	If 'associated development' cannot be consented under this proposed DCO, the Applicant may wish to consider if use of word 'associated' here is appropriate/potentially confusing.
10	61.15	Is the requirement based on any precedent or model provision? This comment would apply also to any similarly drafted paragraphs of the EM, where that is unclear.
11	61.20	It may be useful if there was explanation/ justification as to how this (requirement 20) fits with paragraph 19 of Advice Note 15.
12	70 & 74	Should it be Abergelli Solar Farm or Abergelli Solar Limited?

Annex 3: Comments on draft Statement of Reasons (SoR)

Point number	Paragraph number	Question/ Comment
1	General	SoR Table 3 refers repeatedly to "Schedule 11 of the Order". A Schedule is a Schedule "to" an Order (not "of" it).
2	1.8 to 1.10	How are the TCPA planning permissions (including Permitted Development (PD) which is itself a form of planning permission) covered in the DCO? The Applicant should consider if they should be – e.g. DCO permitted works can't commence and Compulsory Acquisition (CA) powers can't be implemented until those planning permissions have been obtained. Does the Applicant yet have LPA's agreement that PD rights exist, if they rely on PD? What is current stage of any application(s) for planning permission?
3	1.26	Is ownership of the whole 1.5 ha being compulsorily acquired? If so, why? Could some of it be limited to CA of rights only?
4	1.27	Final sentence – is that CA of land ownership or just new rights? If ownership, then why?
5	1.31 & 5.4.1	Has the Applicant considered whether or not s203 Housing and Planning Act 2016 would apply to them and, if so, would it obviate the need for the DCO article?
6	1.32.1 & 11.1	Explanation should be clearer that this relates to CA of <u>freehold</u> (i.e. ownership).
7	1.37	Are all persons listed in Part 3 BoR also listed in Part 1 BoR?
8	1.40	The word "all" – has it already been possible to agree <u>any</u> of it by private treaty? If so, is there still a need for CA powers for those parts?
9	1.47 (& 6.2.6)	At 1.16 there is reference to CA being <u>required</u> for development (as well as to facilitate it), but there isn't reference to that here. Why?
10	1.58.4 (& 5.6.3)	DCO must be populated with protective provisions - it should not be left blank on submission. Also, in Section 8, the Applicant has not mentioned whether there's any National Trust land even though they've mentioned other special considerations. Why not?
11	1.60	Are there any impediments to obtaining planning permissions under TCPA? Does Doc Reference 5.4.0 mention planning permissions? What stages are the applications for planning permissions at?
12	6.4.1	See comments under BoR section below in relation to identifying precise rights within Class 1 for each relevant plot, and ensuring that this table is reproduced in full in the BoR.
13	6.5.2	Heading of final column of table includes 'status of negotiation', but that status does not appear for any of the plots in the table. Why?
14	8.3.3	Will s138 PA2008 also be used?

15	8.3.5	<p>Table – says the protective provisions appear in the DCO, but they currently do not. They should be populated on submission (if not agreed, then the Applicant’s preferred versions). Will Part 2 Schedule 11 DCO identify both National Grid companies referred to here?</p> <p>Incorrect spelling of Cymru.</p> <p>Abergelli Solar <u>Limited</u> appears here, but in other parts of SoR and in DCO it currently says Abergelli Solar <u>Farm</u> – the discrepancies should be clarified.</p>
16	8.4	Why is there not mention of TCPA planning permissions the Applicant will need?
17	11.8	Compensation may not have been agreed and paid during the 5 year period the Applicant refers to here, so will funding be available after the end of the 5 years if that happens?

Annex 4: Comments on the draft Book of Reference (BoR)

Point number	Paragraph number	Question/ Comment
1	General	The Applicant should be aware of the advice in the <i>Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land</i> .
2	General	The Applicant should ensure that anyone listed in Part 3 is also listed in Part 1.
3	General	All blank spaces need to be populated – including the definition of each type of right to be created.
4	General	It is not clear if the Applicant intends to e.g. simply say a particular plot will be subject to Class 1 Rights or, instead, to be more specific as to exactly which of the Class 1 Rights an individual plot will be subject to? We advise the latter approach and if the Applicant does not do that the necessity for a plot to be subject to <u>all</u> rights listed within Class 1 should be questioned.
5	General	Some plots seem to include what appear to be Land Registry Title Numbers, without clearly stating that's that what they are (see numbers starting "WA..." in plot descriptions).
6	General	Comments on draft BoR do not relate to the accuracy of detailed information provided by the Applicant who has a duty to make a diligent inquiry to identify Category 1, 2 and 3 persons.
7	General	The Book of Reference Introduction should provide information for all colours as shown in the Legend on the Land Plans which identify freehold land to be compulsorily acquired (shaded pink), rights to be compulsorily acquired and new rights to be created (shaded blue) and temporary use of land (shaded yellow). Point 10 refers to the Land Plans and would benefit from further detail.
8	General	DCLG Guidance related to procedures for the compulsory acquisition of land Annex C states: <i>There should be no discrepancy between the description of the land in the book of reference and the plan, and no room for doubt on anyone's part as to the precise areas of land which are to be compulsorily acquired.</i>
9	General	The Applicant is advised to ensure the correct cross referencing between BoR, DCO (relevant Article and Schedule) and the Land Plans.
10	General	Descriptions of plots in the BoR must correspond with the Plans. One of the points of identification is Abergelli Fach Farm in relation to several plots of land listed in the BoR. However, on the Land Plan ref 2.2.1 (Sheet 1 of 2) the word 'Fach' is missing from the full name of the property.
11	General	Currently the description of land in the BoR can be checked only against the public footpaths and local landmarks identified on the Land Plans landmarks. In relation to plots 23 and 24 it would be helpful if the public adopted highway (B4489) was also identified on the Land Plan ref 2.2.2 (Sheet 2 of 2) as it is in the BoR.

Annex 5: Comments on draft Consultation Report

Point number	Paragraph number	Question/ Comment
1	General	The Consultation Report (CR) is clear and well structured; giving an overview of two distinct consultation Phases in 2014-2015 and 2017-2018. However, as the Appendices have not been submitted and some parts of the documents are still being reviewed, it is not possible to assess the entire document.
2	General	The Applicant is advised to ensure that the final version of the CR refers correctly to all relevant Appendices, Tables and Figures throughout the whole document. Tables and Figures need to be consistently named and numbered. The accuracy of naming is helpful when cross referencing the text from the main body of CR and the Appendices.
3	General	The Applicant may find it useful to complete their own draft of the s55 checklist which is used by the Planning Inspectorate to assess whether the application can be accepted by examination. The Applicant might also submit their copy of the completed checklist alongside the Application. The latest version can be found as Appendix 3 to the Advice note six: Section 55 Acceptance of Applications Checklist .
4	Contents page	<p>The list of Tables will need to be updated as currently the Tables refer only to Sections 2 to 6. Tables 5-1 and 5-2 (Section 5) are not listed. The substantial Table 5-2 (Project Consultation Milestones) is referred to thorough the CR. Paragraphs 8.4.38 to 8.4.41, and 10.2.1, 10.2.5, 10.2.26 and further in Sections 10 and 11 refer to Table 2-2 which is in fact Table 5-2.</p> <p>Title of the '<i>Appendix 5: Non-Statutory Consultation Post-Statutory Consultation Phase</i>' seems confusing and unclear, and perhaps it could be renamed. It is not obvious to which stage of consultation it refers. Please can the Applicant confirm whether it is relevant to the period between March and May 2018 as per paragraph 8.6?</p> <p>We note that Appendices have not been provided, and currently the index only states basic titles, such as:</p> <ul style="list-style-type: none"> • General; • Non-Statutory Consultation; • EIA Scoping Consultation; • Statutory Consultation; • Non-Statutory Consultation Post-Statutory Consultation Phase; and

		<ul style="list-style-type: none"> • Consultation Feedback and Outcomes. <p>It would be helpful if an index of all Appendices was provided for ease of cross referencing.</p>
5	Section 1	We note that the Executive Summary will be inserted into the document following completion of full report content, including the background information on two distinctive phases of the consultation: Phase 1 (January 2014–March 2015) and Phase 2 (April 2017–May 2018).
6	3.3.7	The paragraph refers to s49(2) of PA2008 under which the Applicant must have regard to consultation responses received under s42, s47 and s48 of PA2008 when making an application for an order granting development consent. The Applicant is advised to ensure that information give in Section 6.4 (Phase 1 Consultation) and Section 8.4 (Phase 2 Consultation) ties in with the evidence provided in the accompanying complete Appendices, and present a robust narrative with regard to this compliance. It is one of the requirements of the s55 acceptance checklist for the applicant to clearly demonstrate that they have had regard to responses received under statutory consultation carried out and whether they had led to any changes in the application.
7	6.4.50 and 8.4.48	'A statement that the Applicant intends to make an application for development consent to the SoS'. A DCO application is submitted to the Planning Inspectorate, on behalf of the Secretary of State, as per paragraph 2.2.1.
8	8.4.22	Ensure the correct numbering of Tables. For example the paragraph refers to Table 8-5 in relation to the locations for viewing the paper copies of documents, but the Table itself is numbered 8-4. Also, it's not included on the list of Tables on the Contents page.
9	8.4.47	Table 8.6 refers to publications and dates that the Phase 2 s48 notice was published but the Table itself is numbered 8-5.
10	8.6	Phase 2 Non-Statutory Consultation (February 2018–May 2018) following Phase 2 Statutory Consultation. 'A number of additional non-statutory activities were undertaken by APL [...] (March 2018–May 2018). Please explain why this approach has been taken.
11	11.1.3	The Applicant refers to s50 of PA2008: <i>Guidance about pre-application procedure</i> . The explicit references to the relevant section could be usefully made throughout the document where required.
12	11.1.12	There is reference to Table 6-1 which highlights the key outputs. However, the Table itself (Key Project Outputs Generated by Consultation Feedback) is numbered 11-1.

Annex 6: Comments on draft Environmental Statement (Chapters 1-5)

To confirm, there are no comments on Environmental Statement (ES) Chapters 1, 2 or 4.

ES Chapter 3			
Point number	ES Para	Extract from ES	Question/ Comment
1	n/a	Appendix 3.3: Outline Construction Management Traffic Plan	The contents page states that ES Appendix 3.3 will provide an 'outline construction management traffic plan'. There is no reference to this document in the draft DCO.
2	ES Chapter 3	n/a	<p>The works numbers should be included in the ES project description chapter, to allow for ease of cross reference between the ES, draft DCO and Works Plans.</p> <p>This will help provide the Examining Authority (ExA) with confidence that all works for which development consent is sought have been identified and assessed in the ES.</p>
3	3.4.20	<i>"This would likely avoid an element of cut and fill, although some excavation is still likely".</i>	An estimation of the volume of material which is likely to be excavated should be provided, including any assumptions which apply to the relevant aspect assessments (e.g. traffic movements, waste handling, contaminated land).
4	3.4.21	<i>The existing National Grid car park is unaffected by the route of the Access Road but may be used as initial temporary laydown whilst the construction of the new section of road commences.</i>	Is the National Grid Car Park within the red line boundary?
5	3.4.26	<i>"The lighting columns would be approximately 8 m in height..."</i>	Should a maximum height for the lighting columns be specified in the ES/draft DCO?
6	3.5.5	Description of gas connection	Will there be any fencing/lighting columns around the AGI?

7	3.7.1	<i>'Construction and commissioning of the Project would take approximately 22 months with an anticipated starting date in 2020'.</i>	Does the 22 month period include the construction and commissioning of the gas and electrical connections? If not, how has this been factored into the assessments within the ES? What assumptions have been made in the ES regarding timescales for construction of the gas and electrical connections? (e.g. start date and duration of construction works?).
8	3.7.32	Description of gas connection	How deep are the trenches likely to be? What will the working width be?
9	3.7.36	<i>"During construction, the PRoW is likely to be stopped up temporarily..."</i>	Will any PRoW diversions be provided? This should be discussed and agreed with the Council.
10	3.7.38	<i>"...the Electrical Connection will require temporary bridges (for example temporary bailey bridge) over the Water Main and oil pipeline during the construction phase..."</i>	What would the dimensions/heights of these structures be? Impacts from temporary structures such as these should be assessed in the ES.
11	3.9.6	<i>"Materials and finishes would be selected to ensure that the appearance of the Power Generation Plant does not deteriorate with time".</i>	What assumptions have been made in the ES assessments about the external appearance of the proposed power station and how are these assumptions secured? This should be clearly stated in the relevant aspect assessments, for example the Landscape and Visual Impact assessment.
12	3.9.10	Operation and Maintenance <i>"...a Travel Plan will be created specifically targeting employees to decrease the number of vehicles accessing the Project".</i>	Requirement 13 of the draft DCO refers to a construction Travel Plan, but how would the operational Travel Plan (referenced in ES paragraph 3.9.10) be secured?

13	3.11.1	<p>Section 3.11 identifies the embedded mitigation measures.</p> <p><i>'This embedded mitigation has been assumed for the purposes of this ES to be in place from the outset. This ES has therefore assessed the likely significant effects of the Project including embedded mitigation.'</i></p>	<p>The ES currently describes all mitigation under the heading of 'Embedded Mitigation'. We consider that this is too broad and that not all of the measures described represent mitigation which is 'embedded' in the design of the Proposed Development - for example, measures which would be included in the CEMP.</p> <p>We recommend that the ES clearly distinguishes between 'embedded mitigation' (ie. that which is inherent to the project design and prevents, reduces and offsets any significant adverse effects) and measures which should be classified as 'mitigation' (ie those measures which are additional to the project design and seek to prevent, reduce and offset any remaining significant adverse effects).</p> <p>Further to this, the Applicant is advised to present the significance of effects inclusive of 'embedded mitigation' both prior to application of 'mitigation' and following application of mitigation. This is necessary to allow the ExA to understand the efficacy (in assessment terms) of the proposed mitigation measures and therefore what would happen if any of the proposed mitigation should fail or not be delivered. This could usefully be presented in a table.</p> <p>It should be clear how each measure (whether 'embedded mitigation' or 'mitigation') is secured.</p>
14	3.11.15	Institute of Air Quality Managers	Typo – should be 'management'.
15	3.11.48	<i>'Intrusive ground investigation will be conducted post-consent, to be secured via a DCO Requirement...'</i>	<p>Would this be secured through Requirement 10 of the draft DCO?</p> <p>Requirement 10(1) as currently drafted does not explicitly refer to 'intrusive ground investigation'. This may be the same as the 'site investigation report' referred to in 10(1)(d) – if so, suggest an amendment to ensure the same terminology is used consistently across both the ES and draft DCO.</p>

ES Chapter 5			
Point number	ES Para	Extract from ES	Question/ Comment
1		n/a	The previous iteration of the Proposed Development (that subject to the SoS' Scoping Opinion) is referenced in ES Chapters 3 and 5, but could benefit from some further description in Chapter 5 – particularly with regard to how the environmental effects were taken into account when discounting this option. For example, reduced visual impact from 1 stack compared to 5 stacks.
2	5.2.7	<i>'...Drax is bringing forward three other power generation projects through the PA 2008 process. They are: Progress Power Ltd at Eye Airfield in Suffolk...Hirwaun Power Ltd at Hirwaun in South Wales ...and Millbrook Power Ltd in Bedfordshire...'</i>	Is the Drax Re-power project (promoted by Drax Power Ltd) also relevant here?

Annex 7: Comments on the draft Plans

Point number	Paragraph number	Question/ Comment
1	General	<p>In reference to the following plans:</p> <ul style="list-style-type: none"> • Land Plans (Sheets 1 of 2 and 2 of 2), • Works Plan (Sheet 1 of 1), and • Rights of Way, Streets and Access Plan (Sheets 1 of 2 and 2 of 2). <p>All Plans show direction of North, are referenced and dated, and refer to APFP Regulations.</p>
2	General	<p>There is clear distinction between what is freehold land, new rights, and temporary land to be acquired for Compulsory Acquisition purposes.</p>
3	Works Plan (Doc Ref 2.3)	<p>It is difficult to understand from this plan where the different works would be located (specifically in the diamond-shaped area where the power station etc would be located). It is understood that this information is difficult to clearly display on one plan.</p> <p>Therefore could other plans be provided which illustrate the individual works in addition to this plan?</p>

Annex 8: General Comments

Point number	Paragraph number	Question/ Comment
1	N/A	During Examination, the Applicant may provide 'other information' which is substantive to the ES and the findings of the assessments. This should be reflected in the definition of the ES in Article 2. The Applicant is advised to keep the ES definition updated throughout examination, so at the end of the examination it is clear what constitutes the ES.
2	N/A	The Applicant should consider providing a document which sets out all other consents and licences they will need (e.g. gas and electrical connections), including timescales etc. The ExA's may seek information in this regard during Examination.
3	N/A	The Applicant should give consideration to providing Welsh Language versions of key documents, as the Welsh Language is an important consideration for Welsh casework. Members of the public should be able to engage in the Examination in either Welsh or English language. Translation of key documents would assist with this.

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 National Infrastructure Planning 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.