



# **The Planning Inspectorate Yr Arolygiaeth Gynllunio**

**The Planning Act 2008**

**Internal Power Generation Enhancement for Port Talbot  
Steelworks**

**Examining Authority's Report of Findings and Conclusions**

**and**

**Recommendation to the  
Secretary of State for Energy and Climate Change**

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**Examining Authority**

**Roger Eyre BSc CEng MICE MCIWEM**

**9 September 2015**

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# **ERRATA SHEET – Internal Power Generation Enhancement for Port Talbot Steelworks – Ref. EN010062**

## **Examining Authority`s Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Energy and Climate Change, dated 9 September 2015**

### **Corrections agreed by the Examining Authority prior to a decision being made**

<b>Page No.</b>	<b>Paragraph</b>	<b>Error</b>	<b>Correction</b>
1	n/a	"File Ref EN10062"	"File Ref EN010062"
1	n/a	Erroneous bullet point	Removal
5	1.1.6	"The applicants....."	"The applicant`s...."
8	1.3.15	"...by the ExA 20 May 2015.."	"...by the ExA on 20 May 2015.."
11	2.1.2	"The applicants Planning Statement.."	"The applicant`s Planning Statement.."
12	2.1.7	2.1.7	2.1.7
12	2.1.9	"...within 1o years of.."	"...within 10 years of.."
14	2.1.19	"...control"	"...control;"
14	2.1.19	"a 66 kilovolt [V] electrical connection.."	"a 66 kilovolt [kV] electrical connection.."
15	2.1.28	"...either in new and existing ducting..."	"...either in new or existing ducting..."
19	3.1.1	"...local planning polices.."	"...local planning policies.."
19	3.3.1	"(5) NPS Ports – National Policy Statement for Ports"	"(5) NPS Ports – National Policy Statement for Ports ("NPSP")."
24	3.11.3	"...(the WFD Regulations)"	"...(the "WFD Regulations")"
24	3.11.5	"...to achieve them And are.."	"...to achieve them and are.."
26	3.15.4	Formatting	The paragraph number should be deleted and the text indented and italicised within speech marks
27	3.15.10	"Kenfis Pool and Dunes"	"Kenfig Pool and Dunes"
28	3.18	Formatting – duplication of paragraph 3.16	Delete the section
38	4.7.6	Erroneous paragraph number	The paragraph number should be deleted and the text indented and italicised within speech marks
40	4.8.9	"Reduced onsite electricity imports from the grid (from approximately 65MWe	"Reduced onsite electricity imports (from approximately 65MWe to 10MWe per annum on average) from the grid:"

		to 10 MWe per annum on average);”	
40	4.9.1	“...for the propose..”	“...for the proposed..”
41	4.10.1	“...and the NSER..”	“...and the No Significant Effects Report (“NSER”)..”
47	4.12.32	“...chapter 2 paragraph 2.0.21..”	“...chapter 2 paragraph 2.1.21..”
49	4.14.5	Number in bold	Remove bold
51	4.15.6	“...300MW threshold set above..”	“...300MW threshold set out above..”
59	4.21.1	“NPSP 4.4.1states”	“NPSP 4.4.1 states”
60	4.22.1	“...Article 8 of Schedule 2 Principal Powers.”	“...Article 8 of Part 2 of the recommended DCO (Principal Powers).”
61	4.23.13	“...Requirements 10, 11and 14..”	“...Requirements 10, 11 and 14..”
64	4.24.14	“Energy Response and Flood Risk Management [ERFRMP]”	“Energy Response and Flood Risk Management Plan [ERFRMP]”
68	4.24.32	“...to the ExA written questions..”	“...to the ExA`s written questions..”
74	4.28.9	“...and meets the..”	“...and meet the..”
76	4.31.2	“A Relevant Representations from..”	“A Relevant Representation from..”
76	4.31.4	“...gas pipework and asubsequent escape,”	“...gas pipework and a subsequent escape,”
76	4.31.4	“Such anescape..”	“Such an escape..”
76	4.31.4	“Tiabach”	“Taibach”
77	4.32.4	“SWP[RR-004]”	“SWP [RR-004]”
82	4.35.1	“..of EN-2 is applicable.”	“..of EN-2 are applicable.”
84	4.36.5	“...temperatureof the..”	“...temperature of the..”
84	4.36.5	“...if the waterwas discharged..”	“...if the water was discharged..”
84	4.36.5	“...depthof the water..”	“...depth of the water..”
85	4.37.2	“The ExA`s raised..”	“The ExA raised..”
87	4.37.5	“ABP relevant representation..”	“ABP`s relevant representation..”
90	4.37.19	“...within existing by licences issued by..”	“...within existing licences issued by..”
91	4.37.30	“...level of 4.95mAOD..”	“...level of 4.95m AOD..”
95	5.2.6	“...response to ExA first written questions..”	“...response to the ExA`s first written questions..”
98	5.3.8	Duplication of statement in “Aerial	Remove

		Deposition of Nitrogen and Acid” in paragraph 5.3.7	
100	5.4.4	“...can be found at the audi recording..”	“...can be found at the audio recording..”
101	5.4.9	“The applicant’s NSER [APP-193] as submitted concluded that no LSE as a result of the proposed development, either alone or in-combination, concluding that an Appropriate Assessment – stage Two of the HRA process – was not required.”	“The applicant’s NSER [APP-193] as submitted concluded no LSE as a result of the proposed development, either alone or in-combination, and that an Appropriate Assessment – stage Two of the HRA process – was not, therefore, required.”
101	5.4.11	“`Based on this information..”	“Based on this information..”
102	5.4.14	“This report [AS-007]stated..”	“This report [AS-007] stated..”
104	5.6.2	“...the Countryside Commission for Wales..”	“...the Countryside Council for Wales..”
105	5.7.2	“...features shown in this table have not disputed..”	“...features shown in this table have not been disputed..”
107	5.11.6	“..and therefor is..”	“..and therefore is..”
114	6.6.2	“...within the final draft DCO[Doc Ref].”	“...within the final draft DCO.”
127	<b>Requirement 13</b>	“`Construction work for the authorised development must not take place: (i) Outside the hours of- (ii) 07:00 to 19:00 on Monday to Friday, and (iii) 07:00 to 13:00 on Saturdays (iv) At any time on Sundays and public holidays, except with prior written approval of the relevant planning authority.	“`Construction work for the authorised development must not take place:- (a) Outside the hours of- (i) 07:00 to 19:00 on Monday to Friday, and (ii) 07:00 to 13:00 on Saturdays (b) At any time on Sundays and public holidays, except with prior written approval of the relevant planning authority.”

		Construction work shall not be carried out on Sundays and public holidays without the prior approval of the relevant planning authority.”	
127	<b>“Explanatory Note”</b>	<b>“Explanatory Note</b> Final paragraph.....is to be inserted”	<i>Delete</i>
129	7.4.10	Erroneous paragraph number	Delete paragraph number and include text in italics within speech marks.
131	7.4.32	“...has been submitted and approved by..”	“...has been submitted to and approved by..”
138	8.1.1	“The Examining Authority [ExA] considers..”	“The ExA considers..”
	Appendix D	“Countryside Commission for Wales”	“Countryside Council for Wales”
	Appendix D	“Minister of Parliament”	“Member of Parliament”

The Examining Authority's findings and conclusions and recommendation in respect of an application by Tata Steel UK Limited (the Applicant) for a Development Consent Order for a new gas fired power station with a generating capacity of 150 MWe (Internal Power Generation Enhancement for Port Talbot Steelworks) that would operate as a Boiler Turbo Alternator plant, together with a new integral electrical connection and a new integral gas connection at Port Talbot Steelworks, Port Talbot, South Wales

## **File Ref EN10062**

- The application, dated 7 August 2014, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 7 August 2014.
- The applicant is Tata Steel UK Limited.
- The application was accepted for examination on 2 September 2014.
- A single Examiner, Roger Eyre, was appointed as the Examining Authority on 13 November 2014.
- The examination of the application began on 10 December 2014 and was completed on 9 June 2015.
- The development proposed comprises a gas fired power station including two new boilers (164 Megawatt thermal (MWth)) and two new steam turbine sets with a gross capacity of up to 150 Megawatt electrical (MWe) with integral cooling units and twin 80m stacks together with an internal gas connection and other pipework, an electricity grid connection and ancillary buildings. The generating station will be fired predominately by the residual gases produced by the steelmaking process, which are currently flared, with imported natural gas used as a back up fuel.
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## **Summary of Recommendation:**

The Examining Authority recommends that the Secretary of State should make the Order in the form attached.

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# **1 INTRODUCTION**

## **1.1 INTRODUCTION**

- 1.1.1 Tata Steel UK Limited (the applicant) proposes to enhance the existing 115.7 Megawatt electrical [MWe] gross power generating capacity at the Port Talbot Steelworks, South Wales, through the installation of two new boilers (164 Megawatt thermal [MWth]) and two new steam turbine sets (65 MWe each) which will be fired predominately by currently flared steelmaking gases with natural gas imported as back-up fuel.
- 1.1.2 When operating the proposed development will have a gross generating capacity of up to 150MWe with an average generating capacity of 130 MWe due to the variable cycle of process gas production on the steelworks site. The proposed development will enhance the electrical generation capacity of the steelworks up to a maximum of 245MWe.
- 1.1.3 The proposed development would exceed generating capacity of 50MWe; therefore it can be defined as a Nationally Significant Infrastructure project [NSIP] under the Planning Act 2008 s15.
- 1.1.4 The principal objective of the proposed development is to burn the currently flared residual gases from the steelmaking process in order to self-generate electricity and thereby reduce the amount of electrical power that is being imported from the national grid. Only surplus electrical energy that cannot be used in the steel-making process will be returned to the national grid.
- 1.1.5 The current cost of importing electrical power from the national grid is a significant expense to the applicant and the proposed development, if authorised, may contribute towards more cost competitive steel-making at the site thereby securing significant socio-economic benefits to the local communities.
- 1.1.6 The applicants Planning Statement [APP-174] paragraph 1.3.4 suggests the savings on power import costs resulting from the proposed development would be the equivalent of the loss of 400 jobs in Port Talbot.

## **1.2 STRUCTURE OF REPORT**

- 1.2.1 The Report is structured as follows:
- Section 2 - sets out the main features of the proposed Project;
  - Section 3 - summarises the legal and policy context applicable to consideration of the application;
  - Section 4 - sets out the Examining Authority [ExA] findings and conclusions in respect of each of the policy and factual issues and

the other potentially important and relevant matters, identified by the ExA;

- Section 5 - assesses the application against the Habitats Regulations;
- Section 6 - assesses the requests for Compulsory Acquisition [CA];
- Section 7 - assesses the draft Development Consent Order [DCO]; and
- Section 8 - sets out the ExA overall conclusions and recommendations to the Secretary of State [SoS].

1.2.2 The following appendices are included within this Report:

- Appendix A - includes the DCO that the ExA recommends the SoS should grant;
- Appendix B - consists of the Examination Library and lists the documents submitted by the Applicant and others in connection with the Application, with the references used in this report;
- Appendix C - details the main events occurring during the Examination and the main procedural decisions taken by the ExA; and
- Appendix D - is a list of Abbreviations used in this report;

### **1.3 THE EXAMINATION AND PROCEDURAL DECISIONS**

- 1.3.1 The application dated 7 August 2014 was made under section 37 of the Planning Act and was received in full by the Planning Inspectorate on 7 August 2014. The application was accepted for examination on 2 September 2014. Fourteen Relevant Representations were received in total [RR01-RR014].
- 1.3.2 A review of the project and the Relevant Representations was made, and Roger Eyre was appointed as the single ExA 13 November 2014 to conduct the examination of this application.
- 1.3.3 The examination of the application began on 10 December 2014, and was completed on 9 June 2015.
- 1.3.4 A Preliminary Meeting [PM] was held 9 December 2014 to which all Interested Parties were invited (Rule 6 letter 13 November 2014 [PD-005]). The letter included a draft timetable for examination and the ExA's initial assessment of the principal issues from the application.

- 1.3.5 Within the Rule 6 letter, the ExA made a number of procedural decisions which included:
- a request for Statements of Common Ground [SoCG] between the applicant and a number of statutory bodies;
  - matrices from the applicant under the Habitats Regulations 2010; and
  - the acceptance of a late representation from Rhondda Cynon Taf County Borough Council [RCTCBC], received 23 October 2014.
- 1.3.6 The ExA issued a first round of written questions on 18 December 2014 [PD-004].
- 1.3.7 A Rule 8(3) notification of variation to the examination timetable was made by the ExA on 2 January 2015 [PD-007], announcing the following changes to the original Examination Timetable issued on 18 December 2014:
- The date for notification of CA Hearing was changed to Monday 19 January 2015 from Monday 12 January 2015;
  - The notification date for any accompanied site visit, Open Floor Hearing, Compulsory Acquisition Hearing and any other Specific was brought forward from Tuesday 27 January 2015 to Monday 19 January 2015;
  - Deadline 3 (17 February 2015) – removal of ‘Responses to comments on the ExA’s first written questions’;
  - Deadline 5 (19 March 2015) – Addition to existing deadline: ‘date for notification of any additional hearings’; and
  - New deadline added (deadline 7) – Receipt of comments on responses to ExA’s second written questions – Monday 11 May 2015.
- 1.3.8 A request for further information from the applicant, under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended), was made by the ExA on 30 January 2015 [PD-008].
- 1.3.9 A request for further information from Welsh Government, under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended), was made by the ExA on 3 February 2015 [PD-009].
- 1.3.10 A notification of additional hearings not included in the original examination timetable issued within the 18 December 2014 Rule 8 letter, was issued by the ExA under Rule 13 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) 19 March 2015 [EV-014].

- 1.3.11 The ExA called the additional Open Floor Hearing [OFH] because the applicant had failed to advertise the first OFH held on 24 February 2015 [EV-009] and the ExA wanted to make sure that everybody interested in the proposed development was given the opportunity to speak. The ExA also took the opportunity to hold a further ISH covering the remaining outstanding items.
- 1.3.12 Six hearings took place during the course of the examination, all of which were held at Blanco's Hotel, Green Park, Port Talbot. These were:
- An Issue Specific hearing [ISH] on the development consent order [DCO] 12 February 2015 (agenda [EV-003], audio recording [EV-004 and EV-005]);
  - An Open Floor hearing [OFH] 24 February 2015 (agenda [EV-008], audio recording [EV-009]);
  - A Compulsory Acquisition [CA] hearing 25 February 2015 (agenda [EV-010], audio recording [EV-011]);
  - An Issue Specific hearing [ISH] on environmental matters (including Environmental Impact Assessment [EIA] and Habitats Regulations Assessment [HRA]) 25 February 2015 (agenda [EV-010], audio recording [EV-012]);
  - An ISH on Outstanding Issues 15 April 2015 (agenda [EV-015], audio recording [EV-016]); and
  - An OFH 15 April 2015 (agenda [EV-017], audio recording [EV-018])
- 1.3.13 The ExA issued a second round of written questions on 26 March 2015 [PD-010].
- 1.3.14 A request for further information from the applicant, under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended), was made by the ExA 15 May 2015 [PD-012].
- 1.3.15 A request for further information from the applicant and Associated British Ports, under Rule 8 (3) and Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended), was made by the ExA 20 May 2015 [PD-013].

## **1.4 SITE VISITS**

- 1.4.1 The ExA made an unaccompanied Site Visit [USV] on 11 February 2015 accompanied by Case Team members as reported at the DCO ISH on 12 February 2015 [EV-004]. The USV covered the following viewpoints;
- (1) View from cycle path near Newbridge Road, Overbridge;
  - (2) View from Aberavon Sands, Port Talbot;

- (3) View from Harbour Way on the roundabout to north of the development;
- (4) View from Harbour way on the roundabout to south east of the development;
- (5) View from Talbot Road and Central Road Junction;
- (6) View from Dyffryn Road, Port Talbot;
- (7) View from Broomhill at Pen-y-cae;
- (8) View from footpath near Margam, Mynydd Brombil; and
- (9) View from Kenfig National Nature Reserve, Visitor Centre and Car Park

1.4.2 An Accompanied Site Visit [ASV] was held on 24 February 2015 with the Applicant and the following interested parties [EV-007]:

- Neath Port Talbot County Borough Council;
- Natural Resources Wales; and
- Associated British Ports.

1.4.3 The ASV covered the following areas [EV-006]:

- (1) The proposed cable route;
- (2) The proposed development site;
- (3) The existing power plant;
- (4) Associated British Ports abstraction points at Port Talbot Dock;
- (5) The following viewpoints;
  - (i) View from cycle path near Newbridge Road, Overbridge;
  - (ii) View from Aberavon Sands, Port Talbot;
  - (iii) View from Harbour Way on the roundabout to north of the development;
  - (iv) View from Harbour way on the roundabout to south east of the development;
  - (v) View from Talbot Road and Central Road Junction;
  - (vi) View from Dyffryn Road, Port Talbot;
  - (vii) View from Broomhill at Pen-y-cae;
  - (viii) View from footpath near Margam, Mynydd Brombil; and
  - (ix) View from Kenfig National Nature Reserve, Visitor Centre and Car Park.

## **1.5 OTHER CONSENTS REQUIRED**

1.5.1 Other consents necessary for the construction and operation of the proposed Project are provided in the application document "Details of Other Consents and Licences" [APP-194]. The document lists the following twelve (12);

- Environmental Permit (NRW);
- Electricity Generating Licence (OFGEM);
- Building Regulation Approval (NPTCBC);
- European Protected Species Licences (NRW);
- Health and Safety related consents (HSE);
- Licence to Kill, Take, Disturb or Possess a Wild Animal (NRW, NPTCBC);

- Abnormal Loads (DoT, NPTCBC, Police, Bridge owners);
- Planning Permission (NPTCBC);
- Section 61 consent (NPTCBC);
- Electrical Connection Agreement (WPD);
- Permit to Pump (NRW); and
- Licence to abstract water and consent to discharge (NRW).

## **1.6 REQUESTS TO BECOME OR WITHDRAW FROM BEING AN INTERESTED PARTY (S102A, S102B AND S102ZA).**

- 1.6.1 Welsh Government submitted a request 5 March 2015 to be registered as an Interested Party to the application, which was accepted by the ExA [AS-009].
- 1.6.2 There were no other requests under s102 during the examination.

## **1.7 UNDERTAKINGS/OBLIGATIONS GIVEN TO SUPPORT APPLICATION**

- 1.7.1 There were no undertakings or obligations given by the applicant to support the application.



## **2 MAIN FEATURES OF THE PROPOSAL AND SITE**

### **2.1 THE APPLICATION AS MADE**

- 2.1.1 Tata Steel UK Limited (the applicant) has applied to the Secretary of State [SoS] for a development consent order [DCO] under section 37 of the Planning Act 2008, for the proposed internal power generation enhancement project for the Port Talbot Steelworks in South Wales.
- 2.1.2 The principal objective of the proposed development is to burn the currently flared steelmaking gases in order to self-generate electricity and thereby reduce the cost of electrical power that is currently being imported from the national grid which is a significant expense to the applicant. The applicants Planning Statement [APP-174] paragraph 1.3.4 suggests the savings on power import costs resulting from the proposed development would be the equivalent of the loss of 400 jobs in Port Talbot.
- 2.1.3 If authorised the development will contribute towards more cost competitive steelmaking at the Port Talbot steelworks site thereby securing significant socio-economic benefits to local communities. Only surplus power that cannot be used in the steel-making process will be returned to the national grid.
- 2.1.4 The applicant proposes to install two new boilers (164 Megawatt thermal [MWth]) and their associated stacks and two new steam turbine sets with a gross capacity of 150 Megawatt electrical [MWe]. The proposed development also includes a switchgear station, a cooling tower unit, ancillary buildings and power and gas connections as described in Schedule 1 of the draft DCO [Appendix A].
- 2.1.5 The overall electrical generation capacity of the steelworks will be increased to a maximum of up to 245MWe, which would designate the proposed development as a nationally significant infrastructure under section 15 of the Planning Act 2008, the minimum generating capacity for this requirement being 50MWe.
- 2.1.6 Within their application documents as submitted to the Planning Inspectorate [PINS] 7 August 2014, the applicant outlined two potential options for the construction of the proposed development. As described in the applicant's Planning Statement [APP-174] 7 August 2014:

*'Option 1 would involve the full and complete construction of the proposed development. Option 2 would involve half the proposed development (one stack, one boiler and associated turbine sets) being installed (Phase 1) with all foundation and engineering being undertaken in that Phase. Phase 2 of Option 2 would involve the second and complete installation of the second stack, boiler and associated turbine sets. Phase 2 could occur up to 10 years after Phase 1. Further details can be found in Chapter 3 Project Description of the ES.'*

- 2.1.7 Whilst the applicant has indicated a preference for constructing the works in a single phase (Option 1), the final decision as to whether a single or a two phased construction programme will be adopted will be subject to the applicant's main board who will consider a bankability study due to be undertaken during the examination period. Both options were assessed in the applicant's ES [APP-011].
- 2.1.8 Paragraph 1.4.14 of the applicant's ES [APP-011] states:
- 'The Applicant initially envisaged the proposed development being delivered by a single construction phase, and preliminary information about the impacts of this approach was presented in the PEIR. As the proposed development has evolved, the Applicant has recognised the need to have flexibility to deliver the proposed development in either one or two construction phases. The proposed DCO has been prepared to provide this flexibility and, accordingly, this ES contains an assessment of the likely significant impacts of both construction scenarios. It is however worth pointing out that the Applicant's preferred option for project execution remains full construction of the proposed development in single phase.'*
- 2.1.9 The DCO if consented will allow the applicant to construct the development under either Option 1 or Option 2. The proposed DCO [Appendix A] includes Requirement 2 which sets the standard period of 5 years from the date of the Order to commencement with a requirement that if Option 2 is adopted then the second phase of construction must start within 10 years of the completion of the first phase.
- 2.1.10 It is worth noting that adopting Option 1 (single construction period) would avoid the temporary in-combination effect that will result if Option 2 is adopted. This aspect of the proposed development is discussed in detail in Chapter 5 paragraphs 5.05 et seq.
- 2.1.11 A two phased construction programme would see the second phase starting no later than ten years after the commissioning of the first phase.
- 2.1.12 Construction periods for Options 1 and 2 are estimated by the applicant in the Planning Statement [APP-174] as follows:
- Option 1**
- Construction Period 36 months
- Option 2**
- Phase 1 Construction Period 36 months
  - Phase 2 Construction Period 24 months
- 2.1.13 Commissioning and start-up periods are estimated at 6-9 months [REP1-003]

- 2.1.14 The location of the proposed development is at the existing Steelworks site at Port Talbot, South Wales. The site is situated wholly within land under the applicant's ownership save for two plots required for the gas and electrical connections (owned by Network Rail Infrastructure Limited [NRail]). The proposed development site lies within the administrative boundary of Neath Port Talbot County Borough Council [NPTCBC]. The current steelworks site covers a total area of 1005.5 hectares [ha], which includes all of the major components of the steelworks, together with the existing ancillary structures and buildings.
- 2.1.15 The Order Limits of the proposed development would extend to a total of 22.9 ha.
- 2.1.16 The site is located approximately 1.5km to the southeast of Port Talbot, and within the locality of the following residential communities. (The site is shown on the Location Plan [APP-179]):
- (a) Margam;
  - (b) Cwmavon;
  - (c) Goetre;
  - (d) Bryn;
  - (e) Pwll-y-glaw;
  - (f) Pontrhydyfen;
  - (g) North Cornelly;
  - (h) South Cornelly;
  - (i) Pyle;
  - (j) Kenfig;
  - (k) Briton Ferry;
  - (l) Llandarcy;
  - (m) Skewen;
  - (n) Neath; and
  - (o) Baglan.
- 2.1.17 The applicant, Tata Steel UK Limited, owns all the land required for the proposed development, except for two small plots required to make the gas and electricity connections across an existing railway line which is owned by NRail. Details of these plots are set out within the Land Plans [APP-181] under plots 01/07 and 02/04.
- 2.1.18 Protective provisions in relation to NRail's assets have been set out within the DCO [Appendix A] which have been agreed by both the applicant and NRail. However, at the end of the examination discussions between the applicant and NRail relating to the acquisition of rights and the protection of NRail's interests within the land had not been concluded as recorded in [AS-010] i.e. the agreement over the Deeds of Grant and Framework Agreement had not been finalised (see paragraph 6.6.5).
- 2.1.19 The main components of the proposed development and its ancillary works would include as follows:

- up to two steam boilers and their associated stacks (maximum 80 metres (m) in height), annexe bay and boiler house;
- a turbine hall housing turbine sets and associated condensers;
- cooling tower units;
- an electrical switchgear station building;
- a condensate storage tank and additional condensate polishing units;
- water treatment plant and chemical dosing system skids;
- administration, workshop, pump house, gas booster house, control
- buildings and ancillary infrastructure;
- the extension of existing pipe work connections (for water, nitrogen, process gases, natural gas and compressed air) from the existing on site utilities pipe work infrastructure to the generating station. All the extended pipe work will be contained within the Order Limits;
- a 66 kilovolt [V] electrical connection up to 2.8 kilometres [km] in length to connect the generating station to the existing on-site substations on the southeast of the site;
- security infrastructure, including perimeter fencing and site lighting infrastructure;
- connections to the existing internal road layout for the provision of site vehicular access(es), roads, pedestrian network, parking and cycle storage;
- temporary construction compounds; and
- connection to site drainage systems.
- These works are detailed in Schedule 1 of the draft DCO [Appendix A].

2.1.20 Under section 115(1) of the Planning Act 2008, development consent may be granted for development which is:

- (a) 'development for which development consent is required, or
- (b) associated development.'

2.1.21 As the application is based in Wales there can be no associated development for this project.

- 2.1.22 The proposed development is not a generating station to supply the National Grid. The proposed development is for a self-generating power enhancement project that will be wholly located within the applicant's existing Port Talbot steelmaking plant on land wholly owned by the applicant. The proposed development site is adjacent to the existing generating facilities and connections to existing process and natural gas sources are within 450m.
- 2.1.23 The proposed switchgear station will need to connect to the grid via a 2.8km cable laid wholly within land owned by the applicant to enable surplus power to be exported to the grid.
- 2.1.24 Each connection needs to cross the existing unused internal railway line owned by NRail. The applicant has sought CA rights over two small parcels of land to facilitate the gas and electrical connections. This is discussed in chapter 6.
- 2.1.25 The applicant's Planning Statement [APP-174] further describe the two connections that are required to enable the project to operate.

### **Gas and Utilities**

- 2.1.26 The pipe work would be an extension of the pipe work that is already in place for the existing power generation facilities and the existing on site gas distribution, steam and utilities network. Therefore, no significant additional pipe work is required. The extension of individual existing utilities and fuel pipe work would be up to 450m in length and contained within the Order Limits.
- 2.1.27 Any such pipe work is fundamental to the project in terms of the reuse of the existing waste flu gases to generate power for the steelworks and so forms an integral part of the proposed development and will be contained within the Order Limits.

### **Electrical Connection Cable Route**

- 2.1.28 A 66kV electrical connection would be located adjacent to the proposed development and within the Order Limits. This new 66kV cable would connect the new switchgear building to the two existing on-site substation approximately 2.8km to the southeast. The cables would either be run underground (either in new and existing ducting and excavations) or be supported off existing structures.
- 2.1.29 Where a new section of ducting is required, a trench would be excavated and the new cables installed. This denotes a 12m corridor which is required to take account of local ground conditions and existing infrastructure.

- 2.1.30 Such works would be carried out by hand/machine to install plastic ducts which are then backfilled with sand and cable tiles placed on top.

## **2.2 THE APPLICATION AT THE CLOSE OF EXAMINATION**

- 2.2.1 On 8 December 2014 the applicant submitted a letter to PINS advising that due to technical factors previously unknown to them, the dimensions and orientations of the principal buildings would need to vary from those originally set out within the DCO. [AS-002]
- 2.2.2 These changes were due to the recently proved alignment of the Dwr Cymru Cyfyngedig [DCC] Afan Valley Trunk Sewer that crosses the proposed development site.
- 2.2.3 The letter provided details of measurements of the original maximum dimensions set out in the draft DCO, in comparison to the new revised parameters proposed by the applicant.
- 2.2.4 The applicant stated within this letter that they considered the proposed revision as not material, and that therefore it did not amount to a substantive change. It was also stated that the changes were consistent with the application that had been consulted on during the pre-application stage and accepted for examination.
- 2.2.5 The applicant made a request during the Preliminary Meeting on 9 December 2014 [EV-002] for the revised parameters as detailed in their letter of 8 December 2014 to be discussed. The applicant also stated that the purpose of the letter was to bring the matter to the Examining Authority [ExA]'s attention, so that any procedural decisions to be made by the ExA could be informed by this new information.
- 2.2.6 The ExA confirmed that the letter would not be discussed at the Preliminary Meeting [PM] as it had been received whilst the ExA was travelling to the meeting, and that the ExA was unable to access it in its full form.
- 2.2.7 Following the PM the ExA accepted the information [AS-002] into the examination and the details were published on 18 December 2014. The ExA's first round of written questions 18 December 2014 [PD-004], asked the applicant question 3.01(a)-(g) specifically in relation to the letter detailing the revised parameters. The questions sought to identify the reasons for the changes.
- 2.2.8 A request for further information from the applicant under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) was made by the ExA 30 January 2015 [PD-008], specifically relating to the amendments to the dimensions of the principal structures and how these could be limited within a Rochdale Envelope.

- 2.2.9 The applicant submitted their responses to these questions at deadline 1 of the examination (15 January 2015) [REP1-002], and at deadline 2 (5 February 2015) [REP2-004]. The applicant's response confirmed that the changes were a result of ongoing design optimisation to reduce the works footprint and construction cost and to also to allow for a protective envelope for the Dwr Cymru Cyfyngedig [DCC] Afan Valley Trunk Sewer [AVTS] that crossed the site and which had previously been assumed could be built over as was the case prior to the demolition of the Margam coke ovens that previously occupied the proposed development site. In response to the ExA's Rule 17 letter [PD-008] the applicant [REP2-004] submitted revised wording for draft DCO Revision 1 Requirement 4 Detailed Design as explained in the applicant's Explanatory Notes on DCO Revision 1 comparison with Revision 0 [APP-198].
- 2.2.10 To support the revised layout the applicant submitted photomontages of the revisions [AS-006] which were published on 18 December 2014.
- 2.2.11 No further or additional representations were made by any of the interested parties relating to the re-orientation and sizing of the principal buildings.
- 2.2.12 The ExA has considered the revised layout of the proposed development as described above in the examination process.

## **2.3 RELEVANT PLANNING HISTORY**

- 2.3.1 The proposed development works will take place solely within the existing steelworks at Port Talbot, South Wales.
- 2.3.2 The original Margam Iron and Steelworks was built at the current Port Talbot Steelworks site between 1923 and 1926. The Abbey Works was built in 1951, becoming fully operational by 1953. These two sites formed part of the Steel Company of Wales.
- 2.3.3 In 1967 the Steel Company of Wales merged with other steel producing companies in the UK to form the British Steel Corporation, later privatised as British Steel Plc and becoming an entirely private company in 1999, British Steel Limited. British Steel merged with Dutch steelmaker Koninklijke Hoogovens in 2000 to form Corus UK Limited. Tata Steel acquired Corus UK Limited in 2007.
- 2.3.4 From the submission version of the applicant's Planning Statement [APP-174] received by PINS 7 August 2014 relevant planning history was summarised as follows:

*'The planning history of the site is extensive and relates to the on-going operation and development of the steelworks. However, the previous planning applications are not considered to be of direct relevance to the proposed development and as such a summary has not been included within this statement.'*

2.3.5 From the SoS's Scoping Opinion 12 November 2013 [PRE-004], the list of past planning applications may be summarised as follows:

*'Planning History:*

- (a) Application P2011/707 - Blast furnace No 4 rebuild – Approved 31/5/2012*
- (b) Application P2012/750 – Replacement cooling system and turbine –Approved*
- (c) Application P2012/1070 – Replacement gas holder - Approved 15/7/2013*
- (d) Application P2013/708 - Re cladding industrial buildings – Approved 1/10/2013'*

2.3.6 The ExA considers that the significant planning history indicates the applicant's ongoing investment in the steelmaking facility at Port Talbot to which this application for development consent is a further major commitment which the applicant valued at approximately £200m.

2.3.7 The ExA is aware that the following two DCO projects were being examined at the time of this examination:

- Tidal Lagoon (Swansea Bay) [EN010049]; and
- Hirwaun Power Station [EN010059].

2.3.8 However neither of these projects had reached a decision prior to the close of the examination for this project.



### **3 LEGAL AND POLICY CONTEXT**

#### **3.1 INTRODUCTION**

- 3.1.1 The application includes a Planning Statement which sets out the policy context for the proposed development [APP-174]. Additional information on local planning policies was provided by Neath Port Talbot County Borough Council [NPTCBC] [REP1-006] and the City and County of Swansea Council [CCSC] [REP1-005] as part of their Local Impact Reports [LIR].

#### **3.2 PLANNING ACT 2008 (AS AMENDED)**

- 3.2.1 The proposed development comprises an electricity generating station, with a nominal gross electrical output capacity of up to 150 MWe, fuelled by gases produced during the steelmaking process with natural gas provided as a back-up. The majority, if not all, the power generated will be consumed within the steelmaking plant with only surplus power being transferred to the national grid. This project constitutes a Nationally Significant Infrastructure project [NSIP], as defined in s14 (1)a and s15 of the PA 2008. National Policy Statements [NPS] in respect of this type of development have been published and the Secretary of State must therefore, subject to certain exceptions, decide the application in accordance with the relevant NPS as specified in section 104(3) of the Planning Act [PA] 2008.

#### **3.3 NATIONAL POLICY STATEMENTS [NPS]**

- 3.3.1 The NPSs which are relevant to the consideration of this application for a Development Consent Order [DCO] are as follows:
- (1) NPS EN-1 The Overarching National Policy Statement for Energy;
  - (2) NPS EN-2 National Policy Statement for Fossil Fuel Electricity Generating Infrastructure;
  - (3) NPS EN-4 National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines;
  - (4) NPS EN-5 National Policy Statement for Electricity Networks; and
  - (5) NPS Ports -National Planning Policy Statement for Ports
- 3.3.2 EN-1, EN-2, EN-4 and EN-5 were produced by the Department for Energy and Climate Change [DECC] and were formally designated as statements of national policy and presented to Parliament in accordance with s5(9) of the PA2008 in July 2011.
- 3.3.3 NPS Ports was produced by the Department for Transport and was designated on 26 January 2012.

- 3.3.4 These five NPSs form the primary policy context for this examination. This report sets out the Examining Authority's [ExA] findings, conclusions and recommendations taking these matters fully into account and applying the approach set out in s104 of the PA2008.
- 3.3.5 The Overarching National Policy Statement for Energy (EN-1) sets out the Government's policy for delivery of major energy infrastructure projects.
- 3.3.6 NPS EN-1 states that:
- 'the UK needs all the types of energy infrastructure covered by the NPS's in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions.' That includes fossil fuel plants such as the proposed development. It also states that applications for development consent should be assessed 'on the basis that the Government has demonstrated that there is a need for those types of infrastructure.'*
- 3.3.7 NPS Ports provides the framework for decisions on proposals for new port development. The NPS Ports covers England and Wales, reflecting the fact that ports policy for Wales, other than for small (fisheries) harbours, is reserved to the UK Government. The Welsh Government is, however, responsible for many related functions, including transport and land use planning.
- 3.3.8 NPS Ports sets out the Government's conclusions on the need for new port infrastructure, considering the current place of ports in the national economy, the available evidence on future demand and the options for meeting future needs. It explains to planning decision-makers the approach they should take to proposals, including the main issues which, in the Government's view, will need to be addressed to ensure that future development is fully sustainable, as well as the weight to be given to the need for new port infrastructure and to the positive and negative impacts it may bring.
- 3.3.9 For this application, the impact of the project on existing port provision is relevant in the context of the need for port provision as set out in the NPS.
- 3.3.10 The IPC must decide an application for energy infrastructure in accordance with this NPS unless it is satisfied that to do so would:
- lead to the UK being in breach of its international obligations;
  - be in breach of any statutory duty that applies to the IPC;
  - be unlawful;
  - result in adverse impacts of the development outweighing its benefits; or
  - be contrary to regulations about how the decisions are to be taken.

### **3.4 WELSH NATIONAL POLICIES AND GUIDANCE**

3.4.1 The principal planning policy documents in Wales that are relevant to this application are

- Planning Policy Wales 2014 (Edition 7); and
- Wales Spatial Plan (updated 2008).

The following Technical Advice Notes [TAN]s are also applicable;

- TAN 05: Nature Conservation and Planning (2009);
- TAN 08: Renewable Energy (2005);
- TAN 11: Noise (1997);
- TAN 12: Design (2014);
- TAN 14: Coastal Planning (1998);
- TAN 15: Development and flood risk (2004);
- TAN 16: Sport, recreation and open space (2009);
- TAN 18: Transport (2007); and
- TAN 23: Economic Development (2014)

3.4.2 The following policy/guidance documents may also be relevant:

- The Use of Planning Conditions for Development Management published October 2014 (WGC 016/2014) (as referred to in paragraph 4.1.7 of NPS-EN-1)

3.4.3 The following may also be relevant:

- TAN15: Development and Flood Risk (WDCPOL 04/03/2015);
- Increasing flood risk and the role of members in the planning system (Clarification Letter CL-02-14);
- Conservation (Natural Habitats etc Regulations 1994) (CL-01-08); and
- The review of designated landscapes in Wales (Ministerial Statement, 25 September 2014).

Where relevant, the ExA has taken account of these policy documents mentioned in this section of the report.

### **3.5 GOVERNMENT OF WALES ACT 2006 (GWA 2006)**

#### **DEVOLVED MATTERS**

3.5.1 The GWA 2006 enables the WG to make legislation which then applies in Wales. The legislation must be within the legislative competence of the WG, i.e. relate to the devolved matters which are set out in Schedule 7 to the Act. These are set out as a series of broad headings, or 'subjects' which include:

- Environment: matters such as environmental protection, countryside, open spaces, nature conservation, habitats, coast and marine environment;

- Local government, including areas of local authorities which includes their boundaries of jurisdiction for matters such as development control and enforcement; and
- Town and Country Planning.

### **3.6 EUROPEAN REQUIREMENTS AND RELATED UK REGULATIONS**

#### **Habitats Directive (Council Directive 92/43/EEC)**

- 3.6.1 The Habitats Directive (together with the Council Directive 79/409/EEC on the conservation of wild birds (Wild Birds Directive) (Birds Directive)) forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites and the strict system of species protection. The directive protects over 1000 animals and plant species and over 200 habitat types (for example: special types of forests; meadows; wetlands; etc.), which are of European importance.

### **3.7 CONSERVATION AND SPECIES REGULATIONS 2010 (AS AMENDED) THE HABITATS REGULATIONS**

#### **Conservation of Habitats and Species (Amendment) Regulations 2012**

- 3.7.1 The Conservation of Habitats and Species Regulations 2010 replaced The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) in England and Wales. The Conservation of Habitats and Species Regulations 2010 (which are the principal means by which the Habitats Directive is transposed in England and Wales) update the legislation and consolidated all the many amendments which have been made to the regulations since they were first made in 1994.
- 3.7.2 The Conservation of Habitats and Species Regulations 2010 apply in the terrestrial environment and in territorial waters out to 12 nautical miles. The EU Habitats and Wild Birds Directives are transposed in UK offshore waters by separate regulations – The Offshore Marine Conservation (Natural Habitats &c.) Regulations 2007 (as amended).
- 3.7.3 The Conservation of Habitats and Species (Amendment) Regulations 2012 came into force on 16 August 2012.
- 3.7.4 These Regulations amend the Habitats Regulations. They place new duties on public bodies to take measures to preserve, maintain and re-establish habitat for wild birds. They also make a number of further amendments to the Habitats Regulations to ensure certain provisions of Directive 92/43/EEC (the Habitats Directive) and Directive 2009/147/EC (the Wild Birds Directive) are transposed clearly.
- 3.7.5 Relevance to this application is discussed in Chapter 5 of this report. The Conservation of Habitats and Species Regulations 2010 (the

Habitats Regulations) are engaged because this case involves the following European sites :

- Crymlyn Bog Special Areas of Conservation [SAC] and RAMSAR ;
- Kenfig SAC; and
- Cefn Cribwr Grasslands SAC.

These European sites are subject to the protection required by the Habitats Directive.

- 3.7.6 In determining this application the Secretary of State [SoS] for Energy and Climate Change will be acting as competent authority for the purposes of regulations 61, 62 and 66 of the Habitats Regulations.

### **3.8 SPECIES**

- 3.8.1 The regulations impose criminal penalties for various activities in relation to protected European species of wild animals and plants. Regulation 53 enables licences to be issued for specified activities; anything done under and in accordance with the terms of a licence is then not an offence under the regulations. The licensing body in Wales is Natural Resources Wales [NRW].
- 3.8.2 NPS EN-1 states that the decision maker will need to take into account whether the appropriate nature conservation body has granted or refused, or intends to grant or refuse, protected species licences.

### **3.9 RENEWABLE ENERGY DIRECTIVE 2009**

- 3.9.1 The Renewable Energy Directive sets out legally binding targets for Member States with the expectation that by the year 2020, 20% of the European Union's energy mix and 10% of transport energy will be generated from renewable energy sources. The UK's contribution to the 2020 target is that by then 15% of energy will be from renewable sources.
- 3.9.2 For this project the reuse of flu gases to replace existing electricity use is the relevant context.

### **3.10 DIRECTIVE 2010/75/EU OF 24 NOVEMBER 2010 ON INDUSTRIAL EMISSIONS (INTEGRATED POLLUTION PREVENTION AND CONTROL (IPPC)) AND (THE "INDUSTRIAL EMISSIONS DIRECTIVE" ("IED")) AND DIRECTIVE 2008/50/EC OF 21 MAY 2008 ON AMBIENT AIR QUALITY AND CLEANER AIR FOR EUROPE (THE "AMBIENT AIR QUALITY DIRECTIVE")**

- 3.10.1 These have been implemented through the Environmental Permitting (England and Wales) Regulations 2010 (the EP Regulations) and Air Quality Standards Regulations 2010 (the AQS Regulations). They form an integrated pollution control framework with the relevant permits. In Wales these are issued by NRW and this is discussed in Chapter 4.

### **3.11 THE WATER FRAMEWORK DIRECTIVE**

#### **Background**

- 3.11.1 The EU Water Framework Directive [WFD] (Directive 2000/60/EC) established a framework for Community action in the field of water policy including the protection of inland surface waters, transitional waters, coastal waters and groundwater.
- 3.11.2 The WFD requires Member States to identify 'river basin districts' – the area of land and sea made up of one or more neighbouring river basins with their associated coastal waters and groundwater. Member States must also identify a 'competent authority' to apply the WFD rules within those districts.
- 3.11.3 The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 transposed the WFD into law in England and Wales (the WFD Regulations). The WFD Regulations separate the 'competent authority' functions into two. The 'appropriate authority' has a number of strategic functions under the Regulations, including approval (or rejection) of 'river basin management plans' [RBMPs] prepared by the 'appropriate agency'.
- 3.11.4 In Wales, Welsh Government [WG] is the 'appropriate authority', and NRW the 'appropriate agency' for the production of river basin management plans. The river basin districts [RBD] in England and Wales are identified on a map deposited with the WFD Regulations. The WFD Regulations require that River Basin Management Plans [RBMPs] were published by December 2009. They are (where appropriate) to be updated by 22 December 2015 and thereafter by each sixth anniversary of that date.
- 3.11.5 The RBMPs include environmental objectives for the district together with a programme of measures to achieve them And are required to comply with Article 4 of the WFD. There should be no deterioration in status and that good ecological and chemical status be achieved by 2015. However, for 'artificial and heavily modified bodies of water', the objective is for them to reach good ecological potential and good chemical status by that date. These are bodies of water that are either created by human activity or whose character has been substantially changed by human activity. Article 4.4 of the WFD sets out certain circumstances in which, exceptionally, the period for compliance may be extended to no later than 2027.

### **3.12 DEROGATION**

- 3.12.1 Member States will be in breach of the WFD if the relevant deadline is not met, unless the very limited circumstances set out in Article 4.7 apply ("derogation"). These are because the failure is either:
- "the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater", or

- To prevent deterioration of a surface water body from high status to good status as a “result of new sustainable human development activities”, and

in either case all practicable steps are taken to mitigate the adverse impact on status and the reasons are set out in accordance with Article 4.7. The WFD Regulations (Regulation 3) place a general duty on the SoS, WG, Environment Agency [EA] and NRW to exercise their ‘relevant functions’ so as to secure compliance with the WFD. PA2008 is not a ‘relevant function’ for this purpose.

- 3.12.2 However, they also have a specific duty to have regard to the relevant RBMP – and any supplementary plans made under it – in exercising their functions, which would include functions under the PA2008. The SoS will need to consider the implications of the project firstly in regard to his specific duty to have regard to the RBMP and secondly – in more general terms – in relation to the UK’s ability to comply with the WFD including (if applicable) the derogation provisions of Article 4.7.

### **3.13 PROJECT CONTEXT**

- 3.13.1 The relevant RBMP in this case is the Western Wales River Basin District as published by the Environment Agency (2009) River Basin Management Plan.
- 3.13.2 Water issues, including water resources, water quality, water abstraction and drainage are discussed in chapter 4.

### **3.14 OTHER LEGAL AND POLICY PROVISIONS**

- 3.14.1 United Nations Environment Programme Convention on Biological Diversity 1992
- 3.14.2 As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA has had regard to this Convention in its consideration of the likely impacts of the proposed development and appropriate objectives and mechanisms for mitigation and compensation. In particular the ExA finds that compliance with the UK provisions on environmental impact assessment and trans boundary matters, referred to below, satisfies, with regard to impacts on biodiversity, the requirements of Article 14.
- 3.14.3 The UK Government ratified the Convention in June 1994. Responsibility for the UK contribution to the Convention lies with the Department for Environment, Food and Rural Affairs who promote the integration of biodiversity into policies, projects and programmes within Government and beyond.

- 3.14.4 This is of relevance to biodiversity, biological environment and ecology and landscape matters which are discussed in chapter 4 and environmental impact assessment and HRA as discussed in chapter 5.

### **3.15 UK LEGISLATION**

#### **THE NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949**

- 3.15.1 The Act provides the framework for the establishment of National Parks and Areas of Outstanding National Beauty [AONBs]. It also establishes powers to declare National Nature Reserves, to notify Sites of Special Scientific Interest [SSSIs] and for local authorities to establish Local Nature Reserves.
- 3.15.2 A National Park and/or AONB has statutory protection in order to conserve and enhance the natural beauty of its landscape. National Parks and /or AONBs are designated for their landscape qualities. The purpose of designating a National park and/or AONB is to conserve and enhance their natural beauty; including landform, geology, plants, animals, landscape features and the rich pattern of human settlement over the ages.
- 3.15.3 Section 5 of the Act requires that -
- '(1) The provisions of this Part of this Act shall have effect for the purpose -
- (a) of conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas specified in the next following subsection; and
  - (b) of promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public.'
- 3.15.4 Following the Sandford Committee's Review of National Parks, s.11A (2) of the Act, an amendment in the Environment Act 1995, now requires that -
- 3.15.5 In exercising or performing any functions in relation to, or so as to affect, land in a National Park, any relevant authority shall have regard to the purposes specified in subsection (1) of section five of this Act and, if it appears that there is a conflict between those purposes, shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park.
- 3.15.6 In relation to this application Brecon Beacons National Park [BBNP] was designated as a National Park in 1957. BBNP confirmed that a Statement of Common Ground [SoCG] with the applicant was not required [REP7-001].



### **The Wildlife and Countryside Act 1981 (as amended)**

- 3.15.7 The Wildlife and Countryside Act 1981 (as amended) is the primary legislation which protects animals, plants, and certain habitats in the UK. The Act provides for the notification and confirmation of SSSIs. These sites are identified for their flora, fauna, geological or physiographical features by the countryside conservation bodies (in England Natural England). The Act also contains measures for the protection and management of SSSIs.
- 3.15.8 The Act is divided into four parts: Part I relating to the protection of wildlife, Part II relating to designation of SSSIs and other designations, Part III on public rights of way and Part IV on miscellaneous provisions.
- 3.15.9 If a species protected under Part I is likely to be affected by development, a protected species license will be required from Natural England. This has relevance to consideration of impacts on SSSIs and on protected species and habitats. Whether any licenses are required are discussed in Section 4.
- 3.15.10 In relation to this application it has relevance to consideration of impacts on the following SSSIs;
- Eglwys Nunydd Reservoir;
  - Margam Moors;
  - Crymlyn Burrows;
  - Pant-y-Sais;
  - Waun Cimla;
  - Penycastell, Cefn Cribwr;
  - Caeau Cefn Cribwr;
  - Cwm Du Woodlands;
  - Kenfis Pool and Dunes; and
  - Crymlyn Bog.

These sites are shown on Figure 3.2 in the applicant's ES Volume 2b [APP-013].

### **3.16 NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006**

- 3.16.1 The Natural Environment and Rural Communities [NERC] Act made provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, SSSIs, National Parks and the Broads. It includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with this, regard must be given to the United Nations Environment Programme Convention on Biological Diversity of 1992.
- 3.16.2 This is of relevance to biodiversity, biological environment and ecology and landscape matters in the proposed development. These matters are discussed in Chapter 4.

### **3.17 THE COUNTRYSIDE AND RIGHTS OF WAY ACT 2000**

- 3.17.1 The Countryside and Rights of Way Act brought in new measures to further protect AONBs, with new duties for the boards set up to look after AONBs. These included meeting the demands of recreation, without compromising the original reasons for designation and safeguarding rural industries and local communities.
- 3.17.2 The role of local authorities was clarified, to include the preparation of management plans to set out how they will manage the AONB asset. There was also a new duty for all public bodies to have regard to the purposes of AONBs. The Act also brought in improved provisions for the protection and management of SSSIs.
- 3.17.3 This is relevant to the examination of effects on and mitigation in relation to impacts on any AONB affected by the proposed development. This is discussed under the landscape and visual impacts in chapter 4 of this report.
- 3.17.4 In relation to the application it has relevance

### **3.18 NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006**

- 3.18.1 The NERC made provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, SSSIs, National Parks and the Broads. It includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with this, regard must be given to the United Nations Environment Programme Convention on Biological Diversity of 1992.
- 3.18.2 This is of relevance to biodiversity, biological environment and ecology and landscape matters in the proposed development.

### **3.19 MADE DEVELOPMENT CONSENT ORDERS**

- 3.19.1 Mention may be made of made DCOs which are referred to later in the report by way of precedent for the DCO under consideration, including any raised by the applicant, other interested parties or that the ExA has referred to during the examination as potentially important and relevant.

### **3.20 TRANSBOUNDARY (EFFECTS)**

- 3.20.1 A Transboundary opinion was published by the Planning Inspectorate on 26 November 2013 and again on 1 October 2014. Under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (the EIA Regulations), and on the basis of the application information available from the Applicant, the Secretary of State is of the view that the proposed development is not likely to have a significant effect on the environment in another EEA

State. In reaching this view the Secretary of State has applied the precautionary approach.

- 3.20.2 The ExA is satisfied that with regard to regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, all transboundary biodiversity matters have been addressed and there are no matters outstanding that would argue against the Order being confirmed.

### **3.21 LOCAL IMPACT REPORTS**

- 3.21.1 Ss104 and 105 state that in deciding the application the Secretary of State must have regard to any LIR within the meaning of s60(3).
- 3.21.2 There is a requirement under s.60(2) of PA2008 to give notice in writing to each local authority falling under s.56A inviting them to submit Local Impact Reports. This notice was given on 13 November 2014 [PD-005].
- 3.21.3 Local Impact Reports have been submitted by NPTCBC and CCSC [REP1-005 and REP1- 006]. The principal matters raised in the LIRs are as follows;

#### ***Neath Port Talbot County Borough Council***

- Principle of Development;
- Landscape and Visual impact;
- Air Quality Emissions, Noise and Vibration;
- Ecology and Biodiversity;
- Traffic and Transport;
- Socio Economic Impact;
- Ground Contamination; and
- Archaeology and Cultural Heritage.

#### ***City and County of Swansea Council***

- Social and economic impacts;
- Landscape and visual impacts;
- Ecological impacts; and
- Air quality impacts.

- 3.21.4 These are considered at chapter 4 of this Report.

### **3.22 RELEVANT DEVELOPMENT PLANS**

- 3.22.1 Paragraph 4.1.5 of NPS EN-1 states that:

'Other matters that the IPC may consider both important and relevant to its decision-making may include Development Plan Documents or other documents in the Local Development Framework. In the event of a conflict between these or any other documents and an NPS, the NPS prevails for purposes of IPC decision making given the national significance of the infrastructure. The energy NPSs have taken

account of relevant Planning Policy Statements [PPSs] and older-style Planning Policy Guidance Notes (PPGs) in England and Technical Advice Notes (TANS) in Wales where appropriate.'

- 3.22.2 The applicant sets out what it considers to be the relevant policies in its Planning Statement [APP-174].

***Neath Port Talbot County Borough Council [NPTCBC]***

- 3.22.3 The current Development Plan for this application area is Neath Port Talbot Unitary Development Plan which was adopted in March 2008.
- 3.22.4 On 3 September 2014 NPTCBC submitted its Local Development Plan [LDP] to the Welsh Government for examination. However due to the stage in the process it was at when NPTCBC submitted their LIR the council did not consider the LDP to be a material planning consideration in the determination of this application.
- 3.22.5 NPTCBC website [www.npt.gov.uk] states that the Inspector's report on the NPTCBC LDP is anticipated to be submitted to the council on 30 October 2015.
- 3.22.6 The NPTCBC Unitary Development Plan [UDP] is also supported by a number of Supplementary Planning Guidance [SPG] documents. The council identified the Port Talbot Harbourside and Town Centre Development Framework (April 2011) to be relevant.

***City and County of Swansea Council [CCSC]***

- 3.22.7 The City and County of Swansea Council [CCSC] adjoins the administrative area of the application's host local authority, NPTCBC.
- 3.22.8 The current adopted development plan for the CCSC is the UDP, which was adopted in November 2009.
- 3.22.9 It is anticipated that the City and County of Swansea Council LDP will replace the UDP in late 2016. The deposit of this LDP is due to be published late 2015.

**3.23 THE SECRETARY OF STATE'S POWERS TO MAKE A DCO**

- 3.23.1 The ExA was aware of the need to consider whether changes to the application meant that the application had changed to the point where it was a different application and whether the Secretary of State would have power therefore under s.114 of PA2008 to make a DCO having regard to the development consent applied for.
- 3.23.2 In exercising this power the Secretary of State may wish to take into account the following views of the ExA.
- 3.23.3 The applicant submitted a revised layout for the proposed development just prior to the Preliminary Meeting on 8 December 2014. The revised layout was a result of ongoing design optimisation

and the result of ongoing discussions with Dwr Cymru Cyfyngedig relating to a larger protective envelope for the Afan Valley Trunk Sewer that crossed the site. It was determined that the sewer could not be built over due to its condition and as a result the main buildings had to be re-orientated. The revised layout did not change the Order Limits although the change did have an impact on landscape and visual impacts. These are discussed later in chapter 4.

- 3.23.4 The ExA acknowledged the receipt of the additional information provided by the applicant to support these changes at the Preliminary Meeting [EV-002] held on 9 December 2014 and within the Rule 8 letter [PD-006] issued on 18 December 2014. The Rule 8 letter [PD-006] sought comment on these changes from interested parties by Deadline 1, 15 January 2015.
- 3.23.5 No comments on these changes were received from any party.
- 3.23.6 In summary, the ExA considers that the changes to the application as submitted are not material and therefore do not affect the granting of a DCO by the Secretary of State.

## **4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES**

### **4.1 MAIN ISSUES IN THE EXAMINATION**

#### ***Preliminary Identification of Principal Issues***

- 4.1.1 In accordance with Section 88 of the Planning Act 2008, the ExA made an initial assessment of the principal issues arising from the ExA's consideration of the application documents [APP-001 to 194] and relevant representations [RR-001 to 014] received relating to the Port Talbot Power Enhancement Project. This was sent to all Interested Parties and Affected Persons on 13 November 2014 [PD-006] and was part of the agenda for the Preliminary Meeting [PM] held on 9 December 2014. The audio recording of the PM [EV-001] records that no further principal issues were raised by any attendees. The ExA has had regard to all important and relevant matters in putting forward this recommendation to the SoS.
- 4.1.2 The ExA confirmed that the principal issues have broad headings and that all the issues would be covered by the relevant heading in the principal issues [PD-006]. The ExA confirmed that these issues would be examined in accordance with national policy and under the procedure established in the Planning Act 2008, as amended, and relevant secondary legislation.
- 4.1.3 The ExA received no requests during the PM for any additions to be made to the list of principal issues [PD-006].
- 4.1.4 The selection of the principal issues informed the ExA's first round of written questions [PD-004] and decisions as to which topics might require Issue Specific Hearings. The principal issues identified by the ExA were as follows:
- Air quality, including issues relating to the impact on air quality from both the construction and the operational phases;
  - Compulsory Acquisition, including issues related to the requirement for the powers sought and financial arrangements;
  - The draft Development Consent Order [DCO], including issues related to adequacy of proposed requirements to provide mitigation for possible adverse effects, protective provisions, maintenance of the scheme, time limits and phasing and Code of Construction Practice;
  - Environmental Impact Assessment, including issues related to the adequacy of the Environmental Statement, cumulative effects and climate change;
  - Other environmental issues, including issues related to airborne emissions and air quality, land stability risk, ground

contamination, flooding, noise, lighting, dust and vibration, water quality, supply and abstraction, health effects, and coal reserves sterilisation;

- Flood risk, including issues related to impact of the proposed development on flood risk and the flood resilience of the proposed buildings and infrastructure;
- Habitats, ecology and nature conservation, including issues related to the information provided and whether this enables the competent authority to reach a view as to whether or not the project will adversely affect the integrity of any European site, the impact on European sites, impacts on habitats and on biodiversity and mitigation and compensatory measures;
- Health and safety, including issues related to health impact on local communities and construction, operation and maintenance;
- Historic and archaeological environment, including issues related to the effects of the project on heritage assets and archaeological remains;
- Noise, dust and vibration, including issues related to impacts during construction and operation;
- Operational matters, including issues related to environmental permitting and implications of different operating scenarios;
- Socio-economic, including issues related to negative and positive impacts on the communities including impacts on local services and facilities, employment, tourism, housing and historic sites;
- Soils and geology, including issues related to contaminated land and coal deposits;
- Transport and traffic, including issues related to rail, construction traffic movement and routing and the local and national road network;
- Visual impact, design and layout, including issues related to the design concept and process, landscape and visual impact and landscaping and screening; and
- Water quality and resources, including issues related to the impact of operation on water resources and water quality.

4.1.5 The following sections deal with the matters listed above that have emerged as the principal issues in the Examination, which may be important and relevant to the SoS's final decision.

## **4.2 ISSUES ARISING FROM WRITTEN SUBMISSIONS**

4.2.1 Fourteen (14) Relevant Representations were received in the pre-examination period [RR-001 to 14]. The issues raised informed the initial identification of the principal issues as listed above.

4.2.2 The ExA's findings and conclusions to all the issues raised in the written and oral submissions are summarised in the remainder of Chapter 4 and also in Chapter 5 of this report.

## **4.3 ISSUES ARISING IN LOCAL IMPACT REPORTS [LIR]**

4.3.1 Two LIRs have been submitted:

- Neath Port Talbot County Borough Council [NPTCBC] [REP1-006];
- and
- City and County of Swansea Council [CCSC] [REP1-005].

4.3.2 NPTCBC is the relevant planning authority for the area within which the proposed development is located. The issues arising from the NPTCBC LIR [REP1-006] were in relation to the following:

- Principle of Development;
- Landscape and Visual Impact;
- Air Quality Emissions, Noise and Vibration;
- Ecology and Biodiversity;
- Traffic and Transport;
- Socio Economic Impact (including future of employment in Neath Port Talbot and in the wider region);
- Ground Contamination; and
- Archaeological and Cultural Heritage.

4.3.3 The applicant was the only commentator [REP2-001] on NPTCBC's LIR [REP1-006]. The applicant and NPTCBC reached agreement on the issues raised in the LIR through agreed requirements in the draft DCO [APP-210] and the agreed Statement of Common Ground [SoCG] [AS-021]

4.3.4 CCSC is considered as a Relevant Authority in accordance with Section 56(2) and Section 60 (2) (a) of the Planning Act 2008 as the administrative boundary of CCSC adjoins the administrative boundary of NPTCBC within which the development is located.

4.3.5 The issues arising from the CCSC LIR [REP1-005] were in relation to the following:

- Socio-economic;
- Landscape and visual impacts;
- Ecological; and
- Air Quality.



- 4.3.6 The applicant was the only commentator [REP2-001] on CCSC's LIR [REP1-005]. The applicant and CCSC reached agreement on all the issues raised in the CCSC LIR through agreed requirements in the draft DCO [APP-210] and the agreed SoCG [AS-020] except for the commitment to CCSC 'Beyond Bricks and Mortar' initiative to "secure social benefits from procurement and regeneration activity in CCSC for the lasting benefits of the community."
- 4.3.7 This is discussed in more detail in paragraph 4.6.2 of this chapter and later in section 7.5 of Chapter 7.

#### **4.4 CONFORMITY WITH THE DEVELOPMENT PLAN POLICIES**

- 4.4.1 NPTCBC's LIR [REP1-006] states in section 5 that:

'The current development plan for this area is the Neath Port Talbot Unitary Development Plan [UDP] which was adopted in March 2008.

*On 30 September 2014 the council submitted its Local Development Plan [LDP] to the Welsh Government for examination. However due to the stage of the process that the LDP is currently at, it is not considered to be a material planning consideration in the determination of the current project.'*

- 4.4.2 The Neath Port Talbot UDP is supported by a number of Supplementary Planning Guidance [SPG] documents. The relevant documents pertinent to this project are:
- Port Talbot Harbour side & Town Centre Development Framework (April 2011) - which emphasises the importance of the Harbour Way Peripheral Distributor Road [PDR] as a catalyst for economic and physical regeneration in the former industrial area of Port Talbot, opening up major development opportunities that have potential to provide long term benefits to the town. Requirements to demonstrate that there would be no adverse effects upon air quality objectives are also included;
  - Developer Contributions;
  - Biodiversity; and
  - Landscaping.

However these documents will be undergoing review and update as part of the LDP process.

- 4.4.3 In addition to the Development Plan, the Authority has a single Integrated Plan 2013-2023, which sets out the council's vision for Neath Port Talbot and the steps it will take to protect and improve local services and to support communities. This includes the reduction in the carbon footprint and seeking to ensure effective management systems to provide health and clean air.

4.4.4 NPTCBC's LIR [REP1-006] states in section 7 Local Policy:

*'Within the Neath Port Talbot UDP, Policy 10 that the expansion or redevelopment of existing enterprises will wherever appropriate be encouraged while Policy EC2 states that proposals for the re-development, intensification and expansion of existing industrial and business premises will be permitted unless unacceptable impacts on local amenities, existing industrial and commercial activities townscape, landscape, biodiversity or highway safety are created. Policies GC1: New Buildings/Structures and Changes of Use and GC2: Engineering works and Operations (including Minerals and Waste) set out the Council's general considerations framework to guide the consideration and assessment of all development proposals.'*

*'Within this wider policy context, the Council recognises the overarching importance for the continuation of steel production at Port Talbot, and the role of this proposed development in terms of onsite energy generation, increasing efficiency significantly and reducing costs of production of the plant. Accordingly, there is general support for the development subject to detailed examination of the impacts to ensure the development complies with the criteria and requirements of the other Development Plan policies, notably in respect of landscape and visual impact and air quality.'*

4.4.5 The ExA has considered these statements in reaching the conclusions discussed later in Chapter 8.

#### **4.5 STATEMENTS OF COMMON GROUND [SOCG]**

4.5.1 SoCGs have been agreed between the applicant and the following:

- (a) Neath Port Talbot County Borough Council [NPTCBC][AS-021];
- (b) City and County of Swansea Council [CCSC] [AS-020]; and
- (c) National Resources Wales [NRW] [REP4-005].

4.5.2 The following have formally confirmed that SoCGs were not required:

- (a) Carmarthen County Council [CCC] [REP6-004 Appx A];
- (b) Powys County Council [PCC] [REP6-004 Appx B];
- (c) Rhondda Cynon Taff County Borough Council [RCTCBC] [REP6-004 Appx D];
- (d) Bridgend County Borough Council [BCBC] [REP6-004 Appx C];
- (e) Brecon Beacons National Park Authority [BBNPA] [REP6-004 Appx E];
- (f) Royal Mail Group [REP6-004 Appx H];
- (g) Welsh Government Highways [AS-009]; and
- (h) Coal Authority [REP6-004 Appx G].

#### **4.6 PROTECTIVE PROVISIONS [PP]**

4.6.1 The applicant has undertaken to draw up and agree Protective Provisions with the following:

- (a) Dwr Cymru Cyfyngedig [DCC];
- (b) National Grid Electricity Transmission [NGET];
- (c) Network Rail [NRail];
- (d) Associated British Ports [ABP]; and
- (e) Western Power Distribution [WPD].

4.6.2 The status of the respective Protective Provisions is summarised in the following table:

Table 4.1

Statutory Undertaker	Status	Issues Outstanding	Doc Ref
NRail	Agreed	Deeds of Grant and Framework Agreement	AS-010
WPD	Agreed	None	REP6-004
NGET	Agreed	Side Agreement	REP6-002
DCC	Agreed	None	REP6-004
ABP	In negotiation	Final drafting	n/a

4.6.3 Protective Provisions are discussed in more detail in Chapters 6 and 7 of this report.

## 4.7 OUTSTANDING ISSUES FROM RR, WR, LIR, SOCG AND PP

4.7.1 The ExA has, through the examination process of document review, written questions and hearings, addressed all the issues raised in the relevant responses, written representations, local impact reports, statements of common ground and protective provisions. The following summarises the outstanding issues that remain at the close of the examination.

### ***Applicant and CCSC - Beyond Bricks and Mortar initiative.***

4.7.2 In the applicant's comments on LIRs [REP2-001] the applicant considers that a commitment in respect of tendering and procurement could not properly be the subject matter of a DCO requirement as it would not meet the tests set out in the National Planning Policy Framework [NPPF] (sic) paragraph 206 which are restated in paragraph 4.1.7 of NPS EN-1. This provides that requirements should only be imposed where they are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects.

4.7.3 The applicant considers that a development consent obligation would be the more appropriate mechanism to secure a commitment in respect of tendering and procurement.

4.7.4 The ExA is aware that the NPPF does not apply in Wales. The appropriate guidance is set out in WGC 016/2014 The Use of Planning Conditions for Development Management which replaces Circular 35/95. This document refers to six tests for planning conditions:

- Necessary;
- Relevant to Planning;
- Relevant to the development to be permitted;
- Enforceable;
- Precise; and
- Reasonable in all other respects.

4.7.5 The guidance states at paragraph 4.23 that:

4.7.6 'A condition which fails any of the six tests should not be imposed.'

4.7.7 The ExA could not find anything in the Model Conditions that supported the application of the CCSC requirement to tie the applicant to their Beyond Bricks and Mortar [BBM] initiative. The applicant has demonstrated his commitment to working within the local communities and the ExA agrees with the applicant's position that the CCSC BBM should not be applied.

#### ***Applicant and ABP - Water abstraction***

4.7.8 At the close of the Examination the applicant had been unable to agree the final form of protective provisions with ABP. This is discussed in sub-section 4.36 below.

#### ***Applicant and NRW - Environmental Permit***

4.7.9 At the close of the Examination the applicant had not obtained an environmental permit from NRW for the proposed development.

4.7.10 Section 2.4 of the NRW SoCG [REP4-005] records that the granting of an environmental permit should be possible in principle.

4.7.11 A permit application was subsequently submitted by the applicant to NRW on 28 May 2015 and acknowledged as being duly made by NRW on 5 June 2015 [AS-011].

#### ***Applicant and NRail - Compulsory Acquisition***

4.7.12 At the close of the Examination the applicant had been unable to agree the final form of the following:

- Deeds of Grant for the rights required for the two railway crossing to facilitate the gas and electrical connections; and
- Asset Protection Agreement.

4.7.13 These are discussed further in paragraph 7.4.53 of Chapter 7.

#### ***Applicant and NGET - Agreements***

4.7.14 At the close of the Examination the applicant had been unable to agree the side agreement with NGET.

4.7.15 This is discussed further in paragraph 7.4.57 of Chapter 7.

#### **4.8 CONFORMITY WITH NPSS AND OTHER KEY POLICY STATEMENTS**

4.8.1 National Planning Statement [NPS] EN-1 paragraph 3.1 states:

*'The UK needs all types of energy infrastructure covered by this NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions.'*

*It is for industry to propose new energy infrastructure projects within the strategic framework set by Government. The Government does not consider it appropriate for planning policy to set targets for or limits on different technologies.*

*The IPC should therefore assess all applications for development consent for the types of infrastructure covered by the energy NPSs on the basis that the Government has demonstrated that there is a need for those types of infrastructure and that the scale and urgency of that need is as described for each of them in this part.*

*The IPC should give substantial weight to the contribution which projects would make towards satisfying this need when considering applications for development consent under the Planning Act 2008.'*

4.8.2 Whilst the Port Talbot Power Enhancement Project is not designed to generate power directly into the national grid, it will serve to significantly reduce the demand on the national grid by generating power for an energy intensive use inside the existing steelworks at Port Talbot.

4.8.3 The applicant states in paragraphs 1.4.2 to 1.4.5, 1.4.8 and 1.4.13 of the ES [APP-011] that:

4.8.4 *'To remain cost competitive the energy efficiency of the site needs to be optimised.'*

4.8.5 *Power at the Port Talbot site is currently generated through existing equipment which does not have sufficient capacity to consume all of the gases generated by the steel-making operations. Much of the equipment dates back to the 1950s and suffers from low (and steadily decreasing) levels of efficiency. The proposed development represents an opportunity to significantly increase the energy efficiency and power generation through the introduction of modern equipment.*

4.8.6 *The total onsite gross power generating capacity is currently 115.7MWe and this capacity provides electrical power and process steam to the major onsite production units.'*

4.8.7 The applicant proposes to enhance this onsite capacity by installing up to two new boilers (nominally up to 164 megawatt thermal (MWth)

each) and associated steam turbine sets with a gross capacity of up to 150 MWe.

4.8.8 The proposed development would result in the total onsite gross power generation capacity at the Port Talbot site increasing up to a maximum of 245MWe.

4.8.9 The applicant states in paragraph 1.4.13 of ES [APP-011] that the proposed development will have, inter alia, the following benefits:

- *'Air quality improvements through the reduction in flared process gases;*
- *Off-set of approximately 400,000 tonnes per annum of CO2 through significant reduction in electricity import from the grid (based on electrical generation from coal fired power stations);*
- *Reduced onsite electricity imports from the grid (from approximately 65MWe to 10MWe per annum on average);*
- *Increased operational efficiency and reliability of onsite power generation and steam production; and*
- *Increased economic efficiency through cost reduction to protect the long-term future of steelmaking in South Wales.'*

4.8.10 Paragraph 12.2.19 of the applicant's ES [APP-011] states the following additional benefit:

*'This document [ES] highlights Neath Port Talbot's major contribution to the UK's energy generation, specifically referring to Tata Steel Works. It also sets out the national targets for reducing CO2 emissions and encouraging the production of energy through renewable resources. This new scheme will help to cut down on green house gas emissions through a reduction in flared process gases therefore contributing to the national CO2 reduction targets whilst protecting sustainable steel making industry in South Wales.'*

## **4.9 CONCLUSIONS ON CONFORMITY WITH NPSS AND OTHER KEY POLICY STATEMENTS**

4.9.1 The question of whether there was a necessary need for the proposed development was not raised by any party during the course of the examination.

4.9.2 The financial viability of the scheme, taking into account paragraph 4.1.9 of EN-1 is considered in paragraph 6.4.2 of Chapter 6 of this report.

4.9.3 The ExA is satisfied that the proposed development conforms with NPSs and other key policy statements.

#### **4.10 ENVIRONMENTAL STATEMENT AND ENVIRONMENTAL IMPACT ASSESSMENT [EIA]**

- 4.10.1 The adequacy of the EIA/ES [APP-011] and the NSER [APP-193] and their assessment of potential impacts were highlighted in the initial identification of principal issues [PD-005].
- 4.10.2 Natural Resources Wales [NRW][RR-006], Neath Port Talbot County Borough Council [NPTCBC] [RR-013], City and County of Swansea Council [CCSC] [RR-002], the Coal Authority [RR-005], Royal Mail Group [RR-008], Associated British Ports [ABP] [RR-009], Public Health England [PHE] [RR-011] and Abertawe Bro Morgannwg University Health Board [RR-012] raised concerns regarding the adequacy of the EIA/ES in their respective Relevant Representations.
- 4.10.3 The Habitats Regulations Assessment information is considered separately in Chapter 5 of this report.
- 4.10.4 The applicant provided information on the environment and its assessment of the environmental issues in the following documents:
- ES [APP-011];
  - Supporting figures [APP-013 to 016];
  - Supporting appendices [APP-018 to 102]
  - Supporting photomontages [APP-103 to 173]; and
  - Standalone Non-Technical Summary [APP-010].
- 4.10.5 At the Preliminary Meeting the applicant advised the ExA that due to previously unforeseen site constraints resulting from the alignment of the DCC Afan Valley Trunk Sewer [AVTS] which runs through the proposed development site and which required a re-orientation of the principal buildings, the applicant considered it necessary to extend the maximum permitted width of the turbine hall and cooling tower units from those included within the draft DCO as submitted.
- 4.10.6 The applicant recorded that whilst the maximum permitted widths would change, the overall size of these buildings would not exceed the maximum area and volume permitted under the draft DCO. The applicant proposed a further requirement be added to Schedule 2 of the draft DCO [APP-210]. This is discussed further in the Chapter 8 of this report.
- 4.10.7 To support these revisions the applicant submitted a Statement of Information on revised parameters for turbine hall and cooling tower units [AS-002] which includes the results of sensitivity testing carried out against the assessment of landscape and visual impacts included in the Environmental Statement [APP-011], revised indicative site layout plan [REP1-003 Appx C] and revised photomontages of the revised layout of the buildings [AS-006].

- 4.10.8 The ExA acknowledged the receipt of the additional information provided by the applicant to support these changes at the Preliminary Meeting [EV-002] held on 9 December 2014 and within the Rule 8 letter [PD-006] issued on 18 December 2014. The Rule 8 letter [PD-006] sought comment on these changes from interested parties by Deadline 1, 15 January 2015.
- 4.10.9 The ExA included a specific question 3.01(a)-(g) in the first round of ExA questions [PD-004] that was intended to produce further information from the applicant regarding these changes. Responses to these questions can be found at [REP1-003].
- 4.10.10 NPS EN-1 paragraph 4.2.4 states:  
  
'The IPC should request further information where necessary to ensure compliance with the EIA Directive'
- 4.10.11 The ExA investigated the adequacy of the information provided in the ES in the first [PD-004] and second [PD-010] rounds of written questions and in the questions to the applicant at the EIA and other Environmental Matters Issue Specific Hearing [EV-010].
- 4.10.12 The applicant's responses to the ExA written questions can be found at first [REP1-003] and second [REP6-004] respectively.

#### **4.11 CONCLUSION ON ADEQUACY OF ENVIRONMENTAL STATEMENT [ES] / ENVIRONMENTAL IMPACT ASSESSMENT [EIA]**

- 4.11.1 It is the view of the ExA that the overall environmental information supplied, is sufficient for the SoS to take into consideration before making a decision in compliance with the Infrastructure Planning (Environmental Impact Assessment) Regulation 3 (2).

#### **4.12 CONSIDERATION OF ALTERNATIVES**

- 4.12.1 The EIA Regulations require that an ES should include an outline of the main alternatives that have been studied by the applicant and an indication of the main reasons for its choices, taking into account the likely significant impacts of each alternative.

- 4.12.2 NPS EN-1 (para 4.4.1-4.4.2) states:

*'From a policy perspective this NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option. Furthermore, it is not necessary to consider alternative technologies for generating stations.'*

*However:*

*Applicants are obliged to include in their ES, as a matter of fact, information about the main alternatives they have studied. This should include an indication of the main reasons for the applicant's choice,*



*taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility.'*

- 4.12.3 The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended), state at Schedule 4, Part 1 (18) that the ES [APP-011] needs to provide:

*'An outline of the main alternatives studied by the Applicant and an indication of the main reasons for the Applicant's choice, taking into account the environmental effects.'*

- 4.12.4 Under the EIA Regulations 22 there is no requirement to assess all potential alternatives, only a requirement to provide a review of those alternatives that have actually been considered.

- 4.12.5 The proposed development is part of a major energy efficiency initiative by the applicant aimed at ensuring the long term sustainability and cost effectiveness of steel making in Port Talbot through the self-generation of electricity from steel making by-product gases to reduce the import of power from the grid and to make use of currently flared gases.

- 4.12.6 With this in mind the alternatives that have been considered by the applicant, which are detailed in Section 2.8 of the ES [APP-011] include:

- ***Do Nothing Scenario*** - a number of existing steam boilers and turbines would eventually reach a position of uneconomical repair with a resulting drop in electrical generation capacity and a further increase in process gas flare. This would also further increase the onsite electricity imports from the grid, resulting in a significant cost penalty to the business; and
- ***Alternative Scenario*** - the alternative scenario would be to import electricity from the grid to support steel making activities at the site, which would be an expensive and uneconomical exercise. This would increase the cost of steelmaking at Port Talbot and would adversely impact on its market competitiveness.

- 4.12.7 Neither of the above would achieve the objective of improving the cost effectiveness of the steelmaking operations at Port Talbot since both would result in a cost impact.

### ***Alternative locations for the proposed development***

- 4.12.8 The applicant used the Kepner Tregoe decision analysis tool to select the optimal location for the proposed development.

4.12.9 Alternative sites, which are shown on Figure 3.2 of the ES [APP-013], were identified as;

- (A) Old Margam Coke Oven site;
- (B) North Side of Harbour Way Dock site; and
- (C) Old A Strand Sinter Plant site.

4.12.10 Only Site A is under the ownership of the applicant and was selected primarily to ensure ease of land transfer. Site A also preferred to the alternative sites due to the following benefits:

- Adjacent to existing power generation buildings making the integration of utilities and pipework connections easier and less costly than the other sites;
- Easier to isolate and ring fence during construction and operation;
- Potential to increase production footprint;
- Minimises risk of damage to onsite assets and personal injury;
- Minimises disruption to other on-going steel making activities; and
- Minimises risk to general public.

4.12.11 Alternative layouts are limited due to the alignment of the Afan Valley Trunk Sewer [AVTS] which runs through the development site. [REP1-001]

4.12.12 Alternative Technology - The applicant considered the application of Boiler Turbo Alternator [BTA] units in comparison with Combined Cycle Gas Turbines [CCGT]. Paragraph 2.8.27 of ES [APP-011] states the conclusions of this comparison as:

*'Although the efficiency of the CCGT unit is slightly higher (at approximately 44%) when compared to the BTA unit (approximately 41%), the BTA is the preferred technology due to the following:*

- *Simpler integration of BTA with existing BTA plant;*
- *Significant operational experience from existing BTA plant;*
- *Better response of BTA to variations in process gas availability; and*
- *BTA being generally more economic and flexible.'*

The ExA sought further evidence to support the selection of BTA technology over that of CCGT in the first round of written questions (Q3.17) [PD-004]. The applicant's response, which can be found at [REP1-003] stated that:

*'The selection by the applicant of BTA over CCGT was primarily based on technical and operational flexibility considerations. Those considerations included the ability of a BTA plant to burn fuels with low calorific values pressures and the ability to obtain better part load efficiencies from BTA in comparison to CCGT. Further, as the process gas production and availability at the steelworks is variable and the CCGT plants require stable fuel supply, there would have been a need (had a CCGT been selected) to frequently utilise natural gas to maintain stable fuel supply rates, reducing the overall cost efficiency of the plant.'*

- 4.12.13 The applicant was also able to draw upon a greater number of reference BTA plants firing blast furnace gas (BFG), as using BFG to fuel CCGT plants is not considered the conventional approach. For these technical reasons the use of CCGT was not considered by the applicant as a viable option for the proposed development, and the applicant therefore excluded the consideration of CCGT as an alternative before the assessment of emissions and air quality began.

### **Alternative options for gas connections**

#### ***Process Gases Connection***

- 4.12.14 The existing power generation assets are supplied with three types of process gas: Blast Furnace Gas [BFG], Basic Oxygen Steel Making Gas, and Coke Oven Gas using a network of above ground pipelines which are up to 3.0 metres in diameter. The gases are all supplied at a low pressure of up to a maximum 200mbar.
- 4.12.15 The proposed generating station will be fuelled predominantly by gases arising from the steel-making process and to enable this, these gas supply pipelines will be extended by up to 450m to connect to the new boiler(s).
- 4.12.16 The preferred site A-Old Margam Coke Oven Site as shown on Figure 3.2 in ES [APP-013] is adjacent to the existing power generation buildings and able to connect through local extensions to the existing steelmaking gas pipelines.
- 4.12.17 The applicant has provided a Gas Connection Statement [APP-002] which has been prepared to comply with regulation 6(1) (a) (ii) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, which requires the Applicant for a gas-fuelled generating station to provide a statement of who will be responsible for designing and building the gas pipeline connection to the generating station.

#### ***Natural Gas Connection***

- 4.12.18 Eni Trading and Shipping Plc supply the natural gas to the Port Talbot Site through a 12inch pipeline from the National Grid network. The

natural gas pipeline enters the Port Talbot Steelworks site at Grid Reference 278310 E 186675 N. At this point, the gas supply pressure is reduced to approximately 6 Barg pressure and is distributed to the site through a network of pipelines that are owned by Tata Steel. This network of pipelines supplies various steel production plants onsite and the existing power generating plant. For the proposed development, this Tata-owned natural gas supply pipeline to the existing power generating plant will be extended to the new generating plant to provide a back-up fuel.

- 4.12.19 Tata will be responsible for designing and building all elements of the Gas Connections.
- 4.12.20 The locations of existing main-feed and back-up gas connections are fixed by their need to supply existing facilities. By locating the proposed power plant adjacent to these facilities the applicant is effectively minimising the extent and complexity of the new gas connections, the vast majority of which will be on land that is already within the applicant's ownership.
- 4.12.21 However, the extension of the process-gas pipework between the blast furnace and the generating station will need to cross over the Ogmore Valley railway line (currently disused) which runs through the Order land and which is owned by Network Rail Infrastructure Limited. It will be necessary for the applicant to obtain the necessary rights over Land Plan Plot No. 01/07 [APP-007] either by agreement or through the exercise of the power of compulsory acquisition, which is included in the draft DCO. This is discussed further in Chapter 6 of this Report.
- 4.12.22 The indicative locations of these connections are shown on the Land Plans [APP-181].

### **Grid Connection**

- 4.12.23 The Grid Connection Statement [APP-001] accompanies the application and has been prepared to comply with regulation 6(1)(a)(i) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, which requires the Applicant to provide a statement of who will be responsible for designing and building the connection to the electricity grid.
- 4.12.24 Paragraph 4.9.1 of the Overarching National Policy Statement for Energy (EN-1) emphasises that it is for the Applicant to ensure that there will be necessary infrastructure and capacity in the transmission and distribution network to accommodate the electricity to be generated by a proposed new power plant.
- 4.12.25 Most, if not all of the electricity generated by the proposed generating station will be utilised by the onsite operations at the steelworks. Occasionally, however, it may be necessary to export excess electricity to the regional distribution network.

- 4.12.26 The Port Talbot steelworks site is already connected to the regional distribution network, and the new generating station will make use of this existing connection.
- 4.12.27 Accordingly, the only new infrastructure required to achieve the grid connection is the new 66kV substation as described in Work No.1A, the 66kV electrical cable connection (2.8 km in length) and associated modifications to and upgrades of the existing Cefn Gwrgan and Grange substations as described in Work No.2.
- 4.12.28 The electricity distribution network in the region is owned and operated by Western Power Distribution [WPD]. The existing power generation plant at the steelworks is already connected to the regional distribution network via the Cefn Gwrgan and Grange substations which are within the site boundary of the steelworks and are jointly owned by Tata and WPD. The new generating station will make use of these existing connections.

### ***THE 66KV ELECTRICAL CONNECTION***

- 4.12.29 The electrical connection consists of 66kV electrical cables running between the new 66kV substation and the existing onsite substations approximately 2.8km to the south east. For most of the route, the cables will either be run underground (either in new and existing ducting and excavations) or be supported off existing above-ground structures.
- 4.12.30 In sections where the ground conditions are unsuitable for underground excavations, and where there are no existing above-ground structures, it will be necessary for metal lattice type bridging structures to be erected to support the cables.
- 4.12.31 The locations of existing electricity sub-stations and grid connection facilities are fixed by their very existence and need to supply existing facilities. By determining Site A as the preferred location for the proposed power plant the options for alternative routings for these connections are limited by the need to minimise disruption to on-going steel production activities.
- 4.12.32 As discussed previously in chapter 2 paragraph 2.0.21 the gas and grid connections can be seen to be integral to the proposed development for an internal self-generating power station that will be fired by steelmaking process gases with any surplus power being supplied to the grid. The ExA is satisfied that without these connections the proposed development will not be able to operate and deliver the significant benefits that have been identified.

### **Conclusions on Alternatives**

- 4.12.33 Accordingly, the ExA considers that the applicant has addressed the case in relation to:
- Alternative sites;

- Alternative layouts;
- Alternative technologies;
- Alternative options for gas and electrical connections.

4.12.34 The ExA considers that the examination of alternatives has been addressed adequately and that the requirements of NPS EN-1 and the EIA Regulations are met.

#### **4.13 MITIGATION MEASURES**

4.13.1 A series of mitigation measures have been proposed within the ES Sections [APP-011], Code of Construction Plan [CoCP] [APP-088] and the Habitat Management Plan [HMP] [Doc Ref]. They have been secured through the draft DCO requirements [APP-210] as follows:

- Requirement 6 - Provision of Landscaping;
- Requirement 9 - Habitat Management Plan;
- Requirement 10 - Code of Construction Practice; and
- Requirement 11 - Approval and implementation of construction mitigation plans.

4.13.2 All works on-site will be undertaken in compliance with the final CoCP as secured by Requirement 10 of Schedule 2 to the draft DCO [APP-210].

4.13.3 Chapter 7 of this report, contains a description of the draft DCO Requirements, and an explanation of modifications either agreed by the applicant or proposed by the ExA together with the identification of who has responsibility for discharge of specific requirements.

#### **4.14 GOOD DESIGN**

4.14.1 The Design and Access Statement [APP-176] has been prepared to demonstrate how the design of the proposed development has been fully considered in line with the design requirements and recommendations of the overarching NPS EN-1, together with Technical Advice Note 12: Design (TAN12) and the Town and Country Planning (Development Management Procedure) (Wales) Order 2012.

4.14.2 The applicant stated in his Design and Access Statement [APP-176] that the proposed development would be in accordance with Planning Policy Wales supplemented by Technical Advice Notes [TAN]s including TAN12: Design. TAN12 refers to the Design Commission for Wales [DCFW] at section 3.9. However the applicant's Design and Access Statement [APP-176] made no reference to DCFW.

- 4.14.3 The issue of quality of design was raised by NPTCBC in their written representation [RR-013] which sought a commitment from the applicant to:

*'provide extensive and detailed consideration to a scheme of the highest quality in terms of design, use of materials and landscaping that reflects the prominence of the site being adjacent to the Harbour Way peripheral distributor road [PDR] which aims to be the gateway to Port Talbot and a catalyst for economic and physical regeneration.'*

- 4.14.4 The applicant has embraced the requirements of NPTCBC, the relevant planning authority through the development and agreement of a Design Principles Document [DPD] [APP-203]. The SoCG [AS-021] between the parties states that:

*'The Parties AGREE that the design of the buildings and detailed submission in respect of requirement 4 of Schedule 2 (Requirements) to the DCO should reflect the principles set out in the design principles document attached at Appendix 1.*

*The Parties AGREE that the obligation at requirement to 4(5) (that the final design for approval must comply with the design principles document) provides an appropriate framework to ensure a high quality design can be achieved for the proposed development in line with the parameters established by Requirement 4 of the DCO.*

- 4.14.5** *The Parties AGREE it is appropriate that the 'design principles document' is a certified document under article 24(1)(e).'*

### **Conclusion on Design**

- 4.14.6 The ExA is encouraged by the applicant's design approach to the project. This has been secured as far as is possible in the draft DCO through the following Requirements:

- Requirement 4: Detailed Design;
- Requirement 6: Provision of Landscaping;
- Requirement 7: Fencing and other means of enclosure;
- Requirement 12: External Lighting; and
- Requirement 15: Surface and foul water drainage.

- 4.14.7 The design approach accords with the aims of NPS EN-1, NPTCBC UDP and NPTCBC SPG Port Talbot Harbour side & Town Centre Development Framework (April 2011) [REP1-006] by promoting good design in new developments adjacent to Harbour Way.

- 4.14.8 The LIR [AS-021] states at Article 24 that:

*'The Parties AGREE that the design of the buildings and detailed submission in respect of requirement 4 of Schedule 2 (Requirements) to the DCO should reflect the principles set out in the design principles document attached at Appendix 1.*

*The Parties AGREE that the obligation at requirement to 4(5) (that the final design for approval must comply with the design principles document) provides an appropriate framework to ensure a high quality design can be achieved for the proposed development in line with the parameters established by Requirement 4 of the DCO.*

*The Parties AGREE it is appropriate that the 'design principles document' is a certified document under article 24(1)(e).'*

- 4.14.9 Given the evidence presented, the ExA is satisfied that an appropriate standard of design quality is likely to result.

#### **4.15 SPECIFIC ENERGY NPS REQUIREMENTS**

##### ***Combined Heat and Power - EN-1 4.6***

- 4.15.1 Paragraph 4.6.6 of NPS EN-1 states:

*'Under guidelines issued by DECC (then DTI) in 2006, any application to develop a thermal generating station under Section 36 of the Electricity Act 1989 must either include CHP or contain evidence that the possibilities of CHP have been fully explored to inform IPC's consideration of the application. This should be through an audit trail of dialogue between the applicant and prospective customers. The same principle applies to any thermal power station which is the subject of an application for development consent under the Planning Act 2008. The IPC should have regard to DECC's guidance, or any successor to it, when considering CHP aspects of applications for thermal generating stations.'*

- 4.15.2 The subject of combined heat and power [CHP] opportunities and their assessments were not addressed specifically within ES [APP-011]. Accordingly the issue was raised in question 3.33 in the ExA's first round of written questions [PD-004]. The applicant's response, which can be found at [REP1-003], confirmed that the existing heat exports of some 100 tonnes of 11 bar steam per hour, which is extracted to supply on site processes or otherwise used to generate power, will continue to be supplied by remaining and new assets as the heat demand on site is not expected to change.

##### ***Conclusion on Combined Heat and Power***

- 4.15.3 The ExA believes that the applicant's response to ExA first round of written questions [REP1-003] provides the necessary evidence to demonstrate that the applicant is compliant with the DECC Guidelines.



### **Carbon Capture and Storage/Carbon Capture Readiness**

4.15.4 NPS EN-1 paragraph 4.7.5 states:

*'All commercial scale fossil fuelled generating stations have to be carbon capture ready (see CCR section below)...Operators of fossil fuel generating stations will also be required to comply with any Emission Performance Standards [EPS] that might be applicable, but this is not part of the consents process.'*

4.15.5 In the CCR section of NPS EN-1 paragraph 4.7.10 states:

*'To ensure that no foreseeable barriers exist to retrofitting carbon capture and storage [CCS] equipment on combustion generating stations, all applications for new combustion plant which are of generating capacity at or over 300MW and of a type covered by the EU's Large Combustion Plant Directive [LCPD] [Doc Ref] should demonstrate that the plant is "Carbon Capture Ready" [CCR] before consent may be given. The IPC must not grant consent unless this is the case. In order to assure the IPC that a proposed development is CCR, applicants will need to demonstrate that their proposal complies with guidance issued by the Secretary of State in November 2009 or any successor to it....'*

4.15.6 The power generating plant proposed under this development is rated at 150MW and is therefore under the 300MW threshold set above. No assessment for CCR was submitted by the applicant as part of the proposal.

### **Conclusion on CCR**

4.15.7 The proposed development has a gross generating capacity of up to 150MWe which when operational with the existing capacity will result in a combined gross generating capacity of up to 245MWe. CCR requirements do not apply as the proposed development is rated at 150MWe which is less than the threshold for CCR which is currently set at 300MWe.

### **Grid Connection**

4.15.8 NPS EN-1 states at paragraph 4.9.1:

*'The connection of a proposed electrical generation plant to the electricity network is an important consideration for applicants wanting to construct or extend generation plant. In the market system, it is for the applicant to ensure that there will be necessary infrastructure and capacity within an existing or planned transmission or distribution network to accommodate the electricity generated. The applicant will liaise with National Grid who own and manage the transmission network in England and Wales or the relevant regional Distribution Operator [DNO] to secure a grid connection. It may be the case that the applicant has not received or accepted a formal offer of a grid connection from the relevant network operator at the time of the*

*application, although it is likely to have applied for one and discussed it with them. This is a commercial risk the applicant may wish to take for a variety of reasons, although IPC will want to be satisfied that there is no obvious reason why a grid connection would not be possible.'*

4.15.9 In the case of the proposed development the need for the grid connection is to enable the applicant to transfer any surplus power that may become available over and above that which will be consumed by the onsite steel-making operations during normal production activities.

4.15.10 The grid connection comprises a new 66kV substation (which will be solely owned by the applicant) and a 66kV electrical cable connection (2.8km in length) between the new sub-station and the existing Cefn Gwrgan and Grange substations together with the associated modifications to and upgrades of these substations.

4.15.11 The applicant states in section 4 of the Grid Connection Statement [APP-001] that:

*'For most of the route the cables will either be run underground (either in new or existing ducting and excavations) or be supported off above-ground structures. In sections where the ground conditions are unsuitable for underground excavations, and where there are no existing above-ground structures, it will be necessary for metal lattice type bridging structures to be erected to support the cables.'*

The electrical connection is entirely within the site of the steelworks on land owned by the applicant, with the exception of a section of the disused internal railway line which the cables will have to cross through underground ducting. This is similar to the Brechfa Forest West Wind Farm grid connection which was accepted by SoS as integral to the project.

4.15.12 The internal railway line (currently disused), is owned by Network Rail Infrastructure Limited and it will be necessary for the applicant to obtain the necessary rights over Land Plan Plot No. 02/04 [APP-181] either by agreement or through the exercise of the power of compulsory acquisition, which is included in the draft DCO.

4.15.13 To enable these works the draft DCO [APP-210] Schedule 4 includes agreed Protective Provisions with:

- Network Rail Part (Part 1) ;
- Western Power Distribution (Part 2); and
- National Grid (Part 3).

4.15.14 However at the end of the Examination the applicant and Network Rail submitted a joint statement [AS-010] recording that they had agreed

the protective provisions and whilst negotiations continued, they had not been able to agree the Framework Agreement and the Deeds of Grant that Network Rail require in place before their objection to the application for development consent can be withdrawn. These final agreements are likely to be commercial and the ExA expects them to be agreed as indicated in the joint statement paragraph 1.4 [AS\_010].

## **GAS CONNECTION**

### **4.16 CONCLUSIONS**

- 4.16.1 The site for the proposed development is adjacent to the existing internal generating facilities and process gas infrastructure and connections can be made within 450 metres. This is the closest position practicable and integral to the proper functioning of the proposed development.

### **4.17 AIR QUALITY AND EMISSIONS**

- 4.17.1 NPS EN-1 identifies traffic emissions, air pollution, dust and odour as issues for human health that need to be taken into account in the assessment of any proposed schemes, along with the effects of nuisance on sensitive receptors. In terms of air quality EN-1 states in paragraph 5.2.7:

*'The ES should describe:*

- *Any significant air emissions, their mitigation and any residual effects distinguishing between project stages and taking account of any significant emissions from any road traffic generated by the project;*
- *The predicted absolute emission levels of the proposed project, after mitigation methods have been applied;*
- *Existing air quality levels and the relative change in air quality from existing levels;*
- *The risk and impact of potential pollution from the proposed development insofar as this might have an effect on the use of other land and the surrounding environment (the environmental regulatory regime may well have an interest in these issues, particularly if the proposed development would impact on an Air Quality Management Area or a SAC); and*
- *Any potential eutrophication impact.'*

- 4.17.2 NPS EN-2 states in paragraph 2.5.6:

*'In considering whether to grant consent, IPC should take account of likely environmental impacts resulting from air emissions and that in the case of SO<sub>x</sub>, NO<sub>x</sub> or particulates in particular, it follows the advice in EN-1 on interaction with the NRW's regulatory processes.'*

- 4.17.3 The updated UK Air Quality Strategy [AQS] 2007 sets out new objectives for local authorities in undertaking their local air quality management duties setting standards that apply to human health. The AQS objectives are based on the evidence supporting the identification of limit values and, in some instances, may be more onerous than the limit values set out within the relevant EU Directives and the AQS Regulations (Wales) 2010 which also apply to human health.
- 4.17.4 In the case of the project, air quality and emissions have been considered and are detailed in Section 5 of the ES [APP-011]. The principal source of operational emissions to atmosphere from the proposed development will be exhaust gases from the new boiler stacks. During construction potential sources of emissions include dust from construction activities and emissions from transport associated with the construction of the proposed development.
- 4.17.5 The applicant sets out the objectives and limit values in Sections 5.4 and 5.5 of ES Volume 3, Appendix 5.1 [APP-033].
- 4.17.6 The assessment of potential air quality impacts was highlighted in the identification of principal issues [PD-005].
- 4.17.7 NPTCBC, CCSC and NRW each raised air quality and emissions issues within their relevant representations [RR-013, RR-002 and RR-006 respectively].
- 4.17.8 The ExA addressed the adequacy of the information and the assessment provided in the ES [APP-011] in the ExA first round of written questions [PD-004][Environmental Questions: 5.01-5.20] and in ExA questions to the applicant and Interested Parties at the Issue Specific Hearing on Environmental Matters held on 25 February 2015 [EV-010].
- 4.17.9 Responses to ExA written questions can be found at [REP1-001 to 004] and written submissions of oral responses at the EIA ISH can be found at [REP4-001 to REP4-004].
- 4.17.10 CCSC agreed in SoCG [AS-020] that the project would not result in any significant impacts on the air quality of the residents of CCS.
- 4.17.11 NPTCBCs LIR [REP1-006] states in paragraph 7.4.4 that:
- 'It is concluded that stack emissions from the new development were predicted to be not significantly different from the existing scenario and as such it is considered that the development would not be likely to have a detrimental effect upon air quality in the area.'
- 4.17.12 NPTCBC further accepted in paragraph 7.4.5 that any adverse effects of dust from construction activities:
- 'may be reduced to negligible significance if effective mitigation measures are implemented and enforced within a Dust Management Plan [DMP] controlled under the DCO.'*

### **Conclusion on Air Quality and Emissions**

- 4.17.13 The respective SoCGs signed between the applicant and NPTCBC [AS-021], CCSC [AS-020] and NRW [REP4-005] all record the acceptance of the applicant's assessment of the impact of air emissions on human health as being insignificant and that all operational, construction and decommissioning emissions and air quality impacts will be adequately regulated through the Environmental Permit regulatory measures and through the Code of Construction Plan; Dust and Traffic Management Plans that are to be produced under Requirement 10 of Schedule 2 of the draft DCO [APP-210].
- 4.17.14 The ExA considers that the examination of air quality and emissions has been addressed adequately across all issues and that the requirements of NPS EN-1 and EN-2 are met together with the objectives of AQS Regulations 2010.
- 4.17.15 The ExA concludes that there is no evidence presented, that the granting of any necessary licence under other regulatory regimes will be withheld as a result of the effects of the project on air quality, and that therefore, based on NPS EN-1 paragraph 4.10.8, the SoS as decision-maker should have no reason to withhold development consent on these grounds.
- 4.17.16 The biodiversity section below includes the discussion of air quality effects on ecological receptors.

### **4.18 BIODIVERSITY, BIOLOGICAL ENVIRONMENT, ECOLOGY AND GEOLOGICAL CONSERVATION**

- 4.18.1 Issues relating to Habitats Regulations Assessment [HRA] (NPS EN-1 paragraph 4.3) are covered in Section 5, Findings and Conclusions in Relation to Habitats Regulations, of this report.
- 4.18.2 NPS EN-1 paragraphs 5.3.7 and 5.3.8 state:
- 'As a general principle, and subject to the specific policies below, development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives (as set out in Section 4.4 above); where significant harm cannot be avoided, then appropriate compensation measures should be sought.'*
- 4.18.3 *In taking decisions, the IPC should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment.'*
- 4.18.4 No geological conservation interests were identified in the course of the examination. The applicant provided information on the baseline ecology and biodiversity and its assessment of these issues in Section

6 of the ES [APP-011] and in Volume 3a Appendices 6.1 to 6.5 [APP-038 to 042]

- 4.18.5 The assessment of potential ecological and biodiversity impacts was highlighted in the identification of principal issues [PD-005]. The ExA investigated the adequacy of the information and the assessment provided in the ES in the first [PD-004] round of written questions and through questions (4.1) [EV-010] at the EIA ISH on 25 February 2015. The responses to these questions can be found for the applicant at [REP1-003], for NRW at [REP1-007] and for NPTCBC at [REP1-002].
- 4.18.6 NRW raised points on ecology and biodiversity in their Relevant Representation [RR-006] with regards to NSER [APP-193] and the requirement for an Environmental Permit. NRW considered that the NSER required refinement regarding the potential for likely significant effects [LSE] in combination with other power station projects. This is discussed further in Chapter 5. NPTCBC raised points on ecology and biodiversity in paragraph 9 of their written representation [RR-013] relating to the translocation of species and the creation of sustainable habitats. NPTCBC also sought further clarification that there would be no increase in overall air emissions if the existing power generation plant and phase 1 of option 2 were operational concurrently.
- 4.18.7 CCSC raised points on predicted fall out of atmospheric pollutants in paragraph 8.5 of their LIR [REP1-005]. In the applicant's response to LIRs [REP2-001] CCSC were referred to Figures 5.19 to 5.36 of the ES [APP-014].
- 4.18.8 NRW and NPTCBC have confirmed in their Written Representations [REP4-002 and 003] and SoCGs [REP4-005 and AS-021] that there are no issues outstanding on this topic and have agreed the mitigation measures to be implemented under Requirements 9; Habitats management plan and 10; Code of construction practice within Schedule 2 of the draft DCO [APP-210].
- 4.18.9 CCSC confirmed in their SoCG [AS-020] at paragraph 13.6 and 13.7 that there are no issues outstanding on this topic.

### ***Conclusions on Biodiversity and Geological Conservation***

- 4.18.10 Given the evidence presented the ExA considers that ecology and biodiversity issues have been adequately assessed and that the requirements of NPS EN-1 are met.
- 4.18.11 The ExA is satisfied that NRW, NPTCBC and CCSC concerns regarding effects on ecology and biodiversity have been adequately addressed by the applicant through DCO [APP-210] Requirements 2; Time Limits, 9; Habitats Management Plan, 10; Code of Construction Practice and 11: Construction Mitigation Plans.

## **4.19 CIVIL AND MILITARY AVIATION AND DEFENCE INTERESTS**

- 4.19.1 NPS EN-1 paragraph 5.4.16 states:

*'There are statutory requirements concerning lighting to tall structures [Ref]. Where lighting is requested on structures that go beyond statutory requirements by any of the relevant aviation and defence consultees, the IPC should satisfy itself of the necessity of such lighting taking into account the case put forward by the consultees. The effect of such lighting on the landscape and ecology may be a relevant consideration.'*

- 4.19.2 The Civil Aviation Authority [CAA] submitted a relevant representation [RR-001] which stated:

*'On behalf of the Civil Aviation Authority I can confirm that the Authority's position related to the proposed development (which would include a pair of chimney stacks a maximum of 80m high) is as described within associated material submitted by Tata Steel UK Ltd (notably the Consultation Report).'*

- 4.19.3 The applicant's Consultation Report [APP-190] states at paragraph 7.112:

*'The Civil Aviation Authority (CAA) made a number of comments in relation to the proposals including: to ensure any potential aerodrome related issues are fully explored; to ensure the issue of aviation warning lighting on tall structures is fully considered; to ensure that any cranes on site are considered in relation to aviation lighting/safety; and to ensure there will be no safety impacts in terms of gas venting or flaring in relation to overflying aircraft.'*

- 4.19.4 A summary of all responses relating to aviation issues is also included within the Consultation Report [APP-190].

- 4.19.5 The applicant has consulted with CAA and appropriate lighting will be affixed to the two stacks in accordance with Requirement 16 of Schedule 2 of the draft DCO [APP-210].

- 4.19.6 The applicant has confirmed [REP1-003] that with the stacks at a maximum of height of 80m, there will not be a requirement for both the flue emission stacks, numbered works 1A, to be promulgated and charted for civil aviation purposes.

### ***Conclusion on Military Aviation and Defence interests***

- 4.19.7 The ExA considers that civil and military aviation interests have been adequately assessed and meet the requirements of NPS EN-1.

## **4.20 CLIMATE CHANGE MITIGATION AND ADAPTATION**

- 4.20.1 NPS EN-1 states in paragraphs 4.8.1 and 4.8.2:

*'Part 2 of this NPS covers the Government's energy and climate change strategy, including policies for mitigating climate change. This part of the NPS sets out how Applicants and the IPC should take the effects of climate change into account when developing and*

*consenting infrastructure. While climate change mitigation is essential to minimise the most dangerous impacts of climate change, previous global greenhouse gas emissions have already committed us to some degree of continued climate change for at least the next 30 years. If new energy infrastructure is not sufficiently resilient against the possible impacts of climate change, it will not be able to satisfy the energy needs as outlined in Part 3 of this NPS.'*

- 4.20.2 Climate change is likely to mean that the UK will experience hotter, drier summers and warmer, wetter winters. There is a likelihood of increased flooding, drought, heat-waves and intense rainfall events, as well as rising sea levels. Adaptation is therefore necessary to deal with the potential impacts of these changes that are already happening.'
- 4.20.3 NPS EN-2 in paragraph 2.3.13 states:
- 'Part 2 of EN-1 covers the Government's energy and climate change strategy, including policies for mitigating climate change. Section 4.8 of EN-1 sets out generic considerations that Applicants and the IPC should take into account, to help ensure that fossil fuel generating infrastructure is resilient to climate change.'*
- 4.20.4 The applicant's ES [APP-011] did not include a section specifically on climate change. Climate change was addressed by the applicant in ES [APP-011] in the following sections:
- 4: Planning Policy;
  - 5: Air Quality;
  - 9: Ground Conditions;
  - 10: Traffic and Transportation; and
  - 13: Flood Risk
- 4.20.5 Climate change was identified as an issue in the initial assessment of Principal Issues [PD-005].
- 4.20.6 The ExA addressed the adequacy of the information and the assessment provided in the ES [APP-011] in the first round of written questions [PD-004] and through questions to the applicant at the EIA ISH on 25 February 2015 [EV-010].
- 4.20.7 The Applicant's responses can be found at [REP1-003 and REP4-004]. These responses included plans which show the consequences on the project of both fluvial and tidal flooding events with a 1 in 1000 probability of occurrence. These show that the development site will not be inundated during extreme events.
- 4.20.8 The applicant's Design Principles Document [APP-203] agreed with the relevant planning authority confirms that the design of the proposed development will meet the requirements of NPS EN-1 in relation to quality of design and durability. The applicant further accepts that the objectives of the Welsh governments Planning Policy for Wales and TAN 12 Design (2014) are important and relevant.



- 4.20.9 NRW confirmed in their response [REP1-007] to ExA's first round of written questions [PD-004] that the applicant's flood consequence assessment [FCA] [APP-090] had been undertaken in accordance with the Welsh government's technical advice note [TAN] 15.
- 4.20.10 The FCA [APP-090] states that:
- 'In a meeting with the applicant on the 17th November 2014, NRW clarified that they were satisfied with the information submitted with the application and that the application was submitted prior to the Welsh Government's guidance.'*
- 4.20.11 NRW [REP1-007] directed ExA to the Welsh government's Planning Policy on Flood Risk and Insurance Industry Changes.
- 4.20.12 The applicant has consulted with NRW and produced plans that show the development site will not be inundated from fluvial events. [APP-015 figure 13.5]
- 4.20.13 In response to ExA's first round of written questions [PD-004] the applicant provided plans showing that the proposed development would not be inundated by extreme (1:1000 year) events resulting from climate change and sea level rise combined with fluvial events [REP1-003].

#### ***Conclusion on climate change mitigation and adaptation***

- 4.20.14 The applicant has, through the agreement of a Design Principles Document with the relevant planning authority, undertaken to incorporate the design quality and durability requirements of NPS EN-1 and prevailing requirements of the Welsh government.
- 4.20.15 ExA has considered these undertakings in relation to the climate change adaptations included within section 4.8 of NPS-EN1.
- 4.20.16 Given the evidence presented, the ExA considers that climate change mitigation and adaptation issues have been adequately assessed by the Applicant and meet the requirements of NPS EN-1 and EN-2.

### **4.21 COMMERCIAL IMPACTS**

- 4.21.1 NPSP 4.4.1 states:

*'Ports in England and Wales operate on commercial lines, without public subsidy and with investment from their own operating profits or from the private sector investors. Port developers must therefore plan to make a commercial return from the investment being made. The decision-maker may need to make judgements as to whether possible adverse impacts would arise from the impact of the development on other commercial operators.'*

- 4.21.2 NPSP 4.4.3 states:

*'Objections from port users adversely affected by the development should be considered in the light of the proposal from the applicant to mitigate those impacts, taking into account any benefits the decision-maker believes, on the evidence presented, will accrue to those users from the development.'*

- 4.21.3 ABP raised concerns in their written representation [RR-009] regarding the potential of the applicant's proposed water abstraction from the impounded Port Talbot dock to restrict their ability to comply with their statutory obligations under section 33 of the Harbour, Docks and Piers clauses Act (1847) to maintain an open port and section 9 of the Transport Act (1981) due to the abstraction resulting in the lowering of water levels below those minima required for operational purposes. This is discussed later at sub-section 4.36 Water Framework Directive.

## **4.22 COMMON LAW NUISANCE AND STATUTORY NUISANCE**

- 4.22.1 The subject of common law nuisance and statutory nuisance was raised by the ExA in the first round of written questions [PD-004] and further at the issue specific hearing on the draft DCO [EV-003]. The outcomes are discussed in Chapter 8 of this report in particular Article 8 of Schedule 2 Principal Powers.

## **4.23 DUST AND OTHER POTENTIAL NUISANCE**

- 4.23.1 Paragraph 4.14.2 of EN-1 states:

*'It is very important that, at the application stage of an energy NSIP, possible sources of nuisance under Section 79(1) of the 1990 Act and how they may be mitigated or limited are considered by the IPC so that appropriate requirements can be included in any subsequent order granting development consent. (See Section 5.6 on Dust, odour, artificial light etc. and Section 5.11 on Noise and vibration.)'*

- 4.23.2 EN-1 5.6.7 states:

*'The IPC should satisfy itself that:*

- 'an assessment of the potential for artificial light, dust, odour, smoke, steam and insect infestation to have a detrimental impact on amenity has been carried out; and*
- that all reasonable steps have been taken, and will be taken, to minimise any such detrimental impacts.'*

- 4.23.3 Odour, smoke, steam and insect infestation were not addressed specifically in the ES [APP\_011] except for the discussions on the potential for plumes arising from the new cooling units. These issues were not raised as potential impacts on human health or the environment by any party during the course of the examination as potential impacts.

- 4.23.4 The ExA raised the issue of plumes from the cooling tower units in the first round of written questions [PD-004].

- 4.23.5 The applicant's responses can be found at [REP1-003]. These confirm that the cooling tower units forming part of the proposed development will be;

*'a modern hybrid, or a more advanced technology, and will be designed to result in no visible plumes (except in exceptionally adverse weather conditions).'*

- 4.23.6 NPS EN-1 paragraph 5.9.3 states:

*'Further, modern hybrid cooling systems – for example mechanical draught – do not generally exhibit visible steam plumes except in exceptional adverse weather conditions.'*

- 4.23.7 The ExA sought further clarification from the applicant and through the questions raised at the EIA issue specific hearing [EV-010] as to what constituted abnormal climatic or exceptionally adverse weather conditions. The applicant's response can be found at [REP4-004].

- 4.23.8 The ExA concludes that based on the applicant's responses the proposed cooling units will not exhibit visible steam plumes under normal climatic conditions.

#### ***Dust, Noise and Vibration***

- 4.23.9 NPTCBC in their LIR [REP1-006] raised dust, noise and vibration as potential nuisance issues during the construction and operational phases of the proposed development.

- 4.23.10 Dust is dealt with in Section 5 Air Quality of the ES [APP-011] and in the Outline CoCP Appendix 15.1 [APP-088].

- 4.23.11 Noise and vibration is dealt with in 4.28 below.

- 4.23.12 The NPTCBC SoCG [AS-021] concludes that the dust management (paragraph 2.35) and noise and vibration (paragraph 2.39) will be dealt with adequately through the implementation of an agreed CoCP and construction mitigation plans together with NRW regulatory control via an Environmental Permit as stipulated by Requirements within Schedule 2 of the draft DCO [APP-210].

#### ***Conclusion on Dust, Noise and Vibration***

- 4.23.13 The ExA is satisfied that, following agreement between the applicant, NRW and NPTCBC, all dust, noise, vibration and other potential nuisance impacts have been adequately addressed and that the management and mitigation measures to be deployed through the draft DCO [APP-210] via Requirements 10, 11 and 14 will ensure that these potential impacts are minimised or excluded.

### **Artificial Light**

- 4.23.14 Artificial light was not raised by any party in the course of the examination.
- 4.23.15 Requirement 12 of the draft DCO [APP-210] will ensure that all external lighting to be installed as part of the proposed development will be in accordance with the ES [APP-011] and the design and access statement [APP-176] to the agreement of NPTCBC, the relevant planning authority.

### **4.24 FLOOD RISK**

- 4.24.1 Section 5.7.9 of NPS EN-1 states:

'In determining an application for development consent, the IPC should be satisfied that where relevant:

- the application is supported by an appropriate Flood Risk Assessment [FRA];
- the Sequential Test has been applied as part of site selection;
- a sequential approach has been applied at the site level to minimise risk by directing the most vulnerable uses to areas of lowest flood risk;
- the proposal is in line with any relevant national and local flood risk management strategy;
- priority has been given to the use of sustainable drainage systems [SuDs] (as required in the next paragraph on National Standards); and
- in flood risk areas the project is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed over the lifetime of the development.'

- 4.24.2 NPS EN-2 Section 2.3.13 states:

*'As fossil fuel generating stations are likely to be proposed for coastal or estuarine sites and climate change is likely, for example, to increase risks from flooding or rising sea levels, applicants should in particular set out how the proposal would be resilient to:*

- *coastal changes and increased risk from storm surge;*
- *effects of higher temperatures, including higher temperatures of cooling water; and*
- *increased risk of drought leading to a lack of available cooling water.'*

4.24.3 NPS EN-5 Section 2.4.1 states:

*'As climate change is likely to increase risks to the resilience of some of this (Electricity Networks) infrastructure, from flooding for example, or in situations where it is located near the coast or an estuary or is underground, applicants should in particular set out to what extent the proposed development is expected to be vulnerable and, as appropriate, how it would be resilient to:*

- *Flooding, particularly for substations that are vital for the electricity transmission and distribution network;*
- *Effects of wind and storms on overhead lines;*
- *Higher average temperatures leading to increased transmission losses; and*
- *Earth movement or subsidence caused by flooding or drought (for underground cables).'*

4.24.4 NRW advise that the guidance given in DEFRA document FCDPAG3 Economic Appraisal Supplementary Note to Operating Authorities Climate Change Impacts (October 2006) should be applied to the assessment of flood risk in Wales.

4.24.5 The assessment of potential flooding was highlighted in the identification of principal issues [PD-005].

4.24.6 In the case of the Project, flood risks that have been considered are detailed in Sections 13 of the ES [APP-011]. This included a Flood Consequence Assessment [FCA] [APP-090] which was developed from a model provided by NRW. The applicant has consulted with NRW to agree the scope of the FCA due to an inconsistency between the Environment Agency [EA] defined flood zones and the Welsh Government [WG] Development Advice Maps [DAMs].

4.24.7 Paragraph 1.6.23 of the applicant's ES [APP-011] states:

*'The new hydraulic model, created for the proposed development and in support of the flood risk assessment, was submitted to NRW on the 14th May 2014 for their validation. NRW subsequently confirmed on the 23rd May 2014 that they agreed with the findings of the Flood Consequences Assessment (FCA) and were satisfied that the proposed development complied with the requirements of Technical Advice Note 15: Development & Flood Risk (July 2004) (TAN15).'*

4.24.8 The applicant's ES [APP-011] paragraphs 13.5.14 and 13.5.15 refer to these two references with the information shown on the following figures:

- Figure 13.5; NRW/EA Flood Map; and

- Figure 13.6 WG DAMs.

These two plans can be found at [APP-015]

- 4.24.9 The applicant determined that the site was partially located within the EA Flood Zone 3 (1:200 year tidal event) and Zone 2 (1:1000 year event or extreme flood zone) as defined by the EA Flood Map [APP-015].
- 4.24.10 The applicant determined that the vast majority of the site was located in Zone B, as identified by the WG DAM, which is defined as within an area known to have been flooded in the past evidenced by sedimentary deposits. The rest of the site is located in Zone C2 which is defined as an area of floodplain without significant flood defence infrastructure.
- 4.24.11 The EA indicative surface water flood map shows a raised risk of surface water flooding at the site. However, this mapping does not fully take into account the local surface water drainage systems installed as part of the recent construction of the Harbour Way PDR which lies to the northern boundary of the project site.
- 4.24.12 The NPTCBC Preliminary Flood Risk Assessment [PFRA] details all flooding incidents in the county borough since records began up to the end of 2010 from pluvial flooding, groundwater, canals and ordinary watercourses. The proposed development site was not reported as being part of any major flooding incident.
- 4.24.13 The development of the Harbour Way peripheral distributor road together with its associated drainage infrastructure now serves to largely protect the site from potential flooding by the river Afan and Ffrwdwyllt catchment. However in extreme events such as the 1 in 1000 fluvial + Mean High Water Springs [MHWS] tidal, whilst the main generating facility does not flood, some of the 66kV electrical cable connection is shown to flood and some parts of Harbour Way to the north are shown to flood to depths of up to 1.0m.
- 4.24.14 This will be accounted for in the Emergency Response and Flood Risk Management [ERFRMP] for the proposed development within the CoCP to be produced in accordance with Requirement 10 of the draft DCO [APP-210].
- 4.24.15 NRW have not raised any concerns with the Applicant's assessment of flood risk.

### ***Conclusion on flood risk***

- 4.24.16 It is important to note that the proposed development can only be located within the existing steelmaking plant at Port Talbot and more specifically Site A the old Margam Coke Oven site. As such the EN-1 Sequential and Exception tests cannot realistically be applied.

- 4.24.17 The ExA considers that the examination of flood risks has been addressed adequately and that it takes into consideration the flood protection benefits afforded by the recent completion of drainage works associated with the Harbour Way peripheral distributor road which borders the development site to the north. The ExA is satisfied that the assessment takes full account of the additional risk from climate change (see paragraph 4.20.5 et seq of this report) and meets the requirements of TAN15 and NPS EN-1.

## **Health**

- 4.24.18 EN-1 paragraph 4.13.2 states:

*'As described in the relevant Sections of this NPS and in the technology specific NPSs, where the proposed project has an effect on human beings, the ES should assess these effects for each element of the project, identifying any adverse health impacts, and identifying measures to avoid, reduce or compensate for these impacts as appropriate. The impacts of more than one development may affect people simultaneously, so the Applicant and the IPC should consider the cumulative impact on health.'*

- 4.24.19 The assessment of potential health impacts was highlighted in the identification of principal issues [PD-005].

- 4.24.20 The applicant did not include a standalone Health Impact Assessment as part of the application choosing instead to address effects on human health in the respective chapters of the ES as follows:

- Air Quality: Chapter 5;
- Noise and Vibration: Chapter 8;
- Ground Conditions: Chapter 9;
- Traffic and Transportation: Chapter 10;
- Socio-economics: Chapter 12; and
- Flood Risk Chapter: Chapter 13.

- 4.24.21 Abertawe Bro Morgannwg University Health Board [ABMUHB] in consultation with Public Health England [PHE] both submitted relevant representations [RR-012 and RR-011] regarding the mitigation of health issues during the construction and operation phases.

- 4.24.22 ABMUHB RR stated:

*'Abertawe Bro Morgannwg University Health Board in consultation with Public Health Wales seeks to provide relevant public health comments. Our colleagues at PHE which includes PHE's Centre for Radiation, Chemical and Environmental Hazards (Wales), have commented as below (text in italic) we would concur with those comments.'*

*We are also particularly interested in the cumulative impacts of the proposal and the associated health impact mitigation measure during the construction and operational phases.'*

## *Previous Responses*

*PHE which includes PHE's Centre for Radiation, Chemical and Environmental Hazards (Wales), have reviewed the preliminary environmental information report (PEIR) submitted in January 2014. Specific recommendations suggested by PHE in our scoping response on 28th October 2013 have been considered and are included in the PEIR. The PEIR also states that the Environmental Statement will assess effects on health in terms of air quality and dust, noise, water quality, ground and soil, traffic and transport and potential for contamination in each of the individual chapters and cumulatively as part of the inter-project cumulative impact assessment. PHE is satisfied with the information provided in the PEIR and will review the Environmental Statement of this project proposal when it becomes available.*

## *PAST PHE / HPA CORRESPONDENCE*

*Scoping response 28th October 2013  
Section 42 Consultation 26th February 2014*

## *SUMMARY OF ES*

### *Air Quality*

*Mitigation measures have been addressed during the construction phase, construction traffic and exhaust stack emissions.*

*Construction-phase dust effects have been assessed to be low to medium risk if unmitigated, but are expected to be negligible following the implementation of appropriate mitigation measures.*

*Construction related traffic effects on air quality are predicted to be negligible at receptors adjacent to the main access routes used by traffic associated with the proposed development.'*

### *Ground Conditions*

*Potential impacts on geology, soils and hydrogeology resulting from the proposed development during the construction, operation and decommissioning phases have been identified. After mitigation, the significance of any residual effect is negligible.*

### *Surface Water*

*There is potential for adverse effects on controlled waters from intermittent miscellaneous discharges of water associated with ancillary equipment and rainwater run-off from associated construction activities. However, this will be mitigated via adherence to a CoCP and by managing and pre-treating site drainage, as necessary, before discharging via consented discharge points, which are controlled through the conditions of an environmental permit. Additionally,*



*surface water runoff effects on the drainage channel (Middle Mother Ditch) outside the Order Limits, and other downstream water bodies / courses will be mitigated via the attenuation ponds constructed as part of the Harbour Way development. Therefore, the effect on controlled waters from intermittent miscellaneous discharges is not significant and presents a residual negligible effect"*

PHE RR stated:

*Air quality, soil and water*

*PHE notes the conclusion that potential human health impacts due to historically contaminated land, construction related dust emissions, groundwater contamination and air pollution due to traffic and the development will have a negligible to minor public health significance if mitigations are implemented.*

*Conclusion*

*On the basis of the submitted information PHE is satisfied that the development's potential impacts on public health have been adequately addressed and, where necessary, suitable mitigation has been proposed. We note that the development is within an air quality management area and that the likely impacts have been considered and addressed within the report. However given that the area has a history of poor air quality and that local health on a number of indicators is below the national (Welsh) average, PHE wishes to remain informed and involved during the rest of the planning decision process*

4.24.23 NPTCBC LIR [REP1-006] raised public health issues relating to;

- Petroleum hydrocarbon analysis;
- Working hours; and
- Noise;

The SoCG [AS-021] signed between the applicant and NPTCBC confirms that there are no outstanding issues relating to health.

4.24.24 At the PM the applicant confirmed that additional site investigation works were being undertaken to assess the existing ground composition and condition [EV-001 and 002].

4.24.25 Minutes of the meeting convened to present and discuss the results to NPTCBC and NRW (Factual and Interpretative Report on Ground Investigation (April 2015)), are to be found at [REP6-004].

4.24.26 Detailed Quantitative Risk Assessments [DQRAs] have been produced for asbestos and groundwater although the DQRAs have not been submitted as evidence. The DQRAs were submitted to NPTCBC and NRW for comment and approval. The responses from both parties can be found at [AS-019] Appendix E. NRW has commented on the controlled waters DQRA and deferred the asbestos DQRA to NPTCBC. Appendix C of [AS-011] includes the letter from the applicant's contract ESG responding to the issues raised. The applicant has

undertaken to draw up a remedial options appraisal and remediation strategy for asbestos and any other pollutant linkages that may be identified.

- 4.24.27 Requirement 18 has been included in Schedule 2 of the Draft DCO [APP-210] to address all ground composition and condition aspects that are integral to the detailed design and construction of the proposed development.
- 4.24.28 Requirement 18 is further supported by Requirements 10 and 11 covering CoCP and Construction Mitigation Plans respectively.
- 4.24.29 NRW commented [AS-019] on the Ground Water DQRA, requiring that it should be improved. The applicant undertook further review of the results of the investigations and subsequently NRW confirmed [AS-018] their agreement to the wording of Requirement 18 of Schedule 2 to the draft DCO [APP-210].
- 4.24.30 NRW agreed SoCG [REP4-005] states at paragraph 4.6:
- 'The parties agree that emissions from the project can be controlled effectively through the Environmental Permit to ensure that these do not give rise to adverse environmental and human health impacts.'*
- 4.24.31 NRW SoCG [REP4-005] further states at paragraph 9.3:
- 'Both parties agree that the noise and vibration from the operation of the project (including its commissioning) can be controlled effectively through the Environmental Permit and that this is the most appropriate mechanism by which the public and the environment can be protected from noise and vibration effects.'*

### **Conclusions on Health**

- 4.24.32 Based on the implementation of the proposed mitigation for the construction, operation and decommissioning phases of the Project, the ExA considers there is no evidence that suggests that the proposed development will result in adverse public health impacts.
- 4.24.33 The ExA considers that the examination of health risks has been addressed adequately within the applicant's responses to the ExA written questions and through the agreed SoCGs with NRW [REP4-005] and NPTCBC [AS-021] subject to the NRW concerns (paragraph 1.19.11 above) being resolved.
- 4.24.34 Accordingly it is the ExA's conclusion that the requirements of NPS EN-1 are met.

## **4.25 HISTORIC ENVIRONMENT**

- 4.25.1 The policy on the historic environment within EN-1 has been followed by the applicant. This policy is broadly consistent with relevant saved policies in the NPTCBC UDP (2008) Policies ENV22 - Archaeological

Remains, ENV23 - Archaeological Evaluation and ENV24 - Archaeological Recording.

4.25.2 The effects of the project on historic and archaeological environment, including issues related to:

- The effects of the project on the settings of heritage assets ; and
- The effects of the project on archaeological remains.

4.25.3 These issues were highlighted in the initial assessment of Principal Issues [PD-005]. In accordance with paragraph 5.8.8 of EN-1, the Applicant has provided a description of the significance of the heritage assets affected by the proposed development and the contribution of their setting to that significance in ES [APP-011] Chapter 13.

4.25.4 The applicant collated data from the Gwent and Glamorgan Archaeological Trust [GGAT] Historic Environment Record, Coflein the on-line database managed by the Royal Commission on the Ancient and Historical Monuments of Wales, Port Talbot Archives, the National Library of Wales, historic mapping and other documentary sources. This research concluded that there were:

- 99 heritage assets recorded within the 1 km study area;
- 29 of these were recorded on the GGAT HER;
- 53 from Coflein;
- 17 were identified from historical mapping; and
- 3 of these sites fall within the proposed development boundary (36, 57 & 59).

(Note: Numbers in brackets relate to ES Appendix 11.1 Figure 11.1 [APP-089])

4.25.5 Within the study area there are five (5) Scheduled Monuments. These comprise a Roman milestone (5) and four (4) Christian monuments of early medieval date (6, 7, 8 & 9). There is one (1) Grade II Registered Park and Garden, the Talbot Memorial Park (10) and five (5) listed buildings. The listed buildings comprise four post-medieval churches, three of which are Grade II listed (1, 3 & 32) and one which is Grade II\* listed (2). The remaining listed building is a Grade II listed cinema of modern date (4).

4.25.6 There are no World Heritage Sites, Conservation Areas or Registered Battlefields within the 1km study area.

4.25.7 Effects on the historic environment were not raised by any party in the course of the examination.

- 4.25.8 Three questions were asked by the ExA in its round one written questions [PD-004], one to the applicant and one to NPTCBC and GGAT and one to NRW, NPTCBC and GGAT. Responses can be found at [REP1-002, 003 and 007].
- 4.25.9 NRW, NPTCBC & GGAT confirmed in their responses that they were in agreement with the applicant's scoping in/out comments.
- 4.25.10 Requirement 8(2) (b) within Schedule 2 of the draft DCO has been included by the applicant to reflect the position agreed with GGAT.

### ***Conclusions on Historic Environment***

- 4.25.11 Policy on the historic environment within EN-1 has been followed by the applicant. This policy is broadly consistent with relevant saved policies in the NPTCBC UDP (2008) Policies ENV22 - Archaeological Remains, ENV23 - Archaeological Evaluation and ENV24 - Archaeological Recording.
- 4.25.12 NPTCBC state in their LIR [REP1-006] at paragraph 7.9.2 that:  
  
'It is considered that the archaeological impacts of the development can be adequately addressed under draft Requirement 8 which requires a Written Scheme of Investigation.'
- 4.25.13 In the ExA's view there is adequate protection for the historic environment within the proposed development site. The programme of archaeological mitigation prior to construction, secured via draft DCO Schedule 2 Requirement 8 [APP-210] will mean that any residual effects are unlikely to be significant.

## **4.26 LAND USE**

- 4.26.1 Section 5.10 of EN-1 is relevant here. However since all the land for the proposed development is wholly owned by the applicant and is wholly located within the existing Port Talbot steelworks site there is not a need to undertake any assessments or decisions. The proposed development site (Site A old Margam coke oven site) has been cleared and is ready for redevelopment.
- 4.26.2 NPTCBC's LIR [REP1-006] states at paragraph 7.2.1 that expansion of existing enterprises will be encouraged through their UDP. The LIR further records the overarching importance for the continuation of steel production at Port Talbot and the general support of the proposed development.
- 4.26.3 The Coal Authority raised a Relevant Representation [RR-005] with respect to the potential for the sterilisation of surface coal resources.
- 4.26.4 The ExA raised this issue in both rounds of written questions [PD-004 and 010]. The applicant's responses can be found at [REP1-003 and REP6-004].

- 4.26.5 Following additional site investigation works and associated desk study results being provided by the applicant, the Coal Authority concluded in its letter to the applicant [REP6-004 Appx G] that due consideration had been given to this issue and that a SoCG would not be necessary.
- 4.26.6 The applicant has considered the impact of the proposed development on footpaths, cycle ways and Public Rights of Way [PROW]s within ES [APP-011] Chapter 10 - Traffic and Transportation and Chapter 12 - Socio-Economics. ES Figure 10.1 shows the location of footpaths, cycle paths and PROWs including bridleways and byways. There are none within the site and no PROWs will be diverted as a result of the proposed development. The only external impact will be along Link 7 - the section of the A48 between the junction with Harbour Way and the M4 Junction 38.
- 4.26.7 The applicant concludes that the impact of construction traffic will be negligible.
- 4.26.8 The Welsh Government [WG] response [AS-015] to ExA Rule 8(3) and Rule 17 letter [PD-009] provided DCO drafting in respect of Crown Land. The applicant has incorporated this within the draft DCO [APP-210].

#### **Conclusion on Land Use**

- 4.26.9 The ExA concludes that the land use issues have been addressed adequately and meet the requirements of NPS EN-1. The ExA has had no reason to disagree with the NPTCBC conclusion that the application complies with the UDP Policies.
- 4.26.10 The ExA concludes that the implications for footpaths, cycle paths and PROWs are negligible.

### **4.27 LANDSCAPE AND VISUAL IMPACTS**

- 4.27.1 NPS EN-1 states at paragraphs 5.9.5 to 5.9.7:

*'The applicant should carry out a landscape and visual assessment and report it in ES. A number of guides have been produced to assist in addressing landscape issues. The landscape and visual assessment should include reference to any landscape character assessment and associated studies as a means of assessing landscape impacts relevant to the proposed project. The applicant's assessment should also take account of any relevant policies based on these assessments in local development documents in England and local development plans in Wales.*

*The applicant's assessment should include the effects during construction of the project and the effects of the completed development and its operation on landscape components and landscape character.*

*The assessment should include the visibility and conspicuousness of the project during construction and of the presence and operation of the project and potential impacts on views and visual amenity. This should include light pollution effects, including on local amenity, and nature conservation.'*

- 4.27.2 The Applicant has carried out a Landscape and Visual Impact Assessment [LVIA] and reported it in the ES [APP-011] at Chapter 7. Following the amendments to the arrangement of the principal buildings [REP1-003] revised and additional photomontages were produced [AS-006]. No representations were made on these amendments.
- 4.27.3 National and local landscape character assessments are described in the ES [APP-011], from paragraph 7.3.16 - 7.9.10
- 4.27.4 In LIR [REP1-006] NPTCBC at section 7.3 describes the local landscape acknowledging the heavy industrial area that includes the applicant's existing steelworks site and the noise and movement aspects of the adjacent M4 motorway.
- 4.27.5 NPTCBC, whilst acknowledging that the proposed development will bring the industrial area closer to the residential area, record that it will form a substantial screen for a considerable section of the older infrastructure.
- 4.27.6 In their LIR [REP1-005] CCSC concluded at section 7.34 that the proposed development would not conflict with the design and siting UDP Policies EV1 and EV2.
- 4.27.7 The SoCG [AS-021] with NPTCBC at section 2.17 - 2.21 states that both parties agree that the assessment methodology for the landscape and visual assessment is appropriate, adequate and that mitigation in the form of landscaping and tree planting will be provided through Requirement 6 within Schedule 2 of the draft DCO [APP-210].
- 4.27.8 The SoCG [AS-020] with CCSC at section 13.7 - 13.15 states both parties agree that the assessment methodology for the landscape and visual assessment is appropriate, adequate and that affects would not be significant.
- 4.27.9 The ExA agrees with NPTCBC in that the LVIA parameters, including the extent of the study area of 15 kilometre radius, are appropriate given the topography and landscape designations of the area.

#### **Assessment of Seascape, Landscape and Visual Impact**

- 4.27.10 The seascape is the existing sweep of Swansea Bay which ranges from the wide sands below the Mumbles through the urban and industrial fringes of Swansea and Port Talbot to the dunes of Kenfig. The Bay is tranquil and open. The assessment identifies no significant impact of

the project on the seascape given that is at this scale it is a small change to the existing Margam backdrop.

- 4.27.11 The project sits within the Port Talbot industrial historic landscape classed as Moderate under LANDMAP and the project would not affect the landscape aspect. The project has been assessed against a range of viewpoints covering both residential, transport and leisure related. Of these the impacts are assessed as low, moderate or minor with the exception. There are no significant effects on residential locations.
- 4.27.12 The assessment also indicates no significant effect on any of the local historic landscapes, coast or features, AONB or registered parks and gardens. Night time lighting effects are similar to the existing steel works. Effects on designated sites are considered further in Chapter 5.

### ***Conclusions on Landscape and Visual***

- 4.27.13 Given the evidence presented, including the general agreement of the two adjacent LPAs [NPTCBC and CCSC] that the proposed development will not have any significant landscape and visual impacts, the ExA believes that with the mitigation measures and design principles that will be delivered through Requirements 4, 6 and 12 of Schedule 2 of the draft DCO [APP-210], the project will assume its place in this industrial setting.
- 4.27.14 The site, which lies wholly within the existing steel works site at Port Talbot and which is under the ownership of the applicant was previously used as industrial land for a coking plant and the ExA believes the loss of landscape resource would be negligible.
- 4.27.15 Overall, the Project would have a minor visual impact seen from close to the site. However, the effect would be within a large existing and developing industrialised setting. In the ExA's view any harm would be avoided through the mitigation proposals identified above and the requirements of the NPS have been met.

## **4.28 NOISE AND VIBRATION**

- 4.28.1 NPS EN-1 states at paragraph 5.11.9:

'The IPC should not grant development consent unless it is satisfied that the proposals will meet the following aims:

- avoid significant adverse impacts on health and quality of life from noise;
- mitigate and minimise other adverse impacts on health and quality of life from noise; and
- where possible, contribute to improvements to health and quality of life through the effective management and control of noise.'

- 4.28.2 Noise and vibration issues were addressed by the applicant in Chapter 8 of ES [APP-011].

- 4.28.3 The assessment of potential noise and vibration impacts was highlighted in the identification of principal issues [PD-005].
- 4.28.4 The ExA addressed the adequacy of the information and the assessment provided in the ES [APP-011] in the first round of written questions [PD-004].
- 4.28.5 The applicant's responses can be found at [REP1-003].
- 4.28.6 NPTCBC raised noise and vibration issues in its LIR [REP1-006] stating at sections 7.4.9 - 7.4.10 that the methodologies applied were adequate and that subject to the agreed Requirements to be applied during the construction phase, they had no objections.
- 4.28.7 NRW confirmed that operational noise will subject to the regulatory regime that will be enforced through the environmental permit and supported by Requirement 14 within Schedule 2 of the draft DCO [APP-210].
- 4.28.8 The applicant has included within Schedule 2 of the draft DCO [APP-210] the following requirements that will ensure noise and vibration are appropriately controlled through the construction, commissioning and operation of the proposed development:
- Requirement 11 - Approval and implementation of construction mitigation plans: (2) Noise Management Plan;
  - Requirement 13 - Construction Hours; and
  - Requirement 14 - Control of Noise during operational phase.

Requirement 11 includes for a piling method statement and vibration risk assessment to be included within the noise management plan.

### ***Conclusion on Noise and Vibration***

- 4.28.9 Given the evidence presented, the ExA believes that noise and vibration issues have been addressed adequately and meets the requirements specified in 5.11 of NPS EN-1.

## **4.29 OTHER MATTERS**

### ***Trans-boundary Effects***

- 4.29.1 The SoS undertook a two stage trans-boundary screening assessment for the proposed development. The first screening was completed on 26 November 2013, following the applicant's request for a scoping opinion and the second screening completed on 1 October 2014, following acceptance of an NSIP application. No EEA States were identified for notification within either screening assessment. The results of the SoS screening assessment are contained within the trans-boundary screening matrix [OD-001].

Trans-boundary screening is also discussed at paragraph 3.20.1 in Chapter 3 above.



#### **4.30 POLLUTION CONTROL AND OTHER ENVIRONMENTAL REGULATORY REGIMES**

- 4.30.1 Section 4.10 of EN-1 notes the need to ensure that the requirements of other consenting regimes are met. Paragraphs 4.10.7 and 4.10.8 state:

*'The IPC should be satisfied that development consent can be granted taking full account of environmental impacts. Working in close cooperation with EA and/or the pollution control authority, and other relevant bodies, such as the MMO, Natural England, the Countryside Council for Wales, Drainage Boards, and water and sewerage undertakers, the IPC should be satisfied, before consenting any potentially polluting developments, that:*

- the relevant pollution control authority is satisfied that potential releases can be adequately regulated under the pollution control framework; and*
- the effects of existing sources of pollution in and around the site are not such that the cumulative effects of pollution when the proposed development is added would make that development unacceptable, particularly in relation to statutory environmental quality limits.*

*The IPC should not refuse consent on the basis of pollution impacts unless it has good reason to believe that any relevant necessary operational pollution control permits or licences or other consents will not subsequently be granted.'*

- 4.30.2 A list of consents required under other regulatory regimes, including environmental regulatory regimes, is provided [APP-194].
- 4.30.3 Section 2.4 of the NRW SoCG [REP4-005] records that the granting of an environmental permit should be possible in principle.
- 4.30.4 The applicant submitted an Environmental Permit application to NRW on 28 May 2015. NRW [AS-011] have confirmed that the application has been 'duly made' for the purposes of paragraph 12(1) of Schedule 5 to the Environmental Permitting (England and Wales) Regulations 2010.

#### ***Conclusion on Pollution control and other environmental regulatory regimes***

- 4.30.5 The ExA concludes that there is no evidence presented indicating that the granting of any necessary licence under other regulatory regimes will be withheld, and that therefore based on NPS EN-1 paragraph 4.10.8, the SoS as decision-maker should have no reason to withhold development consent on these grounds.

#### **4.31 SAFETY**

- 4.31.1 NPS EN-1 at paragraphs 4.11.1 and 4.12.1 state:

*'HSE is responsible for enforcing a range of occupational health and safety legislation some of which is relevant to the construction, operation and decommissioning of energy infrastructure. Applicants should consult with the Health and Safety Executive [HSE] on matters relating to safety.'*

*All establishments wishing to hold stocks of certain hazardous substances above a threshold need Hazardous Substances consent. Applicants should consult the HSE at pre-application stage if the project is likely to need hazardous substances consent. Where hazardous substances consent is applied for, the IPC will consider whether to make an order directing that hazardous substances consent shall be deemed to be granted alongside making an order granting development consent. The IPC should consult HSE about this.'*

- 4.31.2 A Relevant Representations from Mid and West Wales Fire and Rescue Service [RR-014] raised issues regarding safety.
- 4.31.3 The Health and Safety Executive [HSE] responded [REP1-010] to the ExA Rule 8 [PD-006] recording that a high level assessment of the extent and severity of potential major hazards to the public was warranted due to the absence of information in the application documents as to how the proposed development affects the risks to the public from the site itself i.e. does the proposed generating station increase the risk from the rest of the site because of its presence.
- 4.31.4 The ExA addressed these matters in the first round of written questions [PD-004].

The applicant's response can be found at [REP1-003]. The ExA sought further evidence of safety procedures through the DCO Issue Specific Hearing [EV-003] and the second round of ExA questions [PD-010] relating to DCO Requirement 21 Safety. The applicant subsequently submitted a High Level Assessment of Major Accident Hazards [APP-204]. The assessment concluded that; *'the only possible known major hazard from the proposed development is the potential for major loss of containment fuel gas from inside the power generation plant building due to a guillotine of gas pipework and a subsequent escape of fuel gas from the power generation plant building. Such an escape would have the potential to impact both the wider Port Talbot Steelworks site and the local community, most especially those in Tiabach.'*

*The applicant's assessment concludes that such an escape is a barely credible threat and, in the unlikely event that it did occur, a number of controls would be in place to limit the duration of any such release and therefore the risk to the public. The assessment further finds that, even if the control measures failed to prevent or mitigate a catastrophic release of fuel gas, the Proposed Development poses no additional 'Major Accident Hazard' to on-site or off-site populations. In*

*other words, the presence of the Proposed Development would not increase the risk from the rest of the steelworks site.'*

### **Conclusion on Safety**

- 4.31.5 The ExA believes that safety issues have been addressed appropriately through evidence submitted and that there is no need to include a draft DCO Requirement similar to that applied to South Hook. As such the ExA considers the applicant's proposal meets the requirements specified in 4.11 and 4.12 of NPS EN-1.

### **4.32 SECURITY CONSIDERATIONS**

- 4.32.1 NPS EN-1 4.15 identifies possible issues of national security relating to energy infrastructure. No representations were made in regard to national security considerations. The ExA does not believe there to be any national security issues associated with this Application.
- 4.32.2 A Relevant Representation from South Wales Police [SWP] [RR-004] raised issues regarding security. The ExA addressed these in the first round of written questions [PD-004] which asked the applicant whether:
- (a) the applicant proposed to include the security provisions as recommended by the SWP Crime Prevention Design Advisor [CPDA]; and
  - (b) whether the applicant had determined whether the development forms part of the Critical National Infrastructure.
- 4.32.3 The applicant's response which can be found at [REP1-003] states that the security standards for the proposed development will meet or exceed those recommended by the SWP CPDA, except where those specific measures are not appropriate in the context of the development.
- 4.32.4 The relevant representation from the SWP[RR-004] states that the Wales Extremism and Counter Terrorism Unit [WECTU] has not received any notification from the Protection of National Infrastructure [PNI] indicating that this development will form part of the critical national infrastructure. Accordingly the applicant has reasonably assumed the proposed development would not form part of the critical national infrastructure.

### **Conclusion on Security**

- 4.32.5 The ExA is satisfied that the necessary consultations have taken place between the applicant and SWP CPDA, WECTU and PNI and therefore concludes that security issues have been addressed satisfactorily and meet the requirements of NPS EN-1 section 4.15.

### **4.33 SOCIO-ECONOMIC IMPACTS**

- 4.33.1 EN-1 5.12 states that:

*'Where the project is likely to have socio-economic impacts at local or regional levels, the Applicant should undertake and include in their application an assessment of these impacts as part of the ES (see Section 4.2).*

*This assessment should consider all relevant socio-economic impacts, which may include:*

- the creation of jobs and training opportunities;*
- the provision of additional local services and improvements to local infrastructure, including the provision of educational and visitor facilities;*
- effects on tourism;*
- the impact of a changing influx of workers during the different construction, operation and decommissioning phases of the energy infrastructure. This could change the local population dynamics and could alter the demand for services and facilities in the settlements nearest to the construction work (including community facilities and physical infrastructure such as energy, water, transport and waste). There could also be effects on social cohesion depending on how populations and service provision change as a result of the development; and*
- cumulative effects – if development consent were to be granted for a number of projects within a region and these were developed in a similar timeframe, there could be some short-term negative effects, for example a potential shortage of construction workers to meet the needs of other industries and major projects within the region.*

*Applicants should describe the existing socio-economic conditions in the areas surrounding the proposed development and should also refer to how the development's socio-economic impacts correlate with local planning policies.'*

4.33.2 The applicant addressed socio-economic issues in Chapter 12 of the ES [APP-011]. The applicant is highlighted by the Welsh Government as "Wales' largest anchor Company". The applicant also recorded at paragraph 12.3.16 of ES [APP-011] that no additional infrastructure will be required as it is either in place or will be part of the proposed development within the Order Limits.

4.33.3 The applicant states in section 3.7 of ES [APP-011] that:

*'The construction phase for Option 1 will generate approximately 500 temporary jobs across the entire construction phase. The peak level of employment for the construction phase will be approximately 300 jobs, lasting for approximately 12 months (between month 12 and month 24).*

*For Option 2, Phase 1, the construction workforce will be the same as for Option 1 (outlined above), and for Phase 2 will be similar to the*

*first installation and Option 1 (500 over the duration of construction and 300 jobs at peak) but over a shorter construction period.'*

- 4.33.4 The ExA identified social and economic impacts as one of the principal issues to be examined in relation to this application [PD-005]. The ExA addressed these matters in the first round of written questions [PD-004]. The applicant's response can be found at [REP1-003].
- 4.33.5 CCSC LIR [REP1-005] states at paragraphs 6.16 - 6.17 that impacts are considered to be of minor beneficial effect.
- 4.33.6 CCSC SoCG [AS-020] records the disagreement between CCSC and the applicant as to whether the Beyond Bricks and Mortar initiative should be secured either by requirement or development consent obligation. This issue is discussed later in Chapter 8 and considers the SoS recent decision on the Knottingley Power Project.
- 4.33.7 The ExA has considered the evidence and would concur with the applicant's case as presented in the comments on written representations [REP2-003] in that the project, should an order be granted, will generate significant socio-economic and therefore community benefits relating principally to maintenance of steelmaking activities in Port Talbot.
- 4.33.8 NPTCBC SoCG [AS-021] records that the parties agree that the continuation of steel production at the Tata Steelworks in Port Talbot has local, regional and national significance and that the proposed development will help to protect the long term future of steel making in south Wales. It is agreed that the proposed development will deliver significant direct and indirect benefits to the local economy during construction. The parties also agree that there will not be any adverse impacts on tourism in connection with the proposed development.

### ***Conclusions on Economic and Social Impacts***

- 4.33.9 The ExA concludes that the Applicant has had adequate regard to the socio-economic impacts of the proposal and has provided sufficient evidence to support its assertions on the impacts.
- 4.33.10 The ExA concludes that the proposal will create a range of jobs in the construction phase and, whilst unlikely to create any further jobs in the operational phase, the development will sustain viable steel-making in Port Talbot and thereby protect, as far as possible, the level of existing employment in an area where employment remains a challenging issue.
- 4.33.11 Given the evidence presented, the ExA concludes that the proposal has adequately addressed the requirements of EN-1 and EN-2 and would not have significant deleterious effects socially or economically. It also has the potential to support economic development in the area in line with the policies of NPTCBC.

#### **4.34 TRAFFIC AND TRANSPORT**

4.34.1 EN-1 states at paragraphs 5.13.7 and 5.13.8:

*'Provided that the Applicant is willing to enter into planning obligations or requirements can be imposed to mitigate transport impacts identified in the NATA/WebTAG transport assessment, with attribution of costs calculated in accordance with the Department for Transport's guidance, then development consent should not be withheld, and appropriately limited weight should be applied to residual effects on the surrounding transport infrastructure.'*

*'Where mitigation is needed, possible demand management measures must be considered and if feasible and operationally reasonable, required, before considering requirements for the provision of new inland transport infrastructure to deal with remaining transport impacts.'*

4.34.2 The Applicant in its assessment of transport and traffic impacts Chapter 10 of ES [APP-011] has discussed and agreed the scope with NPTCBC as the Local Highways Authority [LHA]. The study area includes 12 highway links, which incorporate the majority of the Harbour Way peripheral distributor road and routes between the site and the M4 at junctions 38, 40 and 41.

4.34.3 The assessment concluded the following:

- The impact of construction phase deliveries on all links is classified as Negligible;
- The impact of transporting abnormal loads to the site is classified as Negligible;
- That without considering any non-Tata background traffic the traffic impact of construction workers on all links would be classed as Negligible;
- The traffic impact of the operational phase on all receptors is classified as Negligible; and
- The traffic impact of the decommissioning phase on all receptors is therefore classified as Negligible.

4.34.4 The ExA raised these issues in the first round of written questions [PD-004] and the Applicants responses can be viewed at [REP1-003]. The applicant's response refers to ES [APP-011] chapter 10 which assesses the impact of traffic against 2018 and 2028 baselines and states that:

*'It has been agreed with NPTCBC that the construction traffic impact is not significant in both 2018 and 2028 future years.'*

4.34.5 The proposed development adjoins the new Harbour Way peripheral distributor road which provides a 4.8km link between Port Talbot and

the Docks and the M4 at Junction 38 at Margam. It is the applicant's intention to use this dual carriageway for all construction traffic. ES [APP-011] paragraph 10.6.4 states that:

*'There will be the requirement for between 200 and 300 HGV delivery trips during the 36 month construction phase. In order to provide a robust assessment, it has been assumed that 300 HGV trips to and from the site will be generated. Based on the construction programme, deliveries will occur through the majority of the construction phase, although there will be significantly fewer required after month 22. The greatest requirements for deliveries will be in months 7, 8 and 12 to 15, although this will only equate to one trip per day.'*

*'The Applicant has also advised that between 5 and 10 van trips will be required per day throughout the construction phase. In order to provide a robust assessment, a worst case scenario of 10 van trips per day has been assumed.'*

*'There will be no requirement to remove excavated waste spoil from the site during the construction phase. Waste management is discussed in detail in Chapter 15. Material excavated during ground preparation will be transported using two 30 tonne dump trucks via internal roads either to be stored in the temporary construction compounds or to the on-site material recycling facility. If this material is contaminated, it will be sent to the on-site landfill site.'*

*'Infill material will be needed for piling. Inert granular material will be transported from the internal material recycling facility, using the same dump trucks, to the proposed development power generation site. Therefore, there will be no additional traffic generated on external roads as a result of waste management and ground preparation.'*

- 4.34.6 Rhondda Cynon Taff County Borough Council [RCTCBC] concluded in their written submission [AS-005] that:

*'The proposed development has no significant adverse impact on RCTCBC local and strategic highway network and therefore no highway objection is raised.'*

NPTCBC is the relevant planning authority for the proposed development and traffic issues were agreed within the SoCG [AS-021] which states that:

*'The Parties AGREE that the proposed development will not have any adverse impact on highway safety nor will it increase dependency on private vehicles. It is agreed that the proposed route of construction traffic via Harbour Way from Junction 34 of the M4 will ensure that there will be no unacceptable impacts, during both the construction and operational phase, upon residential amenity in terms of traffic noise, air emissions, and vibration.'*

- 4.34.7 Royal Mail Group raised a concern in their relevant representation [RR-008] that the construction phase traffic might impact on their statutory duties relating to postal sorting and delivery operations within Port Talbot.
- 4.34.8 The applicant has included Requirement 11 within Schedule 2 of the draft DCO [APP-210] to obtain NPTCBC approval of the construction traffic management plan that has first to be consulted on with Royal Mail Group.
- 4.34.9 NPTCBC state in the SoCG [AS-021] at paragraph 2.54 that:

*'The Parties AGREE that the proposed development will not have any adverse impact on highway safety nor will it increase dependency on private vehicles. It is agreed that the proposed route of construction traffic via Harbour Way from Junction 34 of the M4 will ensure that there will be no unacceptable impacts, during both the construction and operational phase, upon residential amenity in terms of traffic noise, air emissions, and vibrations.'*

#### **Conclusions on Traffic and Transport**

- 4.34.10 EN-1 at paragraph 5.13.7 states that:
- 'provided the Applicant is willing to enter into planning obligations or requirements that can be imposed to mitigate transport impacts, development consent should not be withheld, and appropriately limited weight should be applied to residual effects on the surrounding transport infrastructure. It continues at Paragraph 5.13.8 by advising that where mitigation is needed, possible demand management measures must be considered and if feasible and operationally reasonable, required, before considering requirements for the provision of new inland transport infrastructure.'*
- 4.34.11 The ExA is satisfied that subject to requirements set out within Requirement 11 of Schedule 2 of the draft DCO [APP-210], the Project meets EN-1 policy regarding traffic and transport in all other respects.

#### **4.35 WASTE MANAGEMENT**

- 4.35.1 Section 5.14 of NPS EN-1 and Section 2.9 of EN-2 is applicable.
- 4.35.2 In the case of the Project, waste management issues have been considered by the applicant and are detailed in Chapter 15 of the ES [APP-011] and the outline CoCP included within ES Appendix 15.1 [APP-088] which will be implemented through Requirement 10(2) (a) in Schedule 2 of the draft DCO [APP-210].
- 4.35.3 The proposed development site (Site A Old Margam Coke Oven Site) has already been cleared and consequently the extent of any waste material for treatment and/or disposal will be relatively small and



limited to the potential arisings from any piling, foundation or ground-works.

- 4.35.4 The applicant benefits from an existing materials handling facility within the wider steel making site and accordingly will minimise the quantity of waste leaving the site by road. The potential extent of which will be determined following the conclusion of the DQRA.

ExA raised question 5.57 in the first round of written questions [PD-004] which asked the applicant to provide more information relating to:

- The volumes of wastes for disposal;
- The capacity of the existing on-site handling facility in relation to the need for off-site disposal; and
- Whether any such additional journeys had been accounted for within the transport assessment.

- 4.35.5 The applicant's response, which can be found at [REP1-003], recorded that whilst the precise quantities of waste material would not be known until after the current site investigation works had been completed it was the intention to treat most if not all the material at the on-site facility which has a very large capacity.

- 4.35.6 All wastes generated as part of the operational phase will be handled and stored under appropriate waste management legislation, and substances handled during the operational period would be managed under an appropriate spill response and site-specific environmental management plan to be produced in accordance with Requirement 11 of Schedule 2 of the draft DCO [APP-210].

- 4.35.7 Requirement 18 of Schedule 2 of the draft DCO [APP-210] covers contaminated land and groundwater and will control all remediation and construction activities connected with ground works for the proposed development.

### ***Conclusion on Waste Management***

- 4.35.8 Given the evidence presented, the ExA considers that the issue of waste management has been addressed adequately and meets the requirements of NPS EN-1 and EN-2.

## **4.36 WATER QUALITY AND RESOURCES**

- 4.36.1 Section 5.15.5 of NPS EN-1 states:

*'The IPC will generally need to give impacts on the water environment more weight where a project would have an adverse effect on the achievement of the environmental objectives established under the Water Framework Directive.'*

- 4.36.2 Section 2.10.4 of NPS EN-2 states:

*'...design of the cooling system should include intake and outfall locations that avoid or minimise adverse impacts. There should also be specific measures to minimise fish impingement and/or entrainment and excessive heat from discharges to receiving waters.'*

4.36.3 In the case of the Project, water quality and resources issues have been detailed in Chapter 14 of the ES [APP-011] and the CoCP, ES Appendix 15.1 [APP-088].

4.36.4 CCSC LIR [REP1-005] para 8.6 states:

*'CCSC would also question whether there will be discharges of heated water into the sea which might conceivably negatively affect its shore?'*

4.36.5 The applicant's response to ExA first round of written questions [PD-004] Q5.43 [REP1-003] states that:

*'Paragraph 14.7.31 of the ES Chapter 14 states that:*

*"The temperature of the current discharge is around half of the licensed limit (Appendix 14.10) and will be similar for the proposed development. However, due to the increase in flow rate, more water at this temperature will be discharged and this could have adverse effects on the aquatic ecology of Swansea Bay. However, considering the long-sea outfall is 3km in length, the water discharged will be dissipated more easily than it would if the water was discharged nearer to the shore. This is because the water is likely to be more turbulent further away from the shore. Similarly, the depth of the water will mean that the discharged water will also be diluted more easily than if the water was discharged near the shore.*

*Discharges into water dissipate more easily in a deeper column of water. Increased turbidity also assists in dissipating water. As the water further out from the shore at the end of the long-sea outfall will be deeper and more turbulent than the shallower water close to shore, the discharges will be dissipated more easily via the long-sea outfall.'*

4.36.6 The ExA identified environmental issues relating to water quality, supply and abstraction as one of the principal issues to be examined in relation to this application [PD-005]. The principal issues raised related to the impact of the operation of the proposed development on water quality and resources

4.36.7 The ExA raised these issues in the first [PD-004] and second [PD-010] rounds of written questions. The ExA's first written questions [PD-004] Q5.34 to Q5.50 were related to the surface water environment and covered the following issues:

- Discharges;
- Size of study area;
- River flows and modelling; and
- Abstraction volumes.

4.36.8 Responses to these questions can be found at [REP1-001, REP1-003 and REP1-007]. The responses conclude that the above issues have been addressed and agreed as recorded in the following SoCGs drawn up between the parties:

- NRW [REP4-005] ;
- CCSC [AS-020]; and
- NPTCBC [AS-021].

4.36.9 The only outstanding issue related to ABP's concern relating to the applicant's requirements for water abstraction. ABP response stated that:

*'..whilst not objecting to the applicant's power station proposal, recorded that they must have sufficient comfort that the applicant's water abstraction requirements will not detrimentally impact upon the operational requirements of the Port Talbot dock in terms of maintain water levels within the dock.'*

4.36.10 The ExA's second written questions [PD-010] Q2.4.8 and 2.5.3 sought copies of the parties protective provisions and further evidence relating to ABP's water level and abstraction rate requirements for Port Talbot impounded dock. The responses can be found at [ABP: REP6-001 and applicant: REP6-004]

4.36.11 ABP's response recorded their obligations as a statutory port operator under section 9 of the Transport Act 1981:

*'It is the duty of ABP to provide port facilities at its harbours to such an extent as it may think expedient.'*

4.36.12 ABP also provided evidence of their operational depth requirements within the impounded dock [REP4-001].

4.36.13 At the end of the written questions the only remaining issue to be resolved was that between ABP and the applicant regarding water abstraction from the impounded dock at Port Talbot. This is discussed in paragraph 4.37.5 below.

#### **4.37 WATER FRAMEWORK DIRECTIVE**

4.37.1 The Water Framework Directive [WFD] requires that all inland and coastal waters within defined river basin districts must reach at least 'Good' Status by 2015, and further defines how this should be achieved through the establishment of Environmental Objectives and Ecological Targets for surface waters. As such it is essential that no works are carried out that could result in a reduction of the WFD Status of affected watercourses / water bodies and, if possible, any works along the watercourses / water bodies should aim to improve the WFD Status where possible.

4.37.2 The ExA's raised WFD issues in the second round of written questions [PD-010] Q2.5.4:

*'Can Natural Resources Wales confirm whether they are satisfied that the development proposal will not lead to any adverse effects on the achievement of environmental objectives established under the Water Framework Directive (Ref NPS EN-1 para 5.15.5).'*

4.37.3 NRW response [REP6-003] stated that:

*'The Water Framework Directive (WFD) has been considered, our comments are as follows:*

*The licensed abstraction ref. 21-58-61-0009 permits Tata to abstract from the Docks Feeder channel at an average rate of 473 l/s.*

*The abstraction has historically been operated with an uptake of about 60% of this rate (283 l/s). The increase in abstraction to support the power station will result in up to an additional 190 l/s being abstracted up to the total licensed rate of 473 l/s.*

*The lower Afan has historically experienced extended periods of low flow as a result of flow entering the Docks Feeder Channel for industrial abstraction or navigation within Port Talbot Docks. The 2010 study carried out by Halcrow modelled Afan River flows and compared them with our desired environmental river flow objective to meet WFD standards. The study identified a number of factors that could be addressed to reduce abstraction demand from the river and increase residual flows downstream of Greenpark Weir. Those resulting in the greatest improvement to residual flows were repair to leaking Dock lock gates, installation of a control system to the intake to the Docks Feeder and re-use by Tata of wastewater from the DCWW sewage treatment works. ABP have already replaced the lock gates and are planning installation of the control structures. These actions aimed to increase the efficiency of water use by reducing waste and optimising the benefit of alternative, additional water sources.*

*As part of our Restoring Sustainable Abstractions Programme that sits within WFD, Halcrow also carried out a cost benefit analysis of the Tata Steel abstraction that compared the economic benefits of increased flows in the lower Afan with the economic value of the water to Tata Steel as an industry and costs of replacing licensed Afan water with alternative sources. The purpose was to see whether we should be seeking to reduce Tata's abstraction licence volumes for environmental benefit. It concluded that it would be disproportionately costly for Tata to develop alternative sources of supply which under WFD is an appropriate justification to not pursue licence changes. The Tata abstraction from the Docks Feeder does influence the rate of residual flow in the Afan and is one of the contributing factors affecting the ability of the Afan to meet WFD flow objectives, although not the most significant. The analysis showed though that economic*

*value of the water to industry is high and that we will not be seeking to reduce licence volumes to meet our WFD objectives.*

*We have focused our effort on working with the partners in the Afan Water Management group to increase the efficiency of water management in the system by better control and reduced leakage to increase residual Afan flows but also to increase security of supply to both Tata Steel and Port Talbot Docks.'*

- 4.37.4 ExA understands that the leaking lock gates have been repaired and the installation of a control system to the dock feeder is programmed.

**Water abstraction from Port Talbot Dock**

- 4.37.5 ABP relevant representation [RR-009] recorded that, whilst not objecting in principle to the applicant's development, ABP were concerned that the water abstraction requirements for the new facility may, particularly during prolonged periods of dry weather, affect the safe and efficient operation of the port and the Water Framework Directive requirements.
- 4.37.6 The matter of water abstraction from Port Talbot Dock was identified by ExA as a principal issue [PD-005]. This issue has been discussed at some considerable detail throughout the examination.
- 4.37.7 Written questions were raised in round one [PD-004] and round two [PD-010] with further questions raised at the EIA/HRA ISH [EV-010] held on 25 February 2015 and the additional ISH held on 15 April 2015 to discuss outstanding issues.
- 4.37.8 The ExA sought further information via a Rule 8 and Rule 17 letter [PD-013] prior to the close of the examination. This asked the following:
- (a) Legal Agreements - Can the applicant and ABP provide copies of the agreed legal agreements that exist between them (in relation to water abstraction) as described by ABP in paragraphs 8.1 and 8.2 of their written representation dated 15 January 2015. Redaction will be acceptable for commercially sensitive information.
  - (b) Impounded Dock Level Management - Can the applicant and ABP provide evidence that demonstrates why the existing water level based methodology for managing the impounded dock water levels cannot be applied as the trigger mechanism for impounding seawater in the future.
  - (c) River Afan Monitoring – Can the applicant confirm what has been agreed with NRW and the Afan River Management Group to ensure that there will be sufficient early warning of low river flows to enable impounding to be implemented in order to maintain impounded dock water levels.

(d) Can the applicant and ABP provide evidence that demonstrates the capacity of the existing impounding facilities to maintain the critical water levels within the Port Talbot Dock during periods of low river flows with reference to the anticipated abstraction rates.

(e) Can the applicant provide a final version of their preferred protective provisions with ABP within a draft final preferred DCO

(f) National Policy Statement Ports – Can the applicant and ABP provide any comments in relation to the Ports NPS and in particular NPS Ports sections 3.1.5 and 3.3.

4.37.9 Responses can be found at:

- ABP [AS-016];
- Applicant [AS-019]; and
- NRW [AS-018]

### ***Position on Water Abstraction at Close of Examination***

#### **ABP's position**

4.37.10 ABP consider that an operating dock water level of 5.5m AOD should be maintained at all times. This equates to a depth over the dock cill of 8.6m which is the required depth to accommodate the larger type of vessel with a draft of 7.7m and a minimum under keel clearance [UKC] of 0.9m. At present the majority of vessels visiting the dock are of the smaller type of vessel having a draft of 6.7m which, with a UKC of 0.9m. These smaller vessels require a depth of 7.6m at the dock cill, equating to a water level of 4.5m AOD.

4.37.11 ABP's response records their concern that:

*'the applicant has made only passing acknowledgement to ABP's concerns with regard to its twofold overriding need, namely –*

*i) to maintain operational water levels within Port Talbot Dock in order to service its commercial operations within the Port; and at the same time*

*ii) its need to meet and comply with its statutory duties and obligation.'*

4.37.12 ABP also state that:

*'Ultimately, the primary responsibility for water and water levels within Port Talbot Dock must lie with ABP as port operator. ABP is not prepared, nor can it agree to any derogation from that responsibility. To do so, would render any decision to that effect susceptible to challenge.'*

4.37.13 As regards the continued use of the water level based methodology for managing the impounded dock water levels ABP stated:

*'ABP's concerns with regard to maintaining water levels within the dock stem simply from its two-fold interrelated need:-*

*(i) To maintain sufficient level of water within the Dock to meet its operational/commercial needs; and*

*(ii) At the same time comply with its statutory duties and obligations.*

*In the light of the inconsistencies in approach adopted to date by the applicant with regard to the assessment of its water needs, and indeed the anomalies in modelling - anomalies which have been conceded by its consultants – both of which have been drawn to the ExA's attention in previous written representations, if ABP is to meet its operational and statutory objectives, as summarised above, then it is firmly of the view that it has no choice but to ask the Secretary of State to impose the protective provision in the terms of the draft provided below (see response to question 4(e)).*

*The reality is that, should the power station project be consented, and that consent implemented without some form of agreed methodology supported by a protective provision, ABP will find itself entirely reliant upon the applicant and its water abstraction requirements, backed in turn by the NRW licence which together would give ABP no guarantee as to its ability actually to operate the Port at satisfactory operational water levels and thereby service its customers - nor its ability to fulfil its statutory obligations.'*

#### **NRW's position**

4.37.14 In response to ExA's first round of written question 5.36 [PD-004] which asked:

*'Can NRW state whether they have any concerns regarding the estimated abstraction volumes during construction and confirm whether these would fit comfortably within the existing permit.'*

4.37.15 NRW confirmed [REP1-007] that:

*'We have no concerns regarding the estimated abstraction volumes during the construction period or longer term, as the proposed volumes do not exceed the existing licensed quantities.'*

4.37.16 NRW have confirmed in the SoCG [REP4-005] that:

- the methodology used to model the impacts of the proposed development on the surface water environment is appropriate and that the applicant has demonstrated that abstractions will remain within the allowances of the existing Environmental*

*Permit;*

- *it is not necessary for the DCO to include a requirement for a water abstraction hierarchy to be agreed with NRW. However the parties AGREE that the arrangements for the management of the project's water abstraction requirements will be set out in a memorandum of understanding to be signed by the applicant, ABP, and NRW that will include:*
  - *enforcement of the abstraction hierarchy referred to in the ES [APP-011];*
  - *monitoring of flows at the Marcroft gauging station; and*
  - *issuing advisory notices to the applicant when low flows are not expected to meet the Project's abstraction requirements; and*
  - *the WFD issues have been satisfactorily addressed concluding that [REP6-003]:*
- *'It would be disproportionately costly for the applicant to develop alternative sources of (water) supply which under WFD is an appropriate justification to not pursue licence changes. (The Tata abstraction from the Docks Feeder does influence the rate of residual flow in the Afan and is one of the contributing factors affecting the ability of the Afan to meet WFD flow objectives, although not the most significant).'*

4.37.17 NRW confirmed in their response that:

*'they would be willing to monitor low river flows as part of their existing drought monitoring and management systems.'*

4.37.18 ExA considers that this would improve the sufficiency of early warning of low river flows to enable impounding to be implemented in order to maintain impounded dock water levels.

### **Applicant's position**

4.37.19 The applicant does not intend to increase the abstraction rates over and above those limits already set within existing by licences issued by NRW.

4.37.20 The applicant provided evidence on the existing Pump House Lease and Dock Licence agreements with ABP. The applicant considers that these provide ABP with:

*'a robust legal mechanism whereby it (ABP) can protect its interests and control water management within the dock.'*

4.37.21 The applicant's response also stated that:



*'a requirement to impound seawater which is triggered by reference to water levels within the Dock is the only appropriate mechanism which can ensure that, during dry conditions, the operational requirements of the steelworks and the Dock can both be met. This methodology has worked effectively for many decades and the applicant sees no reason why it would not work in the future. Under the existing arrangements, the applicant constantly monitors the water level in the Dock and, if the water reaches a warning level, a decision is made as to whether impounding is necessary. This decision is made having regard to matters such as the weather forecast and ship movements.'*

4.37.22 As regards the capacity of existing impounding facilities the applicant stated that:

*'As noted above, under the current arrangements, when impounding is necessary, this is carried out by the applicant using hired pumps. Under these arrangements, the pumping capacity is not limited and can be increased as necessary by adjusting the number and capacity of the pumps hired.*

*During previous dry summer periods when impounding has been necessary, this arrangement has always been able to provide the capacity necessary to meet the applicant's abstraction requirements whilst also maintaining satisfactory levels within the Dock.*

*The same arrangement will be capable of providing the necessary capacity in the future to maintain the critical water level in the Dock taking into account the anticipated abstraction rates for the proposed development.'*

4.37.23 As regards any impacts on the Ports NPS the applicant stated that:

*'Section 3.1 of the NPS sets out the Government's policy and the need for new port development. The policies must be applied by the decision-maker in determining applications for new port development. As the proposed development in this case does not involve port development, the policies set out that section are not directly relevant.*

*Even taking a wider view on the application of the ports NPS, the ExA can be satisfied that there is nothing in the proposed development which is contrary to the policy objectives set out in section 3.1, namely:*

- encouraging sustainable port development;*
- allowing judgments about when and where new development might be proposed; and*
- ensuring all proposed development satisfy the relevant legal, environmental and social constraints and objectives.*

*The aim of the first policy referred to above is to encourage port development which is "capable of meeting the needs of importers and exporters cost effectively". As a major importer and exporter at Port Talbot, the applicant stands to benefit from the implementation of this*

*policy and it would not be in the applicant's commercial interests to promote a development which prejudiced the achievement of this policy objective in general terms.*

*There are no specific proposals for nationally significant port development at Port Talbot that fall within the scope of the Ports NPS. ABP has referred in its submissions to its intention to expand its operation at Port Talbot and, in particular, to bringing Margam Wharf back into commercial use. In the event that any such proposals were to come forward and were to constitute a 'nationally significant infrastructure project' for the purposes of the Act, it would be for ABP to satisfy the Secretary of State that the scheme was consistent with the Ports NPS and would help to address the needs identified by the Government in section 3.1.'*

- 4.37.24 Prior to the close of the examination the applicant amended their preferred protective provisions to allow an extra 500mm to the trigger level for impounding of water by raising the level to +4.95 metres above Ordnance Datum.
- 4.37.25 The applicant provided comments on ABP's response [AS-012] providing information on the ongoing development of protective provisions suggesting that these would be concluded by the end of the examination.
- 4.37.26 The applicant has, throughout the examination, sought to retain the continued application of the water level management system for triggering impounding into the dock to maintain water levels. In the applicant's final submission [AS-012] in June 2015 revised Protective Provisions were put forward which responded to ABP's submissions by:
- giving ABP responsibility for pumping water into the dock to maintain water levels (at the applicant's cost);
  - raising the level at which pumping is triggered from +4.45m AOD to +4.95m AOD. This level is equivalent to an over cill depth of 8.05m; and
  - making the applicant responsible for the reasonable costs incurred by ABP in, maintaining, repairing and renewing any plant or equipment used for the purposes of maintaining a level of +4.95m AOD.

#### **ExA conclusions on water abstraction from Port Talbot Dock**

- 4.37.27 The ExA has considered the evidence that has been provided in response to questions raised including oral responses at ISH. The ExA has considered the positions of the two key parties; ABP and the applicant following the Rule 17 and 8(3) letter dated 20 May 2015. The ExA has also considered the associated responses from NRW.
- 4.37.28 Following these considerations the ExA concludes that there remains some doubt as to the accuracy of:

- the modelling and monitoring of feeder river flows during dry periods;
- the quantity of losses from the dock system;
- the projected increase in shipping visits to the impounded dock;
- the timing of future redevelopment of the impounded dock;
- the associated volumes of docking water that may be required;
- the abstraction quantities that will result from the proposed development (within the NRW licence); and
- the quantity of return waters from the proposed development.

4.37.29 Accordingly the ExA considers that the most appropriate method for ensuring that the interests of both ABP and the applicant are addressed, whilst also ensuring that ABP's statutory obligations as a port operator for the impounded dock are not compromised, would be through the continued application of the water level based methodology for managing the impounded dock water levels in accordance with the protective provisions included with Part 5 of Schedule 4 in the draft DCO [Appendix A].

4.37.30 The ExA does not consider that the continued application of the impounded dock water level management system, with the enhanced level of 4.95mAOD which is 0.5m higher than the currently applied value, restricts, impedes or limits in any way ABP's statutory obligations as a port operator.

4.37.31 The ExA has taken these conclusions forward to Chapter 8 where the Protective Provisions between the two parties are discussed and carried forward into the recommended draft DCO [Appendix A].

## **5 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS**

### **5.1 INTRODUCTION**

- 5.1.1 This Section of the report sets out analysis and findings relevant to Habitats Regulations Assessment [HRA].
- 5.1.2 The application proposal engages the Habitats Directive, and the HRA process on the basis of its potential to adversely affect a number of European Sites and their features.
- 5.1.3 The European Sites relevant to this process are of the following type:
- Special Areas of Conservation [SACs] and Ramsar designated pursuant to the Habitats Directive;
- 5.1.4 There are four broad stages for HRA as follows:
- Screening;
  - Appropriate Assessment [AA];
  - Consideration of Additional Requirements and Alternatives; and
  - Imperative Reasons of Overriding Public Interest [IROPI]
- 5.1.5 When assessing a project, it is appropriate to take embedded mitigation that is provided for (see sub-section 4.11 of this report) in the application proposal and (where necessary) secured in the recommended Development Consent Order [DCO] into account. It is an important part of the HRA process to identify Likely Significant Effects [LSEs] which arise in combination with other projects or proposals.
- 5.1.6 The Examining Authority [ExA] does not carry out an AA or any subsequent stage of assessment or decision making under HRA. This role is reserved to the Secretary of State [SoS] as the competent authority. However, the ExA has been mindful throughout the examination process of the need to ensure that the SoS has an adequate basis of information from which to carry out his duties as competent authority, informed by and compliant with the policy set out in National Policy Statement [NPS] EN-1 paragraph 5.3.9.
- 5.1.7 In accordance with the advice provided by PINS Advice Note 10, the ExA has adopted a standardised Planning Inspectorate procedure of drawing together submitted evidence in respect of the HRA process into a Report on the Implications for European Sites [RIES] [OD-002]. The RIES compiles, documents and signposts information provided within the DCO application, and the information submitted throughout the examination by both the Applicant and interested parties, up to the date of its release. The RIES [OD-002] was prepared and released on 26 March 2015.

## 5.2 PROJECT LOCATION

- 5.2.1 The proposed development by the applicant is for a new internal power generation enhancement project on land wholly owned by the applicant at the existing Port Talbot Steelworks site in South Wales. The site location is shown on ES Figure 1.1 [APP-013] and the blue and red line boundaries are shown ES Figure 1.2. [APP-013].
- 5.2.2 The site within which the project is located is entirely within the ownership of the applicant and lies within the administrative boundary of Neath Port Talbot County Borough Council [NPTCBC].
- 5.2.3 The applicant identified all the European sites within a 10km buffer of the project site. This approach is based on the guidance on screening effects on designated wildlife sites provided in the Environment Agency Horizontal Guidance Note H1, Annex F – Air Emissions (2011).
- 5.2.4 The applicant's No Significant Effects Report [NSER] [APP-193] identified the following UK European sites for which the UK is responsible for inclusion within the assessment:

**Table 5.1**

<b>European Site</b>	<b>Designated features</b>	<b>Distance (km) from the proposed development (approximately)</b>	<b>Direction from the proposed development</b>
Kenfig (2 parts, only one within 10km of the proposed development)	SAC	5.1	South east
Crymlyn Bog	Ramsar/SAC	8.3	North west
Cefn Cribwr Grasslands (4 parts)	SAC	10.3	South East

- 5.2.5 Note that Crymlyn Bog is covered by 2 designations as a SAC and as a Ramsar so a total of four European sites were screened by the applicant.
- 5.2.6 National Resources Wales [NRW] agreed in their response to ExA first written questions [REP1-007] that the applicant has considered all relevant European sites and features in the NSER [APP-193], in line with guidance provided in the Environment Agency's [EA] Horizontal Guidance (H1) Annex F.
- 5.2.7 This was also confirmed by NPTCBC in their response to ExA first round of questions [PD-004] which state:

*'The Authority [NPTCBC] is satisfied that all the relevant European sites and features have been considered in the applicant's Habitat Regulations assessment.'*

- 5.2.8 These four sites are referred to collectively as the European Sites. Further details including their respective designated features are included in Table 2.1 of the RIES [OD-002].

### 5.3 METHODOLOGY

- 5.3.1 The methodology for the HRA undertaken by the applicant followed PINS guidance Advice Note 10: Habitat Regulations Assessment relevant to NSIPs (2013) as follows:

- 5.3.2 **Stage One: Screening** — this stage identifies whether there are likely to be any effects upon a Natura 2000 site as a result of the project or plan, either alone or in combination with other projects or plans, and considers whether these effects are likely to be significant;

- 5.3.3 **Stage Two: Appropriate Assessment** — this stage considers the impact on the integrity of the Natura 2000 site of the project or plan, either alone or in combination with other projects or plans, with respect to the site's structure and function and its conservation objectives. Additionally, where there are adverse effects on site integrity, an assessment of potential mitigation of those impacts;

- 5.3.4 **Stage Three: Assessment of alternative solutions** — this stage examines alternative ways of achieving the objectives of the project or plan that avoid adverse effects on the integrity of the Natura 2000 site identified at Stage Two; and

- 5.3.5 **Stage Four: Assessment where no alternative solutions exist and where adverse impacts remain** — this stage involves an assessment of compensatory measures where, in the light of an assessment of imperative reasons of overriding public interest [IROPI], it is deemed that the project or plan should proceed.

- 5.3.6 The Examination has focussed on the potential effects of aerial emissions from the project to lead to increased acidification and deposition of nutrient nitrogen on the European sites within 10km.

- 5.3.7 The following potential effects have been considered and assessed by the applicant within the NSER [APP-193]. The applicant's conclusions were as follows:

- **Water pollution from surface runoff** – there are no hydrological links between the proposed development and Natura 2000 sites within 10km. Therefore there are no LSEs on Natura 2000 sites within 10km associated with water pollution;
- **Construction vehicle movements** – as stated in Chapter 5 of the ES [APP-011], the LSE of traffic emissions associated with construction vehicles, construction site personnel and building

material deliveries within 200 metres of an ecological receptor will be Negligible. As such, the LSE on all Natura 2000 sites within 10km will be Negligible. There will be no construction traffic during operation associated with the proposed development. There will be no traffic during decommissioning associated with the proposed development as there will be no removal or demolition of buildings proposed as part of the decommissioning of existing or proposed development. Boilers are to be decommissioned in-situ. Electrical connection will remain in-situ, as such LSEs on Natura 2000 sites within 10km will be Negligible;

- **Noise** – as stated in Section 8 of the ES [APP-011] the loudest noise during construction of the proposed development will be 92dB at source. At a distance of 5.1km this will reduce to 37 dB, which is well below existing ambient levels and as a result will be inaudible. Noise during operation and decommissioning will be below that created during construction. As such there are no LSE on Natura 2000 sites within 10km associated with noise;
- **Vibration** – vibration from construction and decommissioning of the proposed development will only be detectable within 20 metres from the source. Vibration during operation of the proposed development will be less than during construction. Therefore, there will be no LSEs on Natura 2000 sites within 10km during all stages of the proposed development;
- **Dust blanketing** – as stated in Section 5 of the ES, the LSE of dust on Natura 2000 sites will be Negligible: construction traffic produces fine matter that can travel up to 1 kilometre from source but only presents a potential LSE in association with human health and inhalation; the construction of the proposed development will produce medium and coarse material that will not travel more than 500 metres from source.
- **Direct habitat loss or fragmentation** – there will be no construction or requirement to remove any habitat within any Natura 2000 sites;
- **Direct disturbance to species** - there will be no construction or requirement to remove any habitat within any Natura 2000 sites;
- **Alteration of management** – the proposed development will not cause the alteration of site management actions at any Natura 2000 sites;
- **Increase in lighting** – as stated in Section 7 of the ES [AP-011], the lighting associated with the construction and decommissioning phases would be limited where practical, subject to timing of the construction activities and time of the year, and is considered to be a short term effect and LSEs are considered to be not significant. The aviation lighting associated

with the chimney stacks is considered to be a long term effect present throughout the operational phase of the proposed development and would be similar to the currently established level, and insignificant. The night time visual LSEs are not considered to be significant given the baseline level of lighting within the existing Port Talbot steelworks site at night. The nearest Natura 2000 site is 5.1km from the proposed development and as such light spill will not measurably increase onto Natura 2000 sites within 10km. There will be no LSEs on Natura 2000 sites within 10km associated with lighting from the proposed development;

- **Spread of invasive species** – there will be no construction within, or requirement to access, any Natura 2000 sites. The spread of invasive species in Natura 2000 sites will not be caused by the proposed development; and
- **Aerial Deposition of Nitrogen and Acid** – the potential for aerial deposition of nitrogen and acid was considered in Section 6 of the ES [APP-011] and in both Rev0 and Rev1 of the NSER [AS-004]. The NSER was subsequently renamed by applicant and submitted as a Habitats Screening Report (NSER Rev2) and was submitted with a Report to Inform an Appropriate Assessment [AS-007]. This concluded at paragraph 5.3.3 that:

*'during the interim phase between Option 2 Phase 1 and Phase 2 there is potential for a significant in-combination effect between the three power projects listed above and the proposed development on the transition mires and quaking bogs feature of Crymlyn Bog SAC / Ramsar as a result of nitrogen deposition. However the effect will be temporary until the installation is complete and fully operational (Option 1 and Phase 2 of Option 2) at which point there will be no LSE between all other projects and the proposed development on Crymlyn Bog SAC / Ramsar as a result of nitrogen and acid deposition.'*

Table 5.8 of the report [AS-007] gave the in-combination percentage of critical loads for this LSE on Crymlyn Bog SAC / Ramsar as 1.14%

- 5.3.8 Following subsequent dialogue with NRW, the applicant submitted Revision 2 of the NSER which was renamed as the Habitats Screening Report [HSR] [AS-007]. The HSR was accompanied by a Report to Inform an Appropriate Assessment [RIAA] [AS-007].
- 5.3.9 During the course of the examination the adequacy of the information provided in the ES [APP-011], NSER [APP-193] and RIAA [AS-007] has been resolved through agreed SoCGs with:



- NRW [REP4-005];
- NPTCBC [AS-021]; and
- CCSC [AS-020].

## 5.4 HRA IMPLICATIONS OF PROJECT

- 5.4.1 The applicant did not identify any direct disturbance or habitat loss that will occur within the identified European sites as part of this proposed development. However, the proposed development could have indirect impacts. Based on the information provided in Section 2 of this report, and within Appendices of the Applicants NSER [APP-193] and the ExA RIES [OD-002], it is possible to identify the potential indirect impacts that could result from the Project.
- 5.4.2 NRW agrees that the project will not have any adverse effect on the integrity of any Natura 2000 or Ramsar sites either alone or in combination with other projects [REP4-005].
- 5.4.3 The agenda for the ISH on Environmental Matters [EV-010] included question 4.1.3 as follows:

*'The applicant's position on effects on European sites is that the emissions from Option 2, Phase 1 of the project, combined with other known power stations in the vicinity, would lead to nitrogen deposition of 1.14% of the critical load for Crymlyn Bog Special Area of Conservation.*

*Following comments from NRW, the applicant has accepted that a likely significant effect cannot be excluded and provided information to support an appropriate assessment (December 2014 document refs: 5.03 & 5.05). The applicant's conclusion is that there will be no adverse effect on the integrity of Crymlyn Bog SAC and Ramsar site because of the more stringent NO<sub>x</sub> limits set by the Industrial Emissions Directive, the UK's on-going commitment to reduce NO<sub>x</sub> emissions and the temporary nature (circa 10 years) of the effects from Option 2, Phase 1.*

*It would appear that these are not measures that could be enforced. Could the applicant explain the basis for their confidence that adverse effects on the integrity of Crymlyn Bog will be avoided? Can NRW reprise their reasoning for agreeing that they are satisfied that adverse effects on the integrity of the SAC will be avoided and would be avoided and confirm the reference documents that have been applied to reach this conclusion.*

*The applicant has concluded that effects from acid deposition on Crymlyn Bog SAC/Ramsar site are not likely to be significant. Air quality effects on Kenfig and Cefn Cribwr grassland SACs are also assessed as unlikely to be significant because the process*

*contributions are less than 1% of the relevant critical loads, even when the process contributions from other projects are considered.*

*Could NRW explain the basis for the conclusion that process contributions of less than 1% of critical load are insignificant?’*

- 5.4.4 NRW presented a comprehensive answer that can be found at the audi recording of the meeting [EV-012]. NRW aimed to put the LSE into context by explaining that:

*‘... the feature in question, that of the Crymlyn Bog transitional mires and quaking bogs has a very low critical load for nitrogen of 5 kilograms of nitrogen per hectare per year and that 1% of this would be similar to 3 tablespoons of nutrient spread over a rugby pitch per year. Indicating that the extra addition of 0.14% of this load would be very small.’*

*‘We would look to ensure that there would be no increase in scrub encroachment, so as cited in the shadow appropriate assessment, rush such as fragmites, the growth of that rush outcompetes the feature itself and therefore reduces its quality.’*

*‘...in regard to nutrient impacts these tiny emissions would make no material difference to the scrub encroachment. It would not conceivably be able to increase the growth of scrub encroachment because it is so tiny and because of the nature of the site being lowland wet emphasises that there is no possibility of an adverse effect when also considering the temporary nature of the in-combination effect.’*

- 5.4.5 NRW written submission [REP4-002] submitted following the ISH [EV-010] includes written evidence in support of their conclusions as discussed at the ISH [EV-012] including the following reference documents;

- EA H1 Guidance; and
- Review of Consents for Crymlyn Bog SAC (Houlgreave J., 2005).

- 5.4.6 This last document is an Environment Agency assessment which contains further information on aerial emissions and their effects on Crymlyn Bog. The document underlines the relatively small impact from aerial emissions overall, which NRW considers supports their conclusions. NRW also record that the temporary nature of the effect is, in their opinion, enforceable under the time limit requirement set within the DCO.

- 5.4.7 The applicant's assessment identifies the potential for in-combination impacts on European sites as follows:

- Crymlyn Bog SAC and Ramsar: changes in air quality (nitrogen and acid deposition) in-combination during operational phase.

- 5.4.8 A LSE, has been explained by the European Court of Justice in the Waddenzee judgement as follows in paragraphs 47 and 45 respectively:
- (a) 'Significant: "Where a plan or project has an effect on that site but is not likely to undermine its conservation objectives, it cannot be considered likely to have a significant effect on that site"; and
  - (b) Likely: "if it cannot be excluded, on the basis of objective information, that it will have a significant effect on the site...'
- 5.4.9 The applicant's NSER [APP-193] as submitted concluded that no LSE as a result of the proposed development, either alone or in-combination, concluding that an Appropriate Assessment - stage Two of the HRA process - was not required.
- 5.4.10 Prior to the examination the applicant had provided NRW with an updated NSER to that submitted with the application as explained and included within [AS-004]. At paragraphs 5.2.31 to 5.2.33 this document stated that:
- 'The only residual effect of the project that will be tested for LSE with other project is change in aerial pollutant concentrations (NOx and SOx) for Option 2 Phase 1 of the project.*
- The projects potential in-combination effects are described in Table 5.1 below [AS-004].*
- During the interim phase between Option 2 Phase 1 and Phase 2, there is potential for significant in-combination effects between all other projects and the proposed development on Crymlyn Bog as a result of nitrogen and acid deposition. However, the effect will be temporary until the installation is complete and fully operational (Option 1 and Phase 2 of Option 2) at which point there will be no LSE between all other projects and the proposed development on Crymlyn Bog as a result of nitrogen and acid deposition.'*
- 5.4.11 'Based on this information NRW in its Relevant Representation [RR-006] stated that:
- 'The 'No significant effects report' [APP-193] as currently submitted, requires further refinement in relation to its content and conclusions. Based on the information provided in the report, we [NRW] cannot currently agree with the applicant's conclusions of no likely significant effect [LSE] from this project in-combination, in relation to Crymlyn Bog SAC. A 'shadow' Appropriate Assessment will be required to fully assess in-combination effects between Option 2-Phase 1 of this project and other power stations within the vicinity, in relation to Crymlyn Bog SAC.'*
- 5.4.12 The ExA's Rule 6 letter [PD-005] requested the applicant to submit previously omitted Habitats Screening Matrices (recording the

outcomes of the assessment carried out under the Habitats Regulations 2010 (as amended)).

- 5.4.13 The applicant responded by submitting an updated and renamed NSER as a Habitats Screening Report [AS-007] this was accompanied by a Report to Inform an Appropriate Assessment [AS-007] to which the Screening Matrix formed Appendix D [AS-007]. The effects that were considered previously (paragraph [1.0.5] above) were extended to include the following:

Change in aerial pollutant concentrations (NO<sub>x</sub> and SO<sub>2</sub>) and the resultant change in acid and nitrogen deposition at ecological sensitive sites within 10 km of the proposed boiler stack/s. The LSEs of aerial pollutant concentrations on Natura 2000 sites will be considered further. Tables 4.1 to 4.3 present the process contribution from the proposed Tata development (Options 1 and Option 2 Phase 1) and the resultant acid and nitrogen deposition rates in comparison to the relevant critical level, critical load and critical load factor for each of the three Natura 2000 sites identified within 10 km of the application site.

- 5.4.14 This report [AS-007] stated at paragraphs 1.1.5 that:

*'The screening assessment concludes that the proposed development is likely to have a significant effect upon Crymlyn Bog SAC and Ramsar only, but will not have any significant effects upon the other Natura 2000 Sites. Therefore, Tata Steel UK Limited considers that the competent authority is required to make an Appropriate Assessment of the implications of the proposed development on Crymlyn Bog SAC and Ramsar.'*

- 5.4.15 These documents confirm that further consideration of the Project by way of an Appropriate Assessment to be undertaken by the Competent Authority HRA will be required. NRW agreed with this conclusion in their response [REP1-007] to ExA's first round of written question 6.03 [PD-004].

- 5.4.16 The ExA accepts this conclusion.

## **5.5 ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS RESULTING FROM THE PROJECT, ALONE AND IN COMBINATION**

- 5.5.1 The Statement of Common Ground [SoCG] between NRW and the applicant [REP4-005] agrees the following:

- (a) the sites (and the features of those sites) that are likely to be significantly affected by the project;
- (b) the baseline evidence considered; and
- (c) the methodology used for assessing air quality effects.

- 5.5.2 There were no dissenting views from any interested parties.

5.5.3 The PINS Advice Note 10: Habitat Regulations Assessment relevant to Nationally Significant Infrastructure Projects (2013) states that:

*'in assessing in-combination effects the following projects should be considered:*

- *Projects which have already been implemented or completed;*
- *Projects which have been given consent but which have not yet been implemented or completed;*
- *Projects for which applications for consent have been made; and*
- *Ongoing projects that are subject to periodic regulatory reviews.'*

5.5.4 The projects which have been researched and included are:

- (a) Mynydd Brombil Wind Farm;
- (b) Swansea Bay Tidal Lagoon;
- (c) Abernedd Power Plant;
- (d) Biomass II Power Station ; and
- (e) Prenergy Port Talbot Renewable Energy Plant.

5.5.5 NRW response to ExA first round of written questions [PD-004] states:

*'NRW agrees with the conclusions of the applicant's 'Habitats Screening Report' and 'Report to Inform an Appropriate Assessment', dated December 2014. The reports conclude no adverse effect on the integrity of any Natura 2000 or Ramsar site, from the proposed development. Subject to the scenarios assessed within the above documents (i.e. timings and operation of Options 1 and 2) being secured via the DCO requirements and/or other regulation, we have no further comments to make on this issue.'*

5.5.6 NPTCBC stated the following in relation to the applicant's NSER [APP-193]:

*'The Authority agrees with the conclusions of the No significant Effects Report.'*

5.5.7 As regards the inclusion of relevant developments within the in-combination assessment NPTCBC confirmed that:

*'to the best of our [NPTCBC] knowledge all relevant developments have been considered in the Habitats Screening Report.'*

## 5.6 CONSERVATION OBJECTIVES

- 5.6.1 The conservation objectives for the European sites discussed in this section of the report were provided by the applicant with their Report to Inform an Appropriate Assessment [AA] (see Table 3.1 of [AS-007]).
- 5.6.2 The principal source of data for Crymlyn Bog was the Countryside Commission for Wales [CCW] Core Management Plan Including Conservation Objectives for Crymlyn Bog/Cors Crymlyn Special Area of Conservation [SAC]/Crymlyn Bog Ramsar Site (2010).

The conservation objectives are contained within tables 3.1 and 3.2 of the applicant's Habitats Screening Report [AS-007].

## 5.7 FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY OF EUROPEAN SITES

- 5.7.1 The applicant concluded that the project will not adversely affect the integrity of the European sites and features listed in the table below which has been abstracted from the RIES [OD-002].

Features	Potential adverse effect on integrity	Agreed with SNCB and other relevant parties?	Comments
<b><i>Crymlyn Bog Special Area of Conservation / Ramsar</i></b>			
Transition mires and quaking bogs	No - Refer Report to Inform an Appropriate Assessment [AS-007]	Yes - Refer NRW Responses: [REP1-007] [REP4-002] [REP4-005]	The applicant identified likely significant effects from the project in-combination with other power plants in the vicinity for this feature, caused by an increase in the deposition of nutrient nitrogen. The applicant and NRW agreed that this would not lead to an adverse effect on integrity for a number of reasons including: (a) the temporary nature (see note) of the effect; (b) the Industrial Emissions Directive will set stricter nitrogen oxides emission limits leading to a reduction in background levels; and (c) the increase in emission would be extremely small and will not lead to the conservation objectives of the site being undermined.

Note: the temporary nature of the effect is approximately twelve years being the maximum time that Phase 1 of Option 2 will operate before the older generating plant will be decommissioned following the commissioning of Phase 2 of Option 2.

5.7.2 The applicant's conclusions in relation to the sites and features shown in this table have not disputed by any Interested Parties.

5.7.3 NRW set out their reasoning for agreeing that adverse effects on the integrity of the Crymlyn Bog SAC and Ramsar site would be avoided as follows:

*'Firstly, the temporary nature of the effects from Option 2, Phase 1 is relied on in part by the applicant to conclude that there will be no adverse effects. Concerns have been expressed as to the enforceability of this measure, but NRW consider that it is enforceable because the requirements of the DCO control the timing of the development;*

*Secondly, the more stringent NO<sub>x</sub> limits set by the Industrial Emissions Directive are also enforceable, through the Directive. In any event, NRW consider a reduction in background NO<sub>x</sub> emissions to be a reasonable assumption; and*

*Thirdly and most importantly, the emission will be extremely small, such that it can be concluded beyond (sic) reasonable scientific doubt that there will be no adverse effect. This factor (the extremely small nature of the emission) is enough on its own to conclude no adverse effect in NRW view, even without the first and second points mentioned above. In particular, we refer to Annex F, which is used by NRW to guide the HRA process. It provides a technically robust backdrop against which to make HRA decisions. The H1 Guidance sets out a threshold (pp.18-19). The figure in the present case in excess of this (1.14%) led us to advise the applicant that an appropriate assessment should be carried out. However in the context of Crymlyn Bog and the particular features of concern, namely the Transition Mire and Quaking Bogs, encroachment of scrub would represent the most likely cause of undermining the conservation objectives due to nutrient enrichment. A level of 1.14% of the critical load will make no measurable difference to scrub encroachment and will have no possibility of undermining conservation objectives.'*

5.7.4 NRW provided two documents in support of these written submissions:

- (i) Annex F of the H1 Guidance; and
- (ii) Review of Consents for Crymlyn Bog SAC (Houlgreave J., 2005) . This Environment Agency assessment contains further information on aerial emissions and their effects on Crymlyn Bog. The document underlines the relatively small impact from aerial emissions overall and supports our above conclusions.

- 5.7.5 NRW also explained the basis of the conclusion that contributions of less than 1% of the critical load are judged insignificant:

*'This figure has been ratified by a panel of experts– the Air Quality Technical Advisory Groups [AQTAG] – as part of work done to inform the Environment Agency's Review of Consents project. AQTAG still meets and currently comprises experts from NRW, Natural England and the Environment Agency in England. The 1% figure was chosen as being a proportion of critical load that could not possibly undermine the conservation objectives of a nutrient-sensitive, terrestrial Natura 2000 site feature. It was chosen to be very precautionary and to act as a coarse screening tool.'*

- 5.7.6 The NRW SoCG [REP4-005] states at paragraphs 9.4 - 9.6 that:

*'The Parties AGREE that the Applicant's Habitats Regulations Assessment has considered all relevant protected sites and features.*

*The Parties AGREE that, to the best of their knowledge, all relevant developments have been considered in the assessment of in-combination effects in the Applicant's Habitats Regulations Assessment.*

*The Parties AGREE that the Project will not have an adverse effect on the integrity of any Natura 2000 or Ramsar sites either alone or in combination with other projects.'*

## **5.8 CONSIDERATION OF ALTERNATIVE SOLUTIONS**

- 5.8.1 The ExA did not consider alternative solutions as this stage of the HRA is not applicable in the case of the proposed development.

## **5.9 IMPERATIVE REASONS OF OVERRIDING PUBLIC INTEREST [IROPI]**

- 5.9.1 The ExA did not require the applicant to provide evidence on IROPI as this stage of the HRA is not applicable in the case of the proposed development.

## **5.10 COMPENSATORY MEASURES**

- 5.10.1 The ExA did not consider any compensatory measures as this stage of the HRA is not applicable in the case of the proposed development.

## **5.11 CONCLUSIONS**

- 5.11.1 The evidence put forward by the applicant within the updated Habitats Screening Report [AS-007] and Report to Inform an Appropriate Assessment [AS-007] has been tested by ExA through the first round of written questions [PD-004] and through further questions raised at the EIA/HRA Issue Specific Hearing [EV-010].



- 5.11.2 The ExA has sought and received the SoCG [REP4-005] between the applicant and NRW which confirms the agreement of the NRW to the HRA as undertaken and reported by the applicant.
- 5.11.3 The ExA is satisfied that the evidence presented by the applicant and supported by NRW confirms that there will be no adverse effect on any European Site should the proposed development be constructed and commissioned in a single phase (Option 1).
- 5.11.4 As regards the construction of the proposed works under Option 2 the evidence presented by the applicant and supported by NRW confirms that whilst a heightened concentration of NO<sub>x</sub> emissions has been identified as a potential in-combination effect with other adjacent power stations during Phase 1, NRW are satisfied that this will not result in any adverse effect on the integrity of the Crymlyn Bog SAC/Ramsar nor will there be any other likely significant effect on any other European Sites.
- 5.11.5 The ExA agrees with NRW's position on this issue.
- 5.11.6 Accordingly and based on the evidence above, supported by the written submission from NRW [REP4-002], the ExA concludes that should the proposed development be constructed in two phases then the potential for an in-combination effect arising during Phase 1 of Option 2 it may be considered as insignificant due to its temporary nature and therefor is unlikely to impact on the integrity of the European sites.

## **5.12 OVERALL CONCLUSIONS ON THE NEED FOR THE PROJECT**

- 5.12.1 The ExA concludes that whilst there are impacts of the scheme in terms of ecology and the water environment, the recommended draft DCO, included as Appendix A to this report, contains sufficient measures to mitigate those impacts.
- 5.12.2 Further that due to the significant socio-economic benefits resulting from sustained steel making at the site, it is concluded, therefore, that the benefits of this proposal would outweigh its impacts.

## **6 COMPULSORY ACQUISITION AND RELATED MATTERS**

### **6.1 INTRODUCTION**

- 6.1.1 This section of the report deals with the request for powers to compulsorily acquire rights and/or land.
- 6.1.2 It is arranged into the following sub-sections:
- (i) The purposes for which the land is required;
  - (ii) The legislative and guidance context;
  - (iii) How the ExA examined the case for compulsory acquisition;
  - (iv) Availability and adequacy of funding;
  - (v) The purposes for which the land and/or rights are required;
  - (vi) Alternatives;
  - (vii) Specific groups of affected persons and types of land;
  - (viii) The applicant's case for acquisition of land and rights for development;
  - (ix) The Human Rights Act; and
  - (x) The ExA's recommendation in regards to the granting of Compulsory Acquisition powers.

### **6.2 THE PURPOSES FOR WHICH THE LAND IS REQUIRED**

- 6.2.1 The Applicant is seeking Compulsory Acquisition [CA] powers to secure certain rights and interests within the Order Land to facilitate the Project as detailed within the applicant's Statement of Reasons [APP-005].
- 6.2.2 The site required for the proposed development (the Order Limits) covers an area of approximately 22.9 ha of land on or adjacent to the existing Tata Port Talbot steelworks. The site is required for the proposed development comprising the following:
- Power Generation Plant;
  - Gas Connections; and
  - Electrical Connection.
- 6.2.3 All of the land required for the proposed development is already owned by the applicant with the exception of the disused Ogmere Valley railway line that runs through the steelworks site. This railway line is owned by Network Rail and is required to be crossed in two separate places to enable the utilities (gas) pipework connection and the electrical cable connection to be completed.
- 6.2.4 The applicant does not seek to acquire any freehold land, but to acquire new rights in the above two locations. Accordingly the powers sought in the draft Development Consent Order [DCO] [APP-210] are limited to the compulsory acquisition of new rights only over two sections of a railway line that runs through the Order Land.

- 6.2.5 The land over which the applicant is seeking permanent rights and interests comprises some 0.227 ha and covers the following Work items:
- (1) The extension of existing fuel gases pipework as described in Work No.1C at DCO Schedule 1C(a)(i) [APP-210] plot 01/07; and
  - (2) Part of the electricity cable connection as described in Work No.2 (a) at DCO Schedule 1 [APP-210] plot 02/04.
- 6.2.6 The area required by the fuel gases connection [plot 01/07] is 0.203ha. The area required by the electrical cable connection [plot 02/04] is 0.024 ha. The Book of Reference dated [APP-007] identifies these plots in Part 1. The Land Plans [APP-181] show these areas bordered in red and shaded blue.
- 6.2.7 The applicant also seeks the draft DCO [APP-210] to confer powers to interfere with, suspend or extinguish private rights over a further 20 plots within the Order land which is in the applicant's possession. This land is described in more detail, together with the reason for the permanent right and/or interest being sought, in Part 2 of the Book of Reference [APP-007]. The Land Plans [APP-181] show these areas bordered in red and shaded yellow.
- 6.2.8 The remainder of the land within Order limits bordered in red and shaded yellow on the Land Plans [APP-181]) is owned by the Applicant. There are no powers of compulsory acquisition over this land as it is already owned by the Applicant. However, the applicant seeks to acquire the power through article 19 of the draft DCO to suspend or extinguish any private rights which would be inconsistent with any activity authorised by the draft DCO. This land is described in more detail in Part 3 of the Book of Reference [APP-007] together with the rights which are known to exist over it.
- 6.2.9 In summary the CA powers sought are:
- (a) to acquire new rights over land; and
  - (b) to extinguish and/or override existing rights.
- 6.2.10 These powers are referred to collectively in this Section as the CA powers, save where the context requires otherwise.
- 6.2.11 The draft DCO [APP-210] seeks to incorporate the provisions of the Compulsory Purchase (General Vesting Declarations) Act 1981 (Article 13) and the provisions set out in s.158 of the Act relating to the statutory authority and protection given to override easements and other rights (Article 17).
- 6.2.12 In addition, article 19 of the DCO provides a power to suspend or extinguish private rights over the plots of land listed above where the continuance of these rights would be inconsistent with the exercise of any new right acquired by the undertaker.

- 6.2.13 The applicant also seeks, through the draft DCO, the following powers to apply to all of the land within the Order limits:
- (a) a power to interfere with an interest or right (which includes any easement, liberty, right or advantage annexed to land and adversely affecting other land, including any natural right to support) or breach a restrictive covenant (article 17); and
  - (b) a power to extinguish the rights of statutory undertakers or reposition or remove the apparatus of statutory undertakers over or within the Order land is sought. The exercise of this power is subject to the protective provisions set out in Schedule 4 to the DCO (article 20).
- 6.2.14 s120(5)(a) of PA2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the DCO and s117(4) provides that, if the DCO includes such provisions, it must be in the form of a statutory instrument. As the DCO seeks to apply s120(5)(a), it is therefore necessary that the DCO is in the form of a statutory instrument. The ExA confirms that the final draft DCO is in the form of a statutory instrument.

## **6.3 THE LEGISLATIVE AND GUIDANCE CONTEXT**

### ***The Requirements of the Planning Act (2008) (PA2008)***

- 6.3.1 CA powers can only be granted if the conditions set out in sections 122 and 123 of the PA2008 are met. The Department of Communities and Local Government [DCLG] has issued guidance on compulsory acquisition procedures (DCLG Guidance).
- 6.3.2 Section 122 (2) requires that the land must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate.<sup>1</sup>
- 6.3.3 Section 122(3) requires that there must be a compelling case in the public interest which means that the public benefit derived from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is affected.
- 6.3.4 Section 123 requires that one of three conditions is met by the proposal<sup>2</sup>. The Examining Authority [ExA] is satisfied that the

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<sup>1</sup> Guidance related to procedures for compulsory acquisition DCLG February 2010

<sup>2</sup> (1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that one of the conditions in subsections (2) to (4) is met.

(2) The condition is that the application for the order included a request for compulsory acquisition of the land to be authorised.

condition in s.123 (2) is met because the applicant's application form for the DCO included a request for compulsory acquisition of the land to be authorised. The applicant confirmed his intention to seek the compulsory acquisition of land or an interest in land or right over land in the Introduction to the Applicant and Application [APP-003] and within the Application Form section 13 [APP-004]. The latter also referenced the applicant's Statement of Reasons [APP-005], Funding Statement [APP-006] and Book of Reference [APP-007] which are also relevant.

6.3.5 A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers, these require that:

- (a) all reasonable alternatives to compulsory acquisition must be explored;
- (f) the applicant must have a clear idea of how it intends to use the land and to demonstrate funds are available; and
- (g) the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

## **6.4 HOW THE EXA EXAMINED THE CASE FOR COMPULSORY ACQUISITION**

6.4.1 The ExA examined the case for compulsory acquisition through:

- Identifying CA as a principal issue including issues related to:
  - (i) The requirement for the powers sought;
  - (ii) The need to establish a compelling case in the public interest; and
  - (iii) Adequacy of Funding as a Principal Issue.
- Specific questions on compulsory acquisition (questions 2.01-2.03) in the first round of written questions issued on 18 December 2014 [PD-004];
- Specific question on compulsory acquisition (question 2.2.1) in the second round of written questions issued on 26 March 2015 [PD-010]; and
- Holding a compulsory acquisition issue specific hearing on 25 February 2015 [EV-010 & EV-011].

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(3) The condition is that all persons with an interest in the land consent to the inclusion of the provision.  
(4) The condition is that the prescribed procedure has been followed in relation to the land.

## **Availability and Adequacy of Funds**

- 6.4.2 A Funding Statement was provided with the application [APP-006]. The applicant is the UK operational subsidiary of Tata Steel Europe Limited, part of Tata Steel, one of the world's most geographically diversified steel producers which is registered in India
- 6.4.3 The issue of funding was raised through ExA's first round of written questions [PD-004]. The applicant's responses which can be found at [REP1-003] concluded that the acquisition costs of the land owned by Network Rail will be less than £50,000 and the further cost of suspending or extinguishing rights over the Order land of £50,000 would not be significant in terms of the overall project costs.
- 6.4.4 The applicant also confirmed that:
- the total cost of the development was estimated to be approximately £220 million;
  - the applicant had the ability to procure financial resources to fund the proposed development subject to approval of the Tata Steel Limited Board following the completion of a bankability study which was due in March 2015; and
  - the funds would meet the capital expenditure of the project, the cost of acquiring land and any compensation that might be payable.
- 6.4.5 A CA Issue Specific Hearing was held on 25 February 2015 [EV-010 & EV-011] at which the applicant provided an update on its discussions with affected persons on its CA proposals [REP4-004]. The applicant also reiterated the estimates of costs given above.
- 6.4.6 No further representations were made at the CA issue specific hearing.
- 6.4.7 The applicant did not provide any evidence in relation to the outcome of the bankability study.

## **6.5 ALTERNATIVES**

- 6.5.1 The DCLG Guidance requires (paragraph 20) that:
- 'The promoter should be able to demonstrate to the satisfaction of the decision-maker that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored...'
- 6.5.2 The proposed development is for a power generating enhancement project for the existing steelmaking plant in Port Talbot in south Wales. The proposed development will be located wholly within the existing plant within land that is wholly owned by the applicant. The actual location for the proposed development has been determined as Site A – the Old Margam coke oven site which adjoins the existing power generating facilities and which is closest to the existing process

and natural gas supplies to enable ready connection within distances of approximately 450m.

- 6.5.3 The consideration given to alternative locations for the development has been summarised at section 4.12 above. The proposed development must be located within the existing steelworks site and for safety and efficiency as close to the existing generating facilities as possible. The chosen site; Site A the Old Margam Coke Oven site is adjacent to the existing power generating facilities and thereby the quantum of fuel gas connections is minimised to 450 metres in length. Plot 01/04 is required solely to cross the unused railway line owned by Network rail in order to connect the new generation plant to the existing fuel gas pipelines.
- 6.5.4 The electrical connection is only required to enable any surplus power that is generated and not used for self-consumption within the steelworks to be exported to the national grid via the existing Cefn Gwrgan and Grange substations that are also within land owned by the applicant. The cable routing has been kept as far as is possible within the land owned by the applicant. Plot 02/07 is required solely to cross the unused railway line owned by Network Rail in order to facilitate the electrical cable connection to the existing Grange and Cefn Gwrgan substations.
- 6.5.5 Although the existing substations are within the land owned by the applicant the alignment of the electrical connection requires the crossing of the railway line at some point and the applicant has determined that the location identified as plot 02/07 is the preferred crossing point.
- 6.5.6 Taking into account the alternatives considered the applicant took the view that the application for CA met the requirements of s 122(2)(a) and 122(2)(b) of PA 2008 as being required for the development to which the development consent relates and are required to facilitate or are incidental to the development.
- 6.5.7 The ExA has considered this in terms of the selection of the site, the scale of the development proposed, the specific characteristics of the development and then in relation to the proposed acquisition of rights over each of the two plots 01/07 and 02/04.

## **6.6 SPECIFIC GROUPS OF AFFECTED PERSONS AND TYPES OF LAND**

- 6.6.1 This part of this section deals with specific groups of affected persons and types of land as follows:
- Statutory Undertakers;
  - Crown Land; and
  - Special category land
- 6.6.2 Although no Crown Land was identified within Part 4 of the applicant's Book of Reference [APP-007] and therefore should not be affected by the CA provisions sought by the applicant, the Welsh Government

submitted their requirements relating to Crown rights [AS-015] and these have been included within the final draft DCO[Doc Ref] .

- 6.6.3 No special category land was identified within Part 5 of the applicant's Book of Reference [APP-007] and therefore no land belonging to the National Trust, open space, common land or field garden allotment is included in or affected by the CA provisions or Order Land.

***Statutory Undertakers-Section 127***

- 6.6.4 The following statutory undertakers are potentially affected by the application:

- Network Rail Infrastructure Limited [NRail];
- Western Power Distribution (South Wales) plc [WPD];
- National Grid (National Grid Electricity Transmission [NGET];and
- Dwr Cymru Cyfyngedig [DCC].

***Network Rail Infrastructure Limited [NRail]***

- 6.6.5 Statutory Undertaker NRail is included for the purposes of both the gas and electricity connections (the applicant is seeking to install these connections by routing them under two separate positions along the largely disused Ogmore Valley Railway line which runs through the site). The applicant has finalised an agreement with NRail regarding Protective Provisions which are included as Part 1 of Schedule 4 of the draft DCO [APP-210].
- 6.6.6 However negotiations for the Deeds of Grant and the Framework Agreement for NRail Asset Protection were not successfully concluded by the close of the examination.
- 6.6.7 Whilst NRail confirmed in their letter [REP5-001] dated 19 March 2015 that they had agreed the Protective Provisions as included in Part 1 of Schedule 4 of the draft DCO, they stated that they would not be in a position to withdraw their objection to the application for development consent until the Deeds of Grant and Framework Agreement are also agreed.
- 6.6.8 The applicant is seeking rights over the two plots identified above to enable the gas and electrical connections to be made by passing pipes and cables underneath the existing Ogmore Valley railway line that has not seen use for some years. The ExA is unable to determine any detriment to NRail that would result from these connections provided that they are constructed to standards to be agreed with NRail through the agreed Protective Provisions and subsequent Deed of Grant and Framework Agreement.
- 6.6.9 NRail did not attend the CA Issue Specific Hearing [ISH] held on 25 February 2015 having confirmed that the agreement of the Protective Provisions with the applicant was progressing. NRail subsequently confirmed [REP5-001] that they had agreed the Protective Provisions with the applicant.



- 6.6.10 The ExA is of the opinion that the Protective Provisions included within Part 1 of Schedule 4 of the final draft DCO [APP-210] provide a suitable mechanism for agreement to be reached on the Deed of Grant and Framework Agreement.

***Western Power Distribution (South Wales) plc [WPD]***

- 6.6.11 Statutory Undertaker WPD is included for the purposes of the electricity connection (the applicant is seeking to modify the electrical connections within the existing Cefn Gwrgan and Grange substations which are jointly owned and operated by the applicant and WPD and which are located on land owned by the applicant. WPD also own the regional electricity distribution network). The applicant has agreed Protective Provisions with WPD which are included as Part 2 of Schedule 4 of the draft DCO [APP-210].
- 6.6.12 WPD has indicated that its agreement to the Protective Provisions [REP6-004] included above was conditional on no additional impacts on its apparatus emerging during remainder of the examination. No further impacts on WPD apparatus were identified during the examination. WPD did not attend the CA ISH on 25 February 2015.
- 6.6.13 The ExA is unable to determine any detriment to WPD that would result from the implementation of the required modifications to the electrical connections within the two substations subject to them being implemented in accordance with the agreed Protective Provisions.
- 6.6.14 Accordingly the ExA concludes that the Protective Provisions as agreed are suitable for inclusion with Part 2 of Schedule 4 of the final draft DCO [APP-210]

***National Grid Electricity Transmission plc [NGET]***

- 6.6.15 Statutory Undertaker NGET is included for the purposes of ensuring that any and all of its apparatus that may exist within the Order limits is protected. The applicant has agreed Protective Provisions with NGET which are included as Part 3 of Schedule 4 of the final draft DCO [APP-210]. However at the time of closing of the examination the parties had been unable to successfully negotiate the side agreement.
- 6.6.16 Whilst NGET has previously indicated that it will not be in a position to withdraw its objection to the application until the side agreement has been finalised the ExA is unable to determine any detriment to NGET that would result from the proposed development subject to it being implemented in accordance with the agreed Protective Provisions.
- 6.6.17 Accordingly the ExA concludes that the Protective Provisions as agreed are suitable for inclusion with Part 3 of Schedule 4 of the final draft DCO [APP-210] and that they provide a suitable mechanism for agreement to be reached.

### ***Dwr Cymru Cyfyngedig Limited [DCC]***

- 6.6.18 Statutory Undertaker DCC is included for the purposes of the construction of the generating station (the applicant is seeking an exclusion corridor to protect the Afan Valley Trunk Sewer [AVTS] that runs through the site). The applicant has agreed Protective Provisions with DCC which are included as Part 4 of Schedule 4 of the draft DCO [APP-210].
- 6.6.19 DCC confirmed their agreement to the Protective Provisions as included above through their letter to the applicant's solicitors dated 3 March 2015 [REP6-004].
- 6.6.20 The ExA is unable to determine any detriment to DCC apparatus that would result from the proposed development subject to it being implemented in accordance with the agreed Protective Provisions.
- 6.6.21 Accordingly the ExA concludes that the Protective Provisions as agreed above are suitable for inclusion with Part 4 of Schedule 4 of the final draft DCO [APP-210]

### ***Summary***

- 6.6.22 Representations by the following statutory undertakers have been withdrawn and accordingly the provisions of section 127 are not engaged for:
- WPD; and
  - DCC.
- 6.6.23 Whilst representations by NGrid and NRail have not been withdrawn the ExA is satisfied that the Protective Provisions as included within the draft DCO [APP-210] are a suitable mechanism for agreement to be reached.
- 6.6.24 The applicant's Consultation Report [APP-190] lists all consultees in Appendix 5.
- 6.6.25 No other Statutory Undertakers [SU] representations were submitted during the examination or raised at the CA ISH.

## **6.7 EXTINGUISHMENT OF RIGHTS, AND REMOVAL OF APPARATUS OF STATUTORY UNDERTAKERS ETC. - SECTION 138**

- 6.7.1 Part 5 of the draft DCO includes articles 12, 19 and 20 which provide powers to the applicant , as undertaker, as follows:
- Article 12: provides the power to create and compulsory acquire the new rights affecting the Order land;
  - Article 19: provides the power to suspend or extinguish private rights; and
  - Article 20: provides the power to extinguish rights, remove or reposition SU apparatus within Order land.

- 6.7.2 Schedule 4 of the draft DCO contains Protective Provisions which provide protection for the affected SUs as follows:
- Part 1: NRail;
  - Part 2: WPD;
  - Part 3: NGET; and
  - Part 4: DCC
- 6.7.3 The exact location of all of SU apparatus and rights is not yet known. The Applicant does not anticipate that the authorised development will interfere in any way with the SU apparatus and/or rights but at this stage the possibility cannot be ruled out. Therefore, the Applicant has included powers to extinguish any right or remove any apparatus (contained in Article 20 of the draft DCO [APP-210]) but made subject to the protective provisions in Schedule 4.
- 6.7.4 The ExA is satisfied that the rights sought by the applicant are necessary to enable the proposed development and that without these rights it would not be possible for the development to be constructed or to function as intended.
- 6.7.5 Accordingly the ExA is satisfied that the protective provisions in Schedule 4 will adequately protect the interests of the SUs and therefore the Secretary of State can be satisfied that any extinguishment or removal of rights are necessary for the purpose of carrying out the authorised development (s138).

## **6.8 THE APPLICANT'S CASE FOR ACQUISITION OF LAND AND RIGHTS FOR DEVELOPMENT**

- 6.8.1 The applicant's justification for seeking CA and other powers as set out in the Statement of Reasons is to secure rights and other interests required to enable it to construct, operate and maintain the project within a reasonable commercial timeframe. The applicant maintained that the rights to be acquired were no more than was required to facilitate the project, its construction and future maintenance.
- 6.8.2 This part of this section deals with CA of rights which the Applicant maintains are necessary for the development.
- 6.8.3 There were few representations made to the ExA by affected persons because discussions took place between the applicant and affected persons to deal with their concerns which in all cases have been addressed by Protective Provisions as set out in Schedule 4 of the draft DCO [APP-210]
- 6.8.4 Notwithstanding the above, the applicant wished to proceed with CA in order to ensure that certain easements and other private rights identified as affecting the land were extinguished.
- 6.8.5 In addition there may be unknown rights, restrictions, easements or servitudes affecting the land which also need to be removed or extinguished in order to facilitate the construction and operation of the

project without hindrance. In the absence of CA powers the Order Land might not be assembled. Uncertainty would prevail and the applicant considered that its objectives and Government policy objectives would not be achieved.

- 6.8.6 In the original application CA of the rights and interests in land was proposed for:
- (a) Plot 01/04, Network Rail land, for the purpose of the construction and maintenance of the utilities (gas) connections Works 1 C (a)(i); and
  - (b) Plot 02/07, Network Rail land for the purpose of the construction and landscaping of the electricity cable connection Works 2(a).
- 6.8.7 Under the provisions of the DCO (Article 23) private rights over land subject to CA would be extinguished (except where subject to protective provisions). There was no application for any temporary possession rights.
- 6.8.8 Four statutory undertakers, as listed above, would be affected by the CA proposals. Protective provisions to be included in the final draft DCO have been agreed with three of them whilst one NGrid remained in negotiation at the end of the examination, as summarised above.
- 6.8.9 The powers sought in order to implement the required CA are set out in Parts 3, 4, 5 and 6 of the final draft DCO.
- 6.8.10 Section 120(5)(a) of PA2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the DCO and s.117(4) provides that, if the DCO includes such provisions, it must be in the form of a statutory instrument.
- 6.8.11 Schedule 3 of the final draft DCO modifies the Compulsory Purchase Act 1965 and the Land Compensation Act 1965 and therefore the DCO needs to be in the form of a statutory instrument. The ExA confirms that the final draft DCO is in the form of a statutory instrument.

## **6.9 HUMAN RIGHTS ACT<sup>3</sup> 1998 CONSIDERATIONS**

- 6.9.1 A key consideration in formulating a compelling case is a consideration of the interference with human rights which would occur if CA powers are granted.
- 6.9.2 The applicant acknowledged in the Statement of Reasons [APP-005] that the DCO engaged a number of the articles of the Human Rights Act:

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<sup>3</sup> <http://www.legislation.gov.uk/ukpga/1998/42/contents>

- (a) Article 1 of the First Protocol (rights of those whose property is to be compulsorily acquired and whose peaceful enjoyment of their property is to be interfered with);
- (b) Article 6 entitles those affected by CA powers sought for the project to a fair and public hearing of their objections; and
- (c) Article 8 protects private and family life, home and correspondence. No public authority can interfere with these interests except if it is in accordance with the law and is necessary in the interests of national security, public safety or the economic well-being of the country.

6.9.3 The applicant has stated that it considers that there would be a very significant public benefit arising from the granting of the DCO [APP-210] which would only be realised if the DCO is accompanied by the grant of powers. There has been the opportunity for affected persons to make representations during the preparation of the application. They had been consulted in accordance with s44 of PA 2008 and had rights to make claims for compensation.

6.9.4 The ExA in relation to Article 1 First Protocol is satisfied that the proposed interference with the individual's rights would be lawful, necessary, proportionate and justified in the public interest

6.9.5 The ExA has also had regard to Article 8 dealing with the right to respect for private and family life. None of the applications for compulsory acquisition relate to the compulsory acquisition of a house or dwelling.

6.9.6 The ExA concludes that, the process of examining this application, including the opportunities to submit representations, a series of written questions and the opportunities to be heard at hearings all means that those whose rights may be affected have been given access to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law for the purpose of Article 6.

## **6.10 THE EXA'S RECOMMENDATIONS ON THE GRANTING OF CA POWERS S.122(2)**

6.10.1 The ExA's approach to the question whether and what compulsory acquisition powers it should recommend to the Secretary of State to grant has been to seek to apply the relevant sections of the Act, notably s.122 and s.123, the Guidance, and the Human Rights Act 1998; and, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.

6.10.2 The ExA understands, however, that the draft DCO deals with both the development itself and compulsory acquisition powers. The case for

compulsory acquisition powers cannot properly be considered unless and until the ExA has formed a view on the case for the development overall, and the consideration of the compulsory acquisition issues must be consistent with that view.

6.10.3 EN-1 states that:

*'the UK 'needs all the types of energy infrastructure covered by the NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions.'* That includes fossil fuel plants such as the proposed development. It also states that applications for development consent should be assessed 'on the basis that the Government has demonstrated that there is a need for those types of infrastructure.' The Government has recently introduced a capacity market in order to strengthen energy security and the proposed plant is intended to operate in that part of the energy market. The plant would therefore meet the general public interest in the provision of additional generation capacity identified in the NPS and the specific need for capacity that could provide power at times of peak demand or other shortage. This can only be achieved with the use of CA powers. I am satisfied that the GIS variant would meet the condition in 122(3) that there is a compelling case in the public interest for the land to be acquired compulsorily.'

6.10.4 The ExA is satisfied that the applicant can secure the financial provision to provide compensation for CA adequate to meet the expected liabilities.

6.10.5 Having regard to the relevant provision of the Human Rights Act, the ExA has considered the individual rights interfered with and the submissions made by affected parties in this regard and is satisfied that:

- (a) In relation to Article 1 of the First Protocol that the proposed interference with the individual's rights would be lawful, necessary, proportionate and justified in the public interest;
- (b) In relation to Article 6 that objectors have had the opportunity to present their cases to us in writing and at the CA hearing and that all objections which have been made have been resolved; and
- (c) In relation to Article 8 there is not an issue as none of the applications for compulsory acquisition relate to the compulsory acquisition of a house or dwelling.

6.10.6 The ExA has shown in the Conclusion to the preceding chapters that it has reached the view that development consent should be granted. The question therefore that the ExA addresses here is the extent to which, in the light of the factors set out above, the case is made for compulsory acquisition powers necessary to enable the development to proceed.

- 6.10.7 The ExA is satisfied that the land which is the subject of the request for compulsory acquisition meets the requirements of sections 122(2)(a) and 122(2)(b) for the proposed development.
- 6.10.8 Accordingly the ExA is recommending the grant of the powers of compulsory acquisition in the draft DCO [Appendix A].

## **7 DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS**

### **7.1 INTRODUCTION**

A draft Development Consent Order DCO [APP-008] and Explanatory Memorandum [EM] [APP-009] were submitted with the application for development consent. The EM describes the purpose and form of the draft DCO and each of its articles and schedules. The draft DCO is based on the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009, but with modifications.

7.1.1 The draft DCO [Appendix A] allows the applicant to construct the works in either a single stage (Option 1) or in two stages (Option 2) as described in paragraphs 2.0.5 to 2.0.9. Details of the Authorised Development are included in Schedule 1 - Authorised Development which is supplemented by the following Requirements in Schedule 2:

- Requirement 2 - Time Limits;
- Requirement 3 - Stages of authorised development; and
- Requirement 4 - Detailed design;

7.1.2 During the examination, six further revised drafts of the DCO and two further revised drafts of the EM were submitted by the applicant incorporating progressive changes arising from the Examining Authority's [ExA]'s written questions, points made by interested parties, and from the proceedings at the DCO Issue Specific Hearing [ISH] held on 12 February 2015 [EV-003,004 & 005].

7.1.3 The respective draft DCO versions can be found at:

- Rev1; [APP-195];
- Rev2; [APP-197];
- Rev3; [APP-201];
- Rev4; [APP-205];
- Rev5; [APP-208]; and
- Rev6; [APP-210].

7.1.4 The ExA asked thirty five (35) questions on the DCO in the first round of written questions [PD-004] and nine (9) questions in the second round of written questions [PD-010]. The Applicant's responses can be found at [REP1-003] and [REP6-004].

7.1.5 Further draft DCO questions were raised by ExA in Rule 8(3) and Rule 17 letters [PD-012] and [PD-0013]. The applicant's responses can be found at [AS-014 and AS-019].

7.1.6 All versions of the DCO were subject to comment and revisions were made to address changes sought by interested parties in their written and/or oral representations. Comments were also provided in response to the ExA written questions on drafting or seeking justification for the powers sought in the draft DCO or in response to



questions raised at the DCO ISH held on 12 February 2015 [EV-003,004 & 005].

- 7.1.7 The applicant's final draft (Rev6) DCO can be found at [APP-210] and the applicant's final (Rev 2) EM can be found at [APP-213].
- 7.1.8 The draft DCO constitutes the consent sought for the proposed development. It sets out the authority to be given to the Applicant, including:
- The permanent compulsory acquisition of land and interests in land;
  - The obligations that the applicant is prepared to accept to facilitate the development;
  - The further approvals that are required before particular works can commence;
  - The protective provisions necessary to safeguard the interests of other parties; and
  - The requirements (corresponding to planning conditions) to be met when implementing the consent.
- 7.1.9 Section 120(5)(a) of the Planning Act 2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the DCO. If the Order includes such provision, s 117(4) requires that it must be in the form of a statutory instrument. The ExA confirms that the DCO is in the form of a statutory instrument.
- 7.1.10 The applicant's final draft DCO version 6 [APP-210] and a tracked copy showing changes from the Revision [0] to Revision [6] [APP-212] were submitted on the 10 June 2015 as part of the applicant's final submission prior to the end of the examination [AS-022].
- 7.1.11 The ExA has used draft DCO version 6 [APP-210] to inform this section of the report.
- 7.1.12 The ExA has prepared a version of the draft DCO [Appendix A], which it recommends to the Secretary of State. All of the suggested changes were considered in the Examination.
- 7.1.13 Much of the draft DCO was not the subject of representations. Some proposed alterations are made for the purposes of clarification, for the correction of minor errors, or to reflect changes proposed elsewhere in the draft DCO. Those aspects of the draft DCO which are contentious or to which substantial alterations are proposed are considered in the following paragraphs.
- 7.1.14 In the event that the DCO is made, the following plans and documents would require certification in accordance with Article 24:
- (a) book of reference [APP-007];
  - (b) land plans [APP-181];
  - (c) works plans [APP-182];

- (d) environmental statement [APP-011];
- (e) design and access statement [APP-176]; and
- (f) design principles document [APP-203];

- 7.1.15 The principal powers sought in the DCO are for the construction, operation and maintenance of the Works described in Schedule 1 of the draft DCO.
- 7.1.16 The numbering of articles reflects that of the Applicant's final draft DCO, version 6 [APP-210].
- 7.1.17 The initial draft DCO (Rev 0) [APP-008] was submitted by the applicant with their application on 2 September 2014.
- 7.1.18 During the course of the Examination the applicant produced a further 6 versions of the draft DCO. The revisions generally followed key deadlines in the examination timetable and largely demonstrated the will of the applicant to incorporate the requirements of the principal interested parties.
- 7.1.19 Where the ExA does not mention particular provisions, requirements or schedules, then the Secretary of State (SoS) can be clear that the ExA is satisfied that the measures proposed are appropriate. Unless otherwise stated, the ExA comments below relate to the applicant's final draft DCO Version 6 as carried forward into the ExA's recommended DCO (Appendix A).

## **7.2 SUMMARY OF PRINCIPAL CHANGES MADE BY THE APPLICANT DURING THE EXAMINATION**

- 7.2.1 The following principal changes to the initial draft DCO [APP-008] were made during the Examination.

### ***Articles***

***Article 4 - Power to maintain:*** This article was amended to ensure that the undertaker could not remove or replace the whole of any of the numbered works;

***Article 8 - Defence to proceedings in respect of statutory nuisance:*** This article was amended to make reference to the noise management plan to be approved by the relevant planning authority;

***Article 24 - Certification of plans:*** This article was amended to include the Design and Access Statement and the Design Principles Document both of which were additional requirements of the relevant planning authority; and

***Article 28 - Crown Rights:*** This article was added to incorporate the wording provided by the Welsh Government relating to Crown Land.

## **Schedules**

**Schedule 2 - Requirement 4 Detailed Design (1):** This was discussed extensively throughout the examination in relation to the fixing of the maximum dimensions (Rochdale Envelope) for the principal buildings (Turbine Hall and Cooling Towers). The applicant maintained that the fixing of the maximum area and maximum volume (column (5) of the table of dimensions) would ensure that the height, width and length dimensions (columns (2) - (4) of the table) would be constrained;

**Schedule 2 - Requirement 4 Detailed Design (3):** The applicant's final draft DCO [APP-210] maintains an unrestricted change provision allowing changes to the maximum dimensions to be agreed by the relevant planning authority. The ExA is not satisfied that an unrestricted provision would result in sufficient control over these maximum dimensions. The ExA considers that any increase in the overall height of the principal buildings (Turbine Hall and Boiler House) would potentially undermine the conclusions of the LVIA agreed with Neath Port Talbot City Borough Council [NPTCBC] and City and County of Swansea Council [CCSC]. Further, that any increases in height would also have the potential to impact negatively on the Harbour Way Peripheral Distributor Road [PDR] as a 'Gate Way' to achieve the NPTCBC objective of regenerating Port Talbot. For this reason the ExA has included a restricted provision in the ExA recommended draft DCO [Appendix A];

**Schedule 2 - Requirement 4 Detailed Design (4):** References to the Design and Access Statement and the Design Principles Document have been added as required by the relevant planning authority to provide design quality assurance;

**Schedule 2 - Requirement 8 Archaeology:** Glamorgan Gwent Archaeological Trust [GGAT] has been included as a consultee to the approval of any scheme for the identification and protection of any cultural or archaeological heritage within the order land;

**Schedule 2 - Requirement 10 Code of Construction Practice [CoCP]:** The relevant planning authority's requirement for the inclusion of a mechanism by which failures of dust controls will be investigated and mitigated or remedial works implemented has been added to the CoCP;

**Schedule 2 - Requirement 11 Approval and implementation of construction mitigation plans:** The relevant planning authority requirements for tighter control over noise, traffic, waste, emergency and flood management, piling method statement and vibration risk assessment have been included;

**Schedule 2 - Requirement 18 Contaminated land and groundwater:** Additional requirements have been added to address concerns by Natural Resources Wales [NRW] and the relevant planning

authority that any impacts of contaminated land and/or groundwater, including those to human health, are adequately addressed by the undertaker;

**Schedule 2 - Requirement 19 Construction compound:** The relevant planning authority's requirement to approve the size, layout and location of any temporary buildings and structures forming the Works 1B has been included as these areas will remain for a significant time particularly if the proposed development is constructed in two phases;

**Schedule 3:** All references to restrictive covenants have been removed as the applicant is only seeking to acquire rights;

**Schedule 4 - Protective provisions:** The applicant has included the protective provisions for the following parties:

- Part 1: Network Rail;
- Part 2: Western Power Distribution;
- Part 3: National Grid;
- Part 4: Dwr Cymru Cyfyngedig; and
- Part 5: Associated British Ports [ABP]

The applicant has included their preferred protective provisions in relation to the management of water levels within ABP's impounded Port Talbot Dock due to the applicant not reaching agreement with ABP at the close of the examination. This is discussed in Chapter 4 of this report;

**Schedule 5: Procedure for the discharge of requirements:** This was discussed extensively during the examination as the applicant initially sought to impose timeframes on the relevant planning authority and SoS that were more onerous than the prevailing TCPA timeframes. The applicant has accepted that such was not reasonable in the case of this development and has included drafting in the final draft DCO [APP-210] that sets timeframes that are acceptable to the relevant planning authority in accordance with an agreed performance planning statement [APP-174]. Deadlines previously imposed on the SoS have been removed.

## **7.3 SUMMARY OF PRINCIPAL CHANGES MADE BY THE EXA.**

7.3.1 The following principal changes to the applicant's final draft DCO [APP-210] were made by the ExA.

### **Schedule 2**

**Requirement 4 - Detailed Design:** Sub-paragraph (3) is amended to read:

'The relevant planning authority may at the request of the undertaker approve amendments to the maximum parameters for the turbine hall and boiler house listed in columns (3) and (4) of the tables set out ....'

**Requirement 13 - Construction Hours:** Sub-paragraph (1) of this article is amended to read:

*'Construction work for the authorised development must not take place:*

- (i) outside the hours of-
- (ii) 07:00 to 19:00 on Monday to Friday, and
- (iii) 07:00 to 13:00 on Saturdays,
- (iv) At any time on Sundays and public holidays, except with the prior written approval of the relevant planning authority.

*Construction work shall not be carried out on Sundays and public holidays without the prior approval of the relevant planning authority.'*

**Requirement 19 - Construction Compound:** Sub-paragraph (2) of this article is amended to read:

*'The temporary buildings and structures forming Work 1B must be installed in accordance with the approved details.'*

### **Schedule 3**

- Paragraph 2.-(1) is amended to read:

*'Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973 (a) has effect subject to the modifications set out in sub-paragraphs (2) and (3).'*

### **Schedule 4**

- Part 3 - 2 Interpretation "apparatus" is amended to read:

*' "apparatus" means electric lines or electrical plant as defined in the Electricity Act 1989 (a), belonging to or maintained by National Grid;'*

- Part 3 - 12 Co-operation is amended to read:

*'National Grid and the undertaker must each use their best endeavours to co-operate with the other party.....'*

Part 4 - 2-(1) "accessories" is amended to read:

*' "accessories" has the same meaning as that set out in section 219 of the Water Industry Act 1991 (a) but also.....'*

### **Explanatory Note**

Final paragraph: the location for inspecting a copy of the Order plans and book of reference mentioned in the Order is to be inserted.

## **7.4 DETAILS OF CHANGES MADE**

- 7.4.1 The following sections cover those articles and schedules that have been amended or otherwise included from previously 'made' DCOs to clarify the associated issues and changes that have been made in the development of the draft DCO as submitted through to the applicant's final draft DCO (Rev 6) to generate the ExA's recommended draft DCO as contained within Appendix A to this report.

### ***Articles***

- 7.4.2 **Article 4: Power to maintain** - this article was amended to ensure the undertaker could not remove or replace the whole of any numbered work. This provides the applicant with a flexible power to maintain the development, without allowing either ad hoc decommissioning or the replacement of substantial elements of the development ;
- 7.4.3 **Article 8: Defence to proceedings in respect of statutory nuisance** - this article was amended to make reference to the noise management plan to be approved by the relevant planning authority. This ensures that compliance with the noise management plan will constitute a defence to nuisance proceedings; and
- 7.4.4 **Article 26: Procedures in relation to certain approvals** - This article was discussed in some detail resulting with minor changes being made to Schedule 5: Procedure for Discharge of Requirements, which are set out below.

### ***Schedules***

#### ***Schedule 1 - Authorised Development***

- 7.4.5 The development which would be authorised by the DCO is described in Schedule 1 of the Order. The nationally significant infrastructure project is identified as numbered works 1A, B & C and 2. It is described as a generating station with a nominal gross electrical output capacity of up to 150MWe.
- 7.4.6 A further, more detailed, description of the various elements of the authorised development is provided in chapter 3 of the Environmental Statement [ES] [APP-011].
- 7.4.7 The ExA explored whether all the numbered works would be an integral part of the generating station in its first round written question 4.03 [PD-004]. The applicant's response can be found at [REP1-003].
- 7.4.8 The ExA further explored the issue at the DCO Issue Specific Hearing [ISH] [EV-003]. The applicant's response can be found at [REP3-003].
- 7.4.9 The relevant planning authority, Neath Port Talbot County Borough Council [NPTCBC] confirmed that they were satisfied that all the

numbered works would be an integral part of the generating station as recorded in paragraph 3.12 of the Statement of Common Ground [SoCG] [AS-021] which states that:

- 7.4.10 *'The Parties AGREE that all of the elements of the proposed development set out at Schedule to the draft DCO are either the Nationally Significant Infrastructure Project ["NSIP"] or form part of the NSIP applied for and are therefore consistent with sections 14 and 31 of the Act.....'*
- 7.4.11 ExA Rule 17 Letter to WG 3 Feb 14 [PD-009] sought a WG response on the application as WG had not registered as an Interested Party [IP]. WG response [AS-009] confirmed that WG had no outstanding issues with the application.
- 7.4.12 The ExA concludes that all the numbered works as listed in Schedule 1 would be an integral part of the generating station and that without any single component the generating station would not be able to operate or function as intended.
- 7.4.13 The design and access statement [APP-176] and design principles document [APP-203] have been added to the plans that SoS would need to sign to reflect the requirements of the relevant planning authority to achieve quality design assurance.

### ***Schedule 2 - Requirements***

- 7.4.14 Key requirements are set out in Schedule 2 of the final draft DCO [APP-210], and each are described in the following paragraphs.
- 7.4.15 An explanation of modifications to those set out in the applicant's first draft DCO, either agreed by the applicant or suggested by the ExA, is given.
- 7.4.16 The numbering of requirements reflects that of the applicant's final draft DCO, Revision 6 [APP-210].

### ***Requirement 1 - Interpretation***

- 7.4.17 Definitions of commencement, commissioning and stage were added for clarity.

### ***Requirement 2 - Time limits***

- 7.4.18 Requirement 2 sets the standard period of 5 years from the date of the Order to commencement with a provision that if the authorised development is constructed in two phases then the second stage must be commenced within 10 years of the commencement of the first stage.
- 7.4.19 The applicant has indicated that the preferred option is to construct the works in a single phase. However this is subject to a bankability study as stated in paragraph 1.4.14 of ES [APP-011] which

will likely be driven by current and predicted market forces relating to the steel as a commodity. The ExA is satisfied that the importance of the socio-economic benefits of sustaining steelmaking at the Port Talbot plant justify the inclusion of Option 2 within the DCO [Appendix A].

***Requirement 3 - Stages of authorised development***

- 7.4.20 Requirement 3 requires the applicant to give written notice to the relevant planning authority of his intention to construct the authorised development either in one or two stages, before commencement.

***Requirement 4 - Detailed design***

- 7.4.21 Requirement 4(1) sets a series of parameters for certain buildings or structures in order to set the maximum and minimum parameters of these. This was introduced in order to align with the ES [APP-011] and to provide certainty.
- 7.4.22 Requirement 4(2) sets a series of parameters for certain buildings or structures in order to set the maximum and minimum parameters of these should they be constructed in two stages.
- 7.4.23 Requirement 4(3) allows the relevant planning authority to approve amendments to the maximum parameters for the turbine hall and boiler house subject to them not exceeding the maximum parameters in table 5 of the requirement and subject to such amendments being unlikely to give rise to any materially new or materially different environmental effects as those assessed in the ES [APP-011].
- 7.4.24 Requirement 4(4) requires details of the layout, scale and appearance of authorised development to be submitted and approved by the relevant planning authority. This is because these details will not be known until the technology choice has been finalised post-consent.

***Requirement 5 - Decommissioning of existing generating station***

- 7.4.25 Requirement 5 sets procedures and timescales for the decommissioning of the existing generating station with a limit set at 2 years of the date of the completion notice.

***Requirement 6 - Provision of landscaping***

- 7.4.26 Requirement 6 secures the landscaping proposals set out in the ES [APP-011] through the submission of a landscaping plan (which must be broadly in accordance with the landscaping mitigation proposals set out in chapter 7 of the ES [APP-011]) for the approval of the relevant planning authority. Landscaping works then have to be carried out in accordance with this approved plan and to the timescales set out in that plan. This is in the interest of avoiding any material effects which were not anticipated and assessed through the environmental information presented to the examination.



- 7.4.27 The requirement also requires that if any tree or shrub dies or becomes seriously damaged or diseased within 5 years of planting it must be replaced. This follows the principle of the model provision, tailored to reflect the specific details of the authorised development.

***Requirement 7 - Fencing and other means of enclosure***

- 7.4.28 Requirement 7 secures the permanent and temporary enclosures set out in ES [APP-011] through the submission of details of the proposed means of enclosure for that stage for the approval of the relevant planning authority. The requirement also requires the agreed enclosure to be erected prior to the commissioning of the relevant stage of the authorised development.

***Requirement 8 - Archaeology***

- 7.4.29 Requirement 8 secures the submission and approval by the relevant planning authority of a written scheme for the investigation of areas of archaeological interest either through a watching brief or palaeo-environmental sampling in consultation with GGAT as required by the SoCG [AS-021] .

***Requirement 9 - Habitat management plan***

- 7.4.30 Requirement 9 requires that no works may commence until a written habitats management plan, that reflects the survey results and ecological mitigation and enhancement measures included in the ES, has been submitted and approved by the relevant planning authority.
- 7.4.31 The plan must also include an implementation timetable and be carried out as approved by the relevant planning authority.

***Requirement 10 - Code of Construction Practice (CoCP)***

- 7.4.32 Requirement 10 requires that no works may commence until a CoCP, which specifies measures to mitigate the impacts of construction and must be substantially in accordance with the outline CoCP included as appendix 15.1 to ES [APP-011] has been submitted and approved by the relevant planning authority.
- 7.4.33 The following must be incorporated:
- (a) Water management plan;
  - (b) Pollution prevention plan; and
  - (c) Dust management plan (including mitigation measures).

***Requirement 11 - Approval and implementation of construction mitigation plans***

- 7.4.34 Requirement 11 requires that no works may commence until the following construction mitigation plans, which minimise the impacts of construction works, have been submitted and approved by the relevant planning authority:

- (a) Noise management plan;
- (b) Construction traffic plan;
- (c) Waste management plan; and
- (d) Emergency response and flood management plan

7.4.35 The noise management plan must include:

- (a) Piling method statement;
- (b) Construction vibration risk assessment; and
- (c) Details of mechanisms for investigating failures of noise controls.

7.4.36 In the case of the construction traffic management plan, the relevant planning authority must consult, and have regard to any response, with the Royal Mail Group Limited.

7.4.37 Construction works for the authorised development must be carried out in accordance with the approved mitigation plans.

#### ***Requirement 12 - External Lighting***

7.4.38 Requirement 12 is based on a model provision and requires the submission of a written scheme for the management and mitigation of artificial light emissions (which must be substantially in accordance with the outline lighting strategy) for the approval of the relevant planning authority. The approved scheme must be implemented.

#### ***Requirement 13 - Construction hours***

7.4.39 Requirement 13 is based on a model provision and specifies the hours within which construction works can take place. The requirement does not prevent the undertaker from undertaking these works outside the specified hours but this must be done with the prior, written approval of the relevant planning authority.

#### ***Requirement 14 - Control of noise during operational phase***

7.4.40 Requirement 14 is based on a model provision and specifies the noise management procedures to be implemented under a written scheme approved by the relevant planning authority.

7.4.41 At the NPTCBC's request a requirement for details of the measures to be taken in the event of any noise issues arising has been included.

#### ***Requirement 15 - Surface and foul water drainage***

7.4.42 Requirement 15 requires that no works may commence until written details of the surface and foul water drainage systems have been submitted and approved by the relevant planning authority. Once approved the drainage systems must be carried in accordance with the approved details.

***Requirement 16 - Aviation safety***

- 7.4.43 Requirement 16 secures the installation, by the undertaker, of aviation warning lighting as specified in guidance issued by the Civil Aviation Authority.

***Requirement 17 - Air quality monitoring***

- 7.4.44 Requirement 17 secures the implementation of a system for monitoring ambient levels of nitrogen dioxide that has been submitted and agreed with the relevant planning authority 12 months prior to the commissioning of any stage of the authorised works.

***Requirement 18 - Contaminated land and groundwater***

- 7.4.45 Requirement 18 requires that no works may commence before a written scheme to deal with the contamination of land, including groundwater, which is likely to cause harm to persons, the environment or pollution of controlled waters, has been submitted and agreed by the relevant planning authority in consultation with NRW.
- 7.4.46 The scheme must include an investigation and risk assessment report covering all contaminated ground related risks.
- 7.4.47 Construction of the authorised development must not commence until a verification report, which demonstrates the effectiveness of the agreed remediation works (if required), having been carried out, has been submitted and approved by the relevant planning authority.
- 7.4.48 The requirement also covers the procedures to be followed in the event of contaminated land, not previously identified, being found during the construction of the authorised works.

***Requirement 19 - Construction compound***

- 7.4.49 Requirement 19 secures, prior to the commencement of any works, the approval by the relevant planning authority, of all details of the size, layout and location of any temporary buildings and structures the undertaker may require.

***Schedule 3 - Modification of Compensation and Compulsory Purchase Enactments for Creation of New Rights***

- 7.4.50 The authorised development only requires the acquisition of rights and does not require changes to restrictive covenants. Accordingly references to restrictive covenants have been removed.

***Schedule 4 - Protective Provisions***

- 7.4.51 Schedule 4 of the applicant's draft DCO [APP-210] contains 5 sets of Protective Provisions for the protection of statutory undertakers as follows:

Part 1: Network Rail Infrastructure Limited;

Part 2: Western Power Distribution;

Part 3: National Grid;

Part 4: Dwr Cymru Cyfyngedig; and

Part 5: Associated British Ports.

7.4.52 The status of these Protective Provisions is as follows.

***Network Rail Infrastructure Limited [NRAIL]***

7.4.53 NRail has confirmed in their letter [REP5-001] dated 19 March 2015 that they had agreed the Protective Provisions as included in Part 1 of Schedule 4 of the applicants final draft DCO revision 6 [APP-210]. The ExA is satisfied that these are suitable for inclusion within the final draft DCO.

7.4.54 However Network Rail has, at the time of the end of the Examination, not yet agreed the Deeds of Grant for the acquisition of rights required for the proposed development and a second agreement for the general protection of NRail's interests which includes the form of Asset Protection Agreement (the Framework Agreement). As discussed in chapter 7, the ExA is satisfied that the agreed protective provisions provide a suitable mechanism for agreement to be reached on these outstanding documents.

***Western Power Distribution***

7.4.55 WPD has indicated that its agreement to the Protective Provisions [REP6-004] included above was conditional on no additional impacts on its apparatus emerging during remainder of the examination. No further impacts on WPD apparatus were identified during the examination. WPD did not attend the Compulsory Acquisition [CA] ISH on 25 February 2015.

7.4.56 The ExA is satisfied that the Protective Provisions are suitable for inclusion within the final draft DCO

***National Grid Electricity Transmission [NGET]***

7.4.57 NGET's response to ExA second written questions [REP6-002] records that negotiations over the Protective Provisions were continuing with the applicant and that NGET would not be attending the issue specific hearing on outstanding issues on 15 April 2015.

7.4.58 The applicant subsequently confirmed that it had agreed Protective Provisions with NGET. However at the time of closing of the examination the parties had been unable to successfully negotiate the side agreement.

- 7.4.59 The ExA is satisfied that the Protective Provisions as agreed are suitable for inclusion with Part 3 of Schedule 4 of the final draft DCO [APP-210] and that they provide a suitable mechanism for agreement to be reached.

***Dwr Cymru Cyfyngedig***

- 7.4.60 Appendix K of the applicant's responses to ExA second written questions [REP6-004] includes an email from DCC dated 3 March 2015 confirming DCC approval of the Protective Provisions. The ExA is satisfied that these are suitable for inclusion within the final draft DCO

***Associated British Ports***

- 7.4.61 At the time of the end of the Examination Associated British Ports [ABP] and the applicant had not been able to agree the form of the Protective Provisions to be included in the final draft DCO.
- 7.4.62 As discussed in chapter 4 paragraph 4.37.5 the impact of the applicant's water abstraction activities on the operating water levels within ABP's impounded Port Talbot Dock have been discussed extensively during the examination. However at the time of the close of the examination the parties had been unable to agree the final form of the Protective Provisions to be included with Part 5 of Schedule 4 of the final draft DCO.
- 7.4.63 The principal difference in the approach of the two parties to gain agreement over the Protective Provisions is centred on the following:
- (a) ABP seek to impose quantified abstraction rate limits on the applicant in order to sustain operating water levels within the impounded dock; whilst
  - (b) The applicant seeks to maintain the historically agreed methodology of applying actual water levels measured within the impounded dock to trigger the impounding of sea water to sustain the operating water levels within the impounded dock.
- 7.4.64 ExA recommends the protective provisions for these parties should be in the form presented by the applicant in the draft DCO revision 6 [APP-210] for the following reasons:
- (1) ExA requested [PD-013] evidence from ABP to show that the historical water level trigger system had resulted in negative impacts on their ability to maintain an open port under their statutory obligations. No evidence was submitted.
  - (2) NRW are satisfied that the applicant's abstraction rates will be controlled within existing licences;
  - (3) The applicant's modelling of the Afan River catchment using a base model provided by NRW has been shown to incorporate inconsistencies that impact on the accuracy of water level predictions within the dock;

- (4) The applicant's final preferred form of Protective Provisions includes an undertaking to increase the water level at which impounding will be initiated by 0.5m from 4.45 to 4.95m Above Ordnance Datum [AOD]; and
- (5) The ExA is satisfied that the applicant's proposed water abstraction activities will not impact on ABP's ability to comply with the Ports National Policy Statement [NPS].

7.4.65 The ExA is satisfied that the applicant's final preferred Protective Provisions provide a suitable mechanism for agreement to be reached with ABP and recommends that these Protective Provisions be included within the final draft DCO.

#### ***Schedule 5 - Procedure for Discharge of Requirements***

7.4.66 Article 26 was discussed at some length resulting in some minor changes to Schedule 5.

7.4.67 Schedule 5 provides a clear procedure for the discharge of requirements by the relevant planning authority. It sets out clear time limits for decisions to be made within and makes provision for appeals to be made in the event of a refusal of an application in relation to a requirement or if the relevant planning authority requires further information to be provided in relation to that application. It also includes procedure for seeking input of statutory consultees.

7.4.68 The applicant initially sought to impose response timescales on the relevant planning authority and SoS which were more onerous than those typically used under TCPA regime. The final draft includes timescales agreed with the relevant planning authority that will be in accordance with the Planning Performance Agreement to be agreed between the parties as described in paragraph 3.9 of the SoCG between the parties [AS-021]. The timeframes imposed on the SoS have been removed.

### **7.5 DEEMED MARINE LICENCE[S]**

7.5.1 The proposed development does not require any marine licences.

### **7.6 OTHER LEGAL AGREEMENTS/RELATED DOCUMENTS**

#### ***City and County of Swansea Council - 'Beyond Bricks and Mortar'***

7.6.1 The City and County of Swansea Council [CCSC] sought the inclusion of their Beyond Bricks and Mortar initiative as a DCO requirement within their LIR [AS-020]. This initiative seeks to bind developers to maximise the use of local skills and labour resources within the implementation and/or construction of projects within the administrative area of CCSC. This is discussed in paragraph 4.6.2 et seq.

7.6.2 The ExA has considered this request and has determined that it should be given little weight due to the following:

- CCSC are not the relevant planning authority;
- The relevant planning authority, NPTCBC, originally sought to impose a Community Benefit Scheme requirement on the applicant but subsequently withdrew this requirement following the applicant's demonstration of its on-going community support programme. This is agreed in paragraph 2.56 of the SoCG [AS-021]; and
- The proposed development provides significant socio-economic benefits as it would sustain employment and bring associated benefits to an area that would be significantly challenged without the on-going presence of the Port Talbot Steelworks.

7.6.3 The ExA is satisfied that there are no other legal agreements or related documents that have been identified that have not already been covered within the final draft DCO (Appendix A).

## **8 SUMMARY OF FINDINGS AND CONCLUSIONS**

- 8.1.1 The Examining Authority [ExA] considers that the application is in line with, and supports, the Governments policy objectives for energy as set out in the following National Policy Statements:
- (1) NPS EN-1 The Overarching National Policy Statement for Energy;
  - (2) NPS EN-2 National Policy Statement for Fossil Fuel Electricity Generating Infrastructure;
  - (3) NPS EN-4 National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines;
  - (4) NPS EN-5 National Policy Statement for Electricity Networks; and
  - (5) NPS Ports -National Planning Policy Statement for Ports.
- 8.1.2 The ExA considers that this project contributes to meeting the need for energy capacity by saving a significant draw of power from the national grid. The project which aims to generate electricity for self-use through the burning of by-product steel making gases will contribute to making steelmaking in Port Talbot more cost competitive and thereby bring benefits to the area in terms of sustainability of steelmaking employment and therefore economic activity.
- 8.1.3 The ExA considers that the application fulfils the relevant legal requirements including the UK Government's relevant international obligations.
- 8.1.4 The ExA also had regard to the Local Impact Reports [LIRs] submitted by Neath Port Talbot County Borough Council [NPTCBC] and City and County of Swansea [CCSC].
- 8.1.5 In the ExA's view the evidence presented in the examination does not allow the conclusion that there would be no likely significant effects on the Crymlyn Bog Special Area of Conservation [SAC] and Ramsar site as a result of the combined aerial emissions from the Project and other developments in the vicinity. Therefore, the Secretary of State [SoS], as the competent authority, will need to carry out an Appropriate Assessment [AA].
- 8.1.6 Taking into account the Applicant's initial assessment, additional material provided during the Examination and the proposed mitigation measures secured through the Development Consent Order [DCO], and Natural Resources Wales [NRW]'s conclusion that there would be no significant adverse effect on the integrity of the European site identified, the ExA recommends to the SoS that the project would not put the UK in breach of the Habitats Directive.



- 8.1.7 The ExA considers that the recommended DCO [Appendix A] secures requirements which satisfy the Infrastructure Planning Commission (Decision) Regulations in respect of conserving biodiversity.
- 8.1.8 The ExA concludes that whilst there are impacts of the scheme in terms of ecology, ABP operations and landscape and visual impact, the recommended draft DCO (Appendix A) contains sufficient measures to mitigate those impacts. It is concluded, therefore, that the benefits of this proposal would outweigh its impacts.
- 8.1.9 The ExA concludes that the project as applied for conforms to, and supports, Welsh and local planning policy.
- 8.1.10 In relation to associated development the ExA is satisfied that both the gas connection (steelmaking process and natural gas) and electrical connection are integral to the proposed development as these connections are fully internal to the existing steelworks site within land wholly owned by the applicant and both are fundamental to the proposed development being able to burn the steelmaking gases to generate electricity for self-use within the steelworks with any surplus power not consumed internally being able to be exported to the national grid.
- 8.1.11 The ExA has considered the requests for powers to compulsorily acquire rights over two parcels of Network Rail [NRail] land and to extinguish rights over the Order land, which formed part of the application. It concludes that, in respect of all the two plots and the Order land, the requests for powers meet the tests set out in statute and in guidance.
- 8.1.12 The ExA therefore recommends that the Secretary of State should give consent to the application in the terms of the draft DCO attached at Appendix A.

## APPENDICES

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Appendix pages with appendix page numbering. Try not to delete the section break on the previous page as that will lose the appendix page numbering.

## **APPENDIX A: RECOMMENDED DEVELOPMENT CONSENT ORDER**

**201X No. XXX**

**INFRASTRUCTURE PLANNING**

**The Port Talbot Steelworks (Power Generation Enhancement)  
Order**

<i>Made</i>	- - - -	<i>201*</i>
<i>Coming into force</i>	- -	<i>201*</i>

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- SCHEDULE 5 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS

An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) for an Order under sections 37, 114, 115, 120 and 140 of the Planning Act 2008(b) (“the 2008 Act”).

The application was examined by a person appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The appointed person, having examined the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 83(1) of the 2008 Act, made a report and recommendation to the Secretary of State.

The Secretary of State, having considered the report and recommendation of the appointed person, and decided the application, has determined to make an Order giving effect to the proposals comprised in the application [with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals].

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 140 of the 2008 Act, makes the following Order—

## PART 1

### PRELIMINARY

#### **Citation and commencement**

1. This Order may be cited as the Port Talbot Steelworks (Power Generation Enhancement) Order and comes into force on [\*\*\*].

#### **Interpretation**

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(d);

“the 1965 Act” means the Compulsory Purchase Act 1965(e);

- 
- (a) S.I. 2009/2264, as amended by S.I. 2010/493, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, and S.I. 2013/522.
- (b) 2008 c.29.
- (c) S.I. 2010/103, amended by S.I. 2012/635.
- (d) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.
- (e) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.



“the 1980 Act” means the Highways Act 1980(a);

“the 1990 Act” means the Town and Country Planning Act 1990(b);

“the 1991 Act” means the New Roads and Street Works Act 1991(c);

“the 2008 Act” means the Planning Act 2008;

“address” includes any number or address used for the purposes of electronic transmission;

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“appeal documentation” means a copy of the application submitted to the relevant planning authority and any supporting documentation which the undertaker may wish to provide;

“appeal parties” means the relevant planning authority, the undertaker, and (where relevant) a requirement consultee;

“authorised development” means the development described in Schedule 1 (authorised development) to this Order;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“business day” means a day other than a Saturday or a Sunday or public holiday in Wales;

“carriageway” has the same meaning as in the 1980 Act;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“the design and access statement” means the document certified by the Secretary of State as the design and access statement for the purposes of this Order;

“the design principles document” means the document certified by the Secretary of State as the design principles documents for the purposes of this Order;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“the environmental statement” means the document certified by the Secretary of State as the environmental statement for the purposes of this Order;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 3 and shown on the works plans;

- 
- (a) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
  - (b) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
  - (c) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

“maintain” includes to inspect, repair, adjust, alter, remove, reconstruct or replace the authorised development provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement, and any derivative of “maintain” must be construed accordingly;

“this Order” means the Port Talbot Steelworks (Power Generation Enhancement) Order 201[\*];

“Order land” means the land required for or affected by the authorised development shown on the land plans and described in the book of reference;

“the Order limits” means the limits shown on the works plans within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981 (interpretation)(a);

“relevant planning authority” means Neath Port Talbot County Borough Council as the planning authority for the area in which the authorised development is situated;

“requirements” means those matters set out in Schedule 2 (requirements);

“requirement consultee” means any body named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and “street” includes any part of a street;

“the substation works” means the modifications to the Grange and Cefn Gwrgan substations comprising Work No. 2(b) in Schedule 1 (authorised development) to this Order;

“the Tribunal” means the Lands Chamber of the Upper Tribunal;

“undertaker” means Tata Steel UK Limited (company number 2280000), which is the named undertaker, or any other person who for the time being has the benefit of this Order in accordance with article 7 of this Order and section 156 of the 2008 Act for such time as that section applies to that person;

“watercourse” includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) A reference in this Order to a work designated by a number, or by a combination of letters and numbers (for example, “Work No. 1A”), is a reference to the work so designated in Schedule 1 (authorised development).

(5) The expression “includes” is to be construed without limitation.

(6) All areas described in square metres in the book of reference are approximate.

(7) References to any statutory body include that body’s successor bodies as from time to time have jurisdiction over the authorised development.

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(a) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

## PART 2

### PRINCIPAL POWERS

#### **Development consent etc. granted by the Order**

3.—(1) Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits and in accordance with the works plans.

(2) In constructing or maintaining any of the authorised development, the undertaker may deviate laterally from the lines or situations shown on the works plans within the limits of deviation relating to that work shown on those plans.

#### **Power to maintain authorised development**

4.—(1) The undertaker may at any time maintain the authorised development within the Order limits, except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) In maintaining the authorised development the undertaker may remove or replace any constituent part but not the whole of any numbered work listed in Schedule 1 (authorised development).

#### **Operation of generating station**

5.—(1) The undertaker is authorised to operate and use the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any legislation that may be required from time to time to authorise the operation of a generating station.

#### **Benefit of Order**

6. Subject to article 7 (consent to transfer benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

#### **Consent to transfer benefit of Order**

7.—(1) The undertaker may with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) The requirement to obtain the consent of the Secretary of State under paragraph (1) does not apply to a transfer or grant to a licence holder within the meaning of Part 1 of the Electricity Act 1989 of the benefit of such provisions of this Order and related statutory rights as may be agreed between the undertaker and the licence holder as being reasonably necessary for the purposes of carrying out the substation works.

(3) Where an agreement has been made in accordance with paragraphs (1) or (2) references in this Order to the undertaker, except in paragraph (4), include references to the transferee or lessee.

(4) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraphs (1) and (2) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

## **Defence to proceedings in respect of statutory nuisance**

**8.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with the noise management plan approved by the relevant planning authority as described in requirement 11; or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with a scheme of monitoring and attenuation of noise approved by the relevant planning authority as described in requirement 14; or
  - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

## **PART 3**

### **STREETS**

#### **Street works**

**9.**—(1) In relation to any of the streets within the Order limits, the undertaker may, for the purposes of the authorised development—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

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(a) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

**10.—**(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker may not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but may not be unreasonably withheld.

(4) The undertaker may not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval may not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker may not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river other than in accordance with a consent granted by Natural Resources Wales.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010(b).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, Natural Resources Wales, a harbour authority within the meaning of section 57 of the Harbours Act 1964(c) (interpretation), an internal drainage board, a local authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(d) have the same meaning as in that Act.

#### **Authority to survey and investigate the land**

**11.—**(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

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(a) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

(b) S.I. 2010/675, to which there are amendments not relevant to this Order.

(c) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.

(d) 1991 c.57, amended by sections 100(1) and 120(1) of, paragraph 128 of Schedule 22 to, and Schedule 24 to the Environment Act 1995 (c.25).

- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required, before entering the land, produce written evidence of authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes may be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, Part 1 (determination of questions of disputed compensation) of the 1961 Act.

## PART 5

### POWERS OF ACQUISITION

#### **Compulsory acquisition of rights**

**12.—**(1) The undertaker may create and compulsorily acquire the new rights affecting the Order land described in Part 1 of the book of reference and shown on the land plans.

(2) Subject to section 8 of the 1965 Act (provisions as to divided land), as substituted by paragraph 5 of Schedule 3 to this Order, where the undertaker acquires a right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

#### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

**13.—**(1) The Compulsory Purchase (Vesting Declarations) Act 1981 applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, has effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.

(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” are omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 must be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of rights under this Order.

### **Compulsory acquisition of land – incorporation of the mineral code**

14. Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981 (minerals) are incorporated in this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for “the acquiring authority” substitute “the undertaker”.

### **Time limit for exercise of authority to acquire rights compulsorily**

15.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 14 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

### **Application and modification of legislative provisions**

16. Subject to the modifications set out in Schedule 3 the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right as they apply to the compulsory purchase of land and interests in land.

### **Statutory authority to override easements and other rights**

17.—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(1) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract,

authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(4) Subsection (2) of section 10 of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act applies to the construction of paragraph (2) (with any necessary modifications).

### **Acquisition of subsoil or airspace only**

**18.—**(1) The undertaker may acquire compulsorily such rights in, the subsoil of or the airspace over the land referred to in paragraph (1) of article 12 (compulsory acquisition of rights) as may be required for any purpose for which rights over that land may be acquired under that provision.

(2) Where the undertaker acquires any rights in the subsoil of or the airspace over land under paragraph (1), the undertaker is to not be required to acquire an interest in any other part of the land.

### **Private rights**

**19.—**(1) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under this Order are suspended and are unenforceable or, where so notified by the undertaker, extinguished insofar as in either case their continuance would be inconsistent with the exercise by the undertaker of the rights acquired—

- (a) as from the date of the acquisition of the rights by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is earliest.

(2) Subject to the provisions of this article, any private rights over the Order land owned by the undertaker are suspended and are unenforceable or, where so notified by the undertaker, extinguished insofar as in either case their continuance would be inconsistent with any activity authorised by this Order—

- (a) in the case of a suspension, as from the commencement of the activity authorised by this Order which interferes with such rights; and
- (b) in the case of an extinguishment, on the date specified in the notice given by the undertaker.

(3) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 20 (statutory undertakers) applies.

(5) Paragraph (1) has effect subject to any agreement made, in so far as it relates to the authorised development, at any time between the undertaker and the person in or to whom the right in question is vested, belongs or benefits.

(6) If any such agreement as is referred to in paragraph (5)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.



(7) Reference in this article to private rights over land includes any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

### **Statutory undertakers**

20. Subject to the provisions of Schedule 4 (protective provisions) the undertaker may extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

## **PART 6**

### **MISCELLANEOUS AND GENERAL**

#### **Application of landlord and tenant law**

21.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

#### **Operational land for purposes of the 1990 Act**

22. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as not being operational land).

#### **Protective provisions**

23. Schedule 4 (protective provisions) has effect.

#### **Certification of plans, etc.**

24.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference;
- (b) the land plans;
- (c) the works plans;

- (d) the environmental statement;
- (e) the design and access statement; and
- (f) the design principles document.

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Service of notices**

**25.—**(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978<sup>(a)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

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(a) 1978 c.30. There are amendments to this Act which are not relevant to this Order.

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is to be final and is to take effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article is not to be taken to exclude the employment of any method of service not expressly provided for by it.

### **Procedure in relation to certain approvals**

**26.**—(1) Where an application is made to or request is made of the relevant planning authority, highway authority, or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any of the provisions of the Order or any requirement in Schedule 2 (requirements), such consent, agreement or approval, if given, must be given in writing and must not be unreasonably withheld.

(2) Schedule 5 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the requirements in Schedule 2 (requirements).

### **Arbitration**

**27.** Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institute of Civil Engineers.

### **Crown rights**

**28.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular nothing in this Order authorises the undertaker or any licensee to—

- (a) take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—
  - (i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners; or
  - (ii) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
  - (iii) belonging to a government department or the Welsh Government or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions, and is deemed to have been given in writing where it is sent electronically.

Signed by authority of the Secretary of State for Energy and Climate Change

Address  
Date

*Signature*  
Title  
Department

# SCHEDULES

## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

In the County Borough of Neath Port Talbot—

The construction, operation and maintenance of a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act, comprising—

**Work No. 1A** – an electricity generating station located on the site of the Port Talbot steelworks, with a nominal gross electrical output capacity of up to 150 MWe, fuelled by gases produced during the steelmaking process with natural gas provided as a back up, comprising the following works—

- (a) up to two steam boilers and their associated stacks, boiler house and annexe bay;
- (b) a set of steam turbo-alternators and their associated condensers and turbine building;
- (c) a 66kV electricity switchgear station building containing gas insulated switchgear and associated control rooms, and infrastructure (including cables) to provide a connection to Work No. 2;
- (d) a cooling tower unit comprising—
  - (i) a cooling tower;
  - (ii) a cooling tower electrical control room; and
  - (iii) cooling water pump house;
- (e) ancillary buildings, structures and plant including—
  - (i) electrical equipment,
  - (ii) administration and control building;
  - (iii) main and auxiliary transformers;
  - (iv) condensate polisher, condensate pumps and condensate storage tank;
  - (v) oil water separator;
  - (vi) water treatment plant and chemical dosing system skids;
  - (vii) boiler feed pumps;
  - (viii) low pressure gas boosters; and
  - (ix) emissions monitoring system;
- (f) pipe racks;
- (g) fire protection system; and
- (h) car parking area.

**Work No. 1B** – development comprising a construction compound, temporary laydown storage area, and temporary construction site offices.

**Work No. 1C** – development comprising—

- (a) the connection of Work No. 1A to the existing onsite infrastructure through—
  - (i) the extension of existing pipe work (for water, nitrogen, process gases, natural gas, steam and compressed air); and
  - (ii) connections to the drainage systems, electrical cables and other utilities;

- (b) security infrastructure including perimeter fencing;
- (c) internal roadways including connections to the existing internal roadway;
- (d) site drainage and waste management infrastructure;
- (e) landscaping including tree planting, fencing and other boundary treatments; and
- (f) site lighting infrastructure.

**Work No. 2** – development comprising—

- (a) the installation of 66kV electrical cables approximately 2.8km in length from Work No. 1A to the Grange and Cefn Gwrgan substations. The cables will either be installed underground or supported for part of the route by existing above-ground structures or, if necessary, by a steel lattice cable bridge to be erected between the two substations; and
- (b) modifications to the Grange and Cefn Gwrgan substations to accept the electrical cables, including the installation of new 66kV bays at each substation, consisting of an open 66kV bus bar arrangement, incorporating—
  - (i) bus bar isolators;
  - (ii) GIS circuit breakers;
  - (iii) line isolator and earth switches;
  - (iv) voltage transformers;
  - (v) interconnecting 66kV open bus bars;
  - (vi) cable sealing ends;
  - (vii) associated system earth requirements; and
  - (viii) protection and control equipment,

and in connection with such works and to the extent that they do not form part of any such work, further development comprising—

- (a) construction laydown areas, working sites, storage areas, temporary top soil storage areas and temporary structures including temporary fencing and lighting;
- (b) modifications to the existing internal road layout for the provision of site vehicular access, parking and cycle storage; and
- (c) works to alter the position of apparatus below ground level including mains, sewers, drains and cables and also including below ground structures associated with that apparatus;
- (d) works for the benefit or protection of land affected by the authorised development;
- (e) footpaths, cycle tracks, shafts, foundations, retaining walls, drainage, fencing and culverts;

and such other works as may be necessary or expedient for the purposes of or in connection with the construction of the above works but only within the Order limits and insofar as such development is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

## SCHEDULE 2

### REQUIREMENTS

Articles 3 and 26

#### **Interpretation**

1.—(1) In this Schedule—

“commencement” means the carrying out of a material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development and the words “commence” and “commenced” and cognate expressions shall be construed accordingly;

“commissioning” means the process during which plant components and systems, having been constructed or modified, are made operational and are tested and verified to be in accordance with design assumptions and to have met the appropriate safety criteria; and

“stage” means a defined stage of the construction of the authorised development, the extent of which is set out in the notice given to the relevant planning authority under requirement 3 (stage of authorised development).

(2) Where any requirement provides that the authorised development is to be carried out in accordance with details, or a scheme, plan or other document approved or agreed by the relevant planning authority the approved or agreed details, scheme, plan or other document is taken to include any amendments or revisions subsequently approved or agreed by the relevant planning authority.

#### **Time limits**

2.—(1) The authorised development must be commenced within 5 years of the date of this Order.

(2) If the authorised development is constructed in two stages in accordance with the procedures set out in requirement 3 (stages of authorised development), the second stage must be commenced within 10 years of the commencement of the first stage.

#### **Stages of authorised development**

3.—(1) No authorised development may commence until the undertaker has given a written notice to the relevant planning authority confirming whether the authorised development is to be constructed in one stage or two stages.

(2) The notice given to the relevant planning authority under sub-paragraph (1) must set out the extent of the authorised development that is to be constructed in each stage which must not exceed the maximum parameters for the relevant stage set out in requirement 4 (detailed design).

(3) The authorised development must be constructed in accordance with the number of stages specified in the notice given to the relevant planning authority under this requirement.

#### **Detailed design**

4.—(1) Subject to sub-paragraph (3), the elements of the authorised development listed in column (1) of the table below must not exceed the maximum dimensions set out in relation to that element in columns (2) to (4) of the table and must comply with the other parameters specified in column (5)—

<i>(1) Element of authorised development</i>	<i>(2) Maximum height (metres)</i>	<i>(3) Maximum width (metres)</i>	<i>(4) Maximum length (metres)</i>	<i>(5) Other parameters</i>
Stacks	80	-	-	Maximum of 2. Minimum height of 80 metres.
Cooling tower unit	22	25	160	Maximum area of 2,560 m <sup>2</sup> . Maximum volume of 56,320 m <sup>3</sup> .
Turbine hall	25	85	55	Maximum area of 3,575 m <sup>2</sup> . Maximum volume of 89,375 m <sup>3</sup> .
Boiler house	35 (at apex)	65	60	Maximum area of 3,900 m <sup>2</sup> . Maximum volume of 136,500 m <sup>3</sup> .
Switchgear station	20	55	35	-
Administration and control building	12	28	50	-
Water treatment plant incorporating chemical dosing skids, condensate polisher, condensate pumps and condensate storage tank	10	60	60	-
66kV electrical connection (Work No. 2a)	-	4	-	-



<i>(1)</i> <i>Element of authorised development</i>	<i>(2)</i> <i>Maximum height (metres)</i>	<i>(3)</i> <i>Maximum width (metres)</i>	<i>(4)</i> <i>Maximum length (metres)</i>	<i>(5)</i> <i>Other parameters</i>
Cable bridge for section of 66kV electrical connection (Work No. 2a)	5.5	4	800	The cable bridge may only be installed for the section of Work No. 2A between the Grange and Cefn Gwrgan substations.
Car parking area	-	-	-	Maximum of 30 parking spaces.
Perimeter fencing	3	-	-	-

(2) Subject to sub-paragraph (3), if the authorised development is constructed in two stages—

- (a) the elements of the authorised development constructed at the first stage must not exceed the maximum dimensions set out in columns (2) to (4) of the table below and must comply with the other requirements specified in column (5); and

<i>(1)</i> <i>Element of authorised development</i>	<i>(2)</i> <i>Maximum height (metres)</i>	<i>(3)</i> <i>Maximum width (metres)</i>	<i>(4)</i> <i>Maximum length (metres)</i>	<i>(5)</i> <i>Other parameters</i>
Stack	80	-	-	Maximum of 1. Minimum height of 80 metres.
Cooling tower unit	22	25	80	Maximum area of 1,280 m <sup>2</sup> . Maximum volume of 28,160 m <sup>3</sup> .
Turbine hall	25	45	55	Maximum area of 2,475 m <sup>2</sup> . Maximum volume of 61,865 m <sup>3</sup> .
Boiler house	35 (at apex)	45	60	Maximum area of 2,700 m <sup>2</sup> . Maximum volume of 94,500 m <sup>3</sup> .
Switchgear station	20	55	35	-

<i>(1) Element of authorised development</i>	<i>(2) Maximum height (metres)</i>	<i>(3) Maximum width (metres)</i>	<i>(4) Maximum length (metres)</i>	<i>(5) Other parameters</i>
Administration and control building	12	28	50	-
Water treatments plant incorporating chemical dosing skids, condensate polisher, condensate pumps and condensate storage tank	10	60	60	-
66kV electrical connection (Work No. 2a)	-	4	-	-
Cable bridge for section of 66kV electrical connection (Work No. 2a)	5.5	4	800	The cable bridge may only be installed for the section of Work No. 2A between the Grange and Cefn Gwrgan substations.
Car parking area	-	-	-	Maximum of 30 parking spaces.
Perimeter fencing	3	-	-	-

(b) the authorised development when completed at the second stage must not exceed the maximum dimensions and parameters set out in the table in sub-paragraph (1).

(3) The relevant planning authority may at the request of the undertaker approve amendments to the maximum parameters for the turbine hall and boiler house listed in columns (3) and (4) of the tables set out in this requirement, but such approval must not be given except in relation to minor or immaterial amendments which—

- (a) will not result in the parameters set out in column (5) of the tables being exceeded for the relevant building; and
- (b) have been demonstrated to the satisfaction of the relevant planning authority as being unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(4) No stage of the authorised development may commence until for that stage written details of the following have been submitted to and approved by the relevant planning authority—

- (a) the layout, design, external appearance, dimensions and floor levels of all permanent buildings and structures;

- (b) the colour, materials and surface finishes of all permanent buildings and structures; and
  - (c) the durability of all cladding materials.
- (5) The details to be submitted for approval under sub-paragraph (4) must—
- (a) be in accordance with the design and access statement and the design principles document; and
  - (b) include appropriately scaled plans and sectional drawings.
- (6) The authorised development must be carried out in accordance with the approved plans and any other approvals given by the relevant planning authority pursuant to this requirement.

### **Decommissioning of existing generating station**

5.—(1) The undertaker must give written notice (“the completion notice”) to the relevant planning authority within 7 days of the date on which the commissioning of the authorised development is completed.

(2) If the authorised development is constructed in two stages, the obligation in sub-paragraph (1) applies to the completion of commissioning of the second stage of the authorised development.

(3) The undertaker must decommission the existing generating station as soon as reasonably practicable following service of the completion notice having regard to the operational requirements of the steelworks and, in any event, the existing generating station must be decommissioned within two years of the date of the completion notice.

(4) The decommissioning mentioned in sub-paragraph (3) requires that the existing generating station permanently ceases to operate for the purposes of generating electricity, but does not require the undertaker to demolish any part of the existing generating station.

(5) In this requirement “the existing generating station” means—

- (a) Margam A boiler 5;
- (b) Margam B Mitchell boiler;
- (c) service boiler 4;
- (d) service boiler 5;
- (e) turbo alternator TA1;
- (f) turbo alternator TA2; and
- (g) turbo alternator TA3.

### **Provision of landscaping**

6.—(1) No stage of the authorised development may commence until a written landscaping scheme for that stage has been submitted to and approved by the relevant planning authority. The landscaping scheme must be in accordance with the design and access statement and chapter 7 of the environmental statement and must include details of all proposed hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) vehicular and pedestrian access, parking and circulation areas;
- (f) minor structures, such as furniture, refuse or other storage units, signs and lighting;
- (g) proposed and existing functional services above and below ground, including drainage, power and communications cables and pipelines, manholes and supports;

- (h) details of existing trees to be retained, with measures for their protection during the construction period;
- (i) retained historic landscape features and proposals for restoration, where relevant; and
- (j) implementation timetables for all landscaping works.

(2) All landscaping works must be carried out in accordance with the approved landscaping scheme and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(3) The landscaping works must be carried out in accordance with implementation timetables approved under sub-paragraph (1).

(4) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

### **Fencing and other means of enclosure**

7.—(1) No stage of the authorised development may commence until details of the proposed means of enclosure for that stage (which must be in accordance with the details described in the environmental statement) have been submitted to and agreed in writing with the relevant planning authority.

(2) The means of enclosure agreed under sub-paragraph (1) must be erected prior to the commissioning of the relevant stage of the authorised development.

### **Archaeology**

8.—(1) No authorised development may commence until a written scheme for the investigation of areas of archaeological interest as identified in chapter 11 (cultural heritage and archaeology) of the environmental statement has been submitted to and approved by the relevant planning authority.

(2) The scheme approved under sub-paragraph (1) must identify—

- (a) areas where a watching brief is required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found; and
- (b) areas where palaeo-environmental sampling must be carried out prior to the commencement of any of the authorised development to establish the presence and extent of any surviving peat deposits and the measures to be taken to taken where any such deposits are found.

(3) Any archaeological works or watching brief carried out under the approved scheme must be carried out by an organisation registered with the Chartered Institute for Archaeologists (“CIfA”) or a CIfA member.

(4) Any archaeological works or watching brief must be carried out in accordance with the approved scheme and in consultation with the archaeological planning section of Gwent Glamorgan Archaeological Trust.

### **Habitat management plan**

9.—(1) No stage of the authorised development may commence until for that stage a written habitat management plan, reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement, has been submitted to and approved by the relevant planning authority.

(2) The habitat management plan must include an implementation timetable and must be carried out as approved by the relevant planning authority.

### **Code of construction practice**

**10.—**(1) No stage of the authorised development may commence until a code of construction practice for that stage has been submitted to and approved by the relevant planning authority.

(2) The code of construction practice, which specifies measures to mitigate the impacts of constructions works, must be substantially in accordance with the outline code of construction practice set out in appendix 15.1 of Volume 3 of the environmental statement and must incorporate the following plans—

- (a) water management plan;
- (b) pollution prevention plan; and
- (c) dust management plan.

(3) The dust management plan required under sub-paragraph (2)(c) must include details of the mechanisms by which failures of dust controls will be investigated and appropriate mitigation or remedial works will be implemented.

(4) All construction works for the authorised development must be carried out in accordance with the approved code of construction practice for that stage, including any plans approved as part of it.

### **Approval and implementation of construction mitigation plans**

**11.—**(1) No stage of the authorised development may commence until the following plans to minimise the impacts of construction works have been submitted to and approved by the relevant planning authority for that stage—

- (a) a noise management plan, which must be substantially in accordance with section 8.7 of the environmental statement and the outline plan at Appendix 15.1.5 of that document;
- (b) a construction traffic management plan, which must be substantially in accordance with section 10.6 of the environmental statement and the outline plan at Appendix 15.1.6 of that document;
- (c) a waste management plan, which must be substantially in accordance with section 15.10 of the environmental statement and the outline plan at Appendix 15.1.4 of that document; and
- (d) an emergency response and flood management plan, which must be substantially in accordance with section 8.7 of the environmental statement and the outline plan at Appendix 15.1.7 of that document.

(2) The noise management plan required under sub-paragraph (1)(a) must include—

- (a) a piling method statement;
- (b) a construction vibration risk assessment; and
- (c) details of the mechanisms by which failures of noise controls will be investigated and appropriate mitigation or remedial works will be implemented.

(3) The relevant planning authority must consult Royal Mail Group Limited before approving the construction traffic management plan and must have regard to any response provided by Royal Mail Group Limited.

(4) Construction works for the authorised development must be carried out in accordance with the approved plans for that stage referred to in sub-paragraph (1).

### **External lighting**

**12.—**(1) Not less than three months before commissioning any stage of the authorised development, the undertaker must submit to the relevant planning authority written details of all external lighting to be installed at that stage of the authorised development, and such details must be in accordance with the environmental statement and the design and access statement and must include details of the direction and levels of lighting.

(2) The relevant stage of the authorised development must not be brought into operation until the details submitted under sub-paragraph (1) have been approved by the relevant planning authority and the approved external lighting scheme has been installed.

(3) The approved lighting scheme must be retained for the duration of the operation of the relevant stage of the authorised development.

### **Construction hours**

**13.—**(1) Construction work for the authorised development must not take place:—

- (a) Outside the hours of—
  - (i) 07:00 to 19:00 on Monday to Friday, and
  - (ii) 07:00 to 13:00 on Saturdays,
- (b) At any time on Sundays and public holidays, except with the prior written approval of the relevant planning authority.

### **Control of noise during operational phase**

**14.—**(1) The undertaker must not commence commissioning of any stage of the authorised development until a written scheme for the management of noise generated by the operation of that stage of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme to be submitted and approved under sub-paragraph (1) must be substantially in accordance with section 8.7 of the environmental statement and must include details of—

- (a) the noise attenuation measures to be taken to minimise operational noise, including any noise limits;
- (b) noise monitoring requirements including the location of monitoring equipment; and
- (c) the measures to be taken, including timescales, to address any noise issues identified.

(3) The noise management scheme must be implemented as approved and maintained for the duration of the operation of the relevant stage of the authorised development.

### **Surface and foul water drainage**

**15.—**(1) No stage of the authorised development may commence until written details of the surface and foul water drainage system for that stage have been submitted to and approved by the relevant planning authority.

(2) The surface and foul water drainage system for the relevant stage of the authorised development must be constructed in accordance with the approved details.

### **Aviation safety**

**16.** The undertaker must install on any chimney stack forming part of Work No.1 aviation warning lighting with such shape, colour and character as specified in guidance issued by the Civil Aviation Authority.

### **Air quality monitoring**

**17.—**(1) Not less than 12 months prior to the commissioning of any stage of the authorised development, a scheme for the monitoring of ambient concentrations of nitrogen dioxide in the area must be submitted to and approved by the relevant planning authority.

(2) The scheme to be submitted under sub-paragraph (1) must contain details of—

- (a) the locations at which monitoring will take place;
- (b) the monitoring equipment and methods to be used;

- (c) the frequency and duration of monitoring; and
- (d) the procedure for reporting the result of the monitoring.

(3) The air quality monitoring scheme must be implemented as approved for the relevant stage of the authorised development.

### **Contaminated land and groundwater**

**18.—**(1) No stage of the authorised development may commence until for that stage a written scheme to deal with the contamination of any land, including groundwater, which is likely to cause harm to persons, the environment or pollution of controlled waters has been submitted to and approved by the relevant planning authority in consultation with Natural Resources Wales.

(2) The scheme must include an investigation and risk assessment report, prepared by a competent person in accordance with the guidance document which must contain—

- (a) an investigation of the extent, scale and nature of contamination;
- (b) an assessment of the potential risks to human health, the environment and controlled waters;
- (c) a piling method risk assessment; and
- (d) a remediation scheme to bring the site to a condition suitable for the intended use by removing any unacceptable risks to human health, the environment and controlled waters which must contain—
  - (i) details of remediation works to be undertaken;
  - (ii) proposed remediation objectives and remediation criteria; and
  - (iii) site management procedures.

(3) The undertaker must carry out the remediation in accordance with the approved scheme.

(4) Construction of the authorised development must not commence until a verification report which demonstrates the effectiveness of the agreed remediation works (if required) carried out in accordance with sub-paragraph (3) has been submitted to and agreed in writing with the relevant planning authority.

(5) If contaminated land not previously identified is found during the construction of the authorised development no further works for the authorised development are to be carried out until an investigation and remediation scheme has been submitted to and approved by the relevant planning authority; and the scheme must include details of—

- (a) how the contaminated land is to be identified and assessed;
- (b) where remediation is required by the scheme, the remediation measures;
- (c) timescales for carrying out the remediation measures; and
- (d) any ongoing monitoring or mitigation requirements.

(6) Any remediation measures identified in the investigation and remediation scheme mentioned in sub-paragraph (5) must be carried out in accordance with the approved scheme.

(7) In this requirement, “the guidance document” means Land Contamination: A Guide for Developers (Welsh Local Government Association and the Environment Agency Wales, 2006).

### **Construction compound**

**19.—**(1) No stage of the authorised development may commence until for that stage details of the size, layout and location of temporary buildings and structures forming Work No. 1B have been submitted to and approved by the relevant planning authority.

(2) The temporary buildings and structures forming Work No. 1B must be installed in accordance with the approved details.

## SCHEDULE 3

Articles 12(1) and 16

### MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

#### *Compensation enactments*

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(aa) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there is substituted the words “a right over land is purchased”; and
- (b) for the words “acquired or taken from him” there is substituted the words “over which the right is exercisable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there is substituted the words “a right over land consisting”;
- (b) for the word “severance” there is substituted the words “right over the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there is substituted the words “right proposed”; and
- (d) for the words “part is” there is substituted the words “right is”.

#### *Application of the 1965 Act*

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there is substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard is had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land

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(a) 1973 c.26.



of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

**5.** For section 8 of the 1965 Act (provisions as to divided land) there is substituted the following section—

“**8.**—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
  - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
  - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

in relation to that person, the Order ceases to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

**6.** The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

**7.** Section 11 of the 1965 Act (powers of entry) is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act is modified correspondingly.

**8.** Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that

section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

## SCHEDULE 4

Article 23

### PROTECTIVE PROVISIONS

#### PART 1

##### FOR THE PROTECTION OF RAILWAY INTERESTS

1. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred or imposed by that paragraph.

2. In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of the powers under section 8 of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited (registered company no. 2904587) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held by or used for the benefit of Network Rail for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements arising from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works under this Order.

4.—(1) The undertaker must not exercise the powers conferred by article 11 (authority to survey and investigate land), article 12 (compulsory acquisition of rights); article 18 (acquisition of subsoil or airspace only); article 19 (private rights), article 20 (statutory undertakers) or the powers conferred by section 11(3) of the 1965 Act as applied by the Order in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers and electronic code communications operators: preliminary notices) or article 20 (statutory undertakers) in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer will be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes are to be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works shall be carried out at the expense of the undertaker in either case with all reasonable dispatch, and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes—

- (a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents; or
- (b) any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(2), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 10(1)(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

**10.—**(1) The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail —

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**11.—**(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail’s apparatus generated by the operation of the authorised works (including the operation of tramcars using the tramway comprised in the works) where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised works) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(2) for the relevant part of the authorised works giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised works take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(2) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution shall be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations on the authorised tramway comprised in the authorised works and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraph (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(1)(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 27 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

**12.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

**13.** The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

**14.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

**15.—**(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure of such a work; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the supervision of the engineer shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**16.** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

**17.** In the assessment of any sums payable to Network Rail under this Part of this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.



**18.** The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

**19.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

**20.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 7 (consent to transfer benefit of Order) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**21.** The undertaker shall, no later than 28 days from the date that the plans submitted to the Secretary of State are certified in accordance with article 24 (certification of plans, etc.), provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

## PART 2

### FOR THE PROTECTION OF WESTERN POWER DISTRIBUTION

1. The provisions in this Part of this Schedule have effect for the protection of WPD, unless otherwise agreed in writing between the undertaker and WPD.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable WPD to fulfil its statutory functions in a manner not less efficient than previously;

“alternative rights” means all necessary legal easements, consents, or permissions required by WPD to permit or authorise a diversion;

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by WPD;

“associated company” means any company which is either a holding company of WPD, a subsidiary of WPD or another subsidiary of the holding company of WPD, and “holding company” and “subsidiary” have the meanings given to them by section 1159 of the Companies Act 2006;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“undertaker” has the meaning given in article 2(1) of the Order except that, for the purposes of this Part of this Schedule, it does not include WPD or an associated company of WPD which has the benefit of the Order under a transfer or grant made under article 7;

“WPD” means Western Power Distribution (South Wales) PLC (company number 02366985) whose registered office is at Avonbank, Feeder Road, Bristol BS2 0TB; and

“WPD Network” means WPD’s distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the 1989 Act.

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and WPD are regulated by the provisions of Part 3 of the 1991 Act.

4.—(1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

(2) The undertaker must not exercise the powers under the Order to carry out the substation works unless the exercise of such powers is with the consent of WPD.

(3) Where WPD is asked to give its consent under sub-paragraph (2) that consent must not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of WPD to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of WPD.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to WPD written notice of that requirement, together with a plan and section of the work proposed.

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed on the land referred to in sub-paragraph (2), WPD, must on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its reasonable endeavours to obtain the alternative rights in other land in which the alternative apparatus is to be constructed

(4) WPD must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 27, and after the grant to WPD of any such facilities and rights as are referred to in sub-paragraph (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

6.—(1) Not less than 28 days before starting the execution of any works in, on or under any land acquired, held, appropriated or used for the purposes of the authorised development that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to WPD a plan, section and description of the works to be executed. For the avoidance of doubt, if any works referred to require any diversion or require WPD to obtain any alternative rights, the undertaker must give WPD sufficient notice to obtain any such alternative rights and shall not commence works of the type described unless or until any such alternative rights have been obtained.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by WPD for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and WPD is entitled to watch and inspect the execution of those works.

(3) Any requirements made by WPD under sub-paragraph (2) must be made within a reasonable period beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to WPD.

(4) If WPD in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 4 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than the reasonable period provided for in sub-paragraph (3) before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to WPD notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

7.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to WPD the proper and reasonable expenses reasonably incurred by WPD in, or in connection with, the inspection, removal, alteration or protection of any apparatus.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal and agreed between the parties.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 27 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as

the case may be, the amount which apart from this sub-paragraph would be payable to WPD by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to WPD in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on WPD any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

**8.** The undertaker will indemnify WPD and keep WPD indemnified in respect of any direct losses, costs, claims or liabilities arising out of, or as a consequence of the works authorised by the Order and anything done under this Part of this Schedule.

**9.** Any difference or dispute arising between the undertaker and WPD under this Schedule shall, unless otherwise agreed in writing between the undertaker and WPD, be determined by arbitration in accordance with article 27 (arbitration) of the Order.

## PART 3

### FOR THE PROTECTION OF NATIONAL GRID

#### **Application**

1. For the protection of National Grid as referred to in this Part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

#### **Interpretation**

2. In this Part of this Schedule—

“acceptable insurance” means third party liability insurance effected and maintained by the undertaker with a limit of indemnity of not less than £10,000,000 (Ten Million Pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the entire construction period of the authorised development and arranged with underwriters whose security/credit rating is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group; and (ii) “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989(aa), belonging to or maintained by National Grid;

“authorised development” has the same meaning as in article 2 of this Order and (unless otherwise specified) for the purposes of this Part of this Schedule shall include the use and maintenance of the authorised development;

“commence” has the same meaning as under paragraph 1 of Schedule 2 (requirements) and commencement shall be construed to have the same meaning;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed; and

“specified work” means so much of any of the authorised development that will or may be situated 15m (measured in any direction) of, or which may affect, any apparatus.

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

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(a) 1989 c.29.

### **Acquisition of land**

4.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order the undertaker must not acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid as of right or other use in relation to the apparatus then the provisions in this Part of this Schedule shall prevail.

### **Removal of apparatus**

5.—(1) If, in the exercise of the agreement reached in accordance with paragraph 4 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to National Grid to their satisfaction (taking into account paragraph 6 sub-paragraph (1) below) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

### **Facilities and rights for alternative apparatus**

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to National Grid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker

and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under paragraph 6 sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph (2), article 27 of the Order shall apply.

### **Retained apparatus: protection of National Grid**

7.—(1) Not less than 56 days before the commencement of any specified work that does not require the removal of apparatus under paragraph 5(2) (removal of apparatus) the undertaker must submit to National Grid a plan and seek from National Grid details of the apparatus belonging to or maintained by National Grid.

(2) The plan to be submitted under sub-paragraph (1) must show—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) shall be detailed including a method statement and describing in addition to the matters set out in sub-paragraph (2)—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers;
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraphs (1), (2) or (3) apply until National Grid has given written approval of the plan so submitted,

(5) Any approval of National Grid required under sub-paragraph (1), (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8);
- (b) must not be unreasonably withheld.

(6) In relation to a work to which sub-paragraphs (1), (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (1), (2) or (3) must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraphs (2), (3) or (5), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5), (6), (8) and/or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(8) Where National Grid require any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the undertakers' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraphs (1), (2), (3) or (5) (except in an emergency)

(9) If National Grid in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 5 to 6 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(10) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and shall

- (a) comply with sub-paragraph (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order comply with National Grid's policies for development near overhead lines ENA TA 43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

## **Expenses**

**8.**—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 5 sub-paragraph (3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;



- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 27 (arbitration) of the Order to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## **Indemnity**

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works), any material damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and

- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision shall not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the undertaker and considering their representations.

### **Insurance**

**10.—**(1) The undertaker shall not commence construction (and not permit the commencement of such construction) of the authorised works on any land either owned by National Grid or in respect of which National Grid has an easement or wayleave for apparatus or any other interest or to carry out any works within 15 metres of any apparatus unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker (such confirmation not to be unreasonably withheld or delayed).

(2) In the event of the undertaker's failure to comply with sub-paragraph (1) of this Part of this Schedule National Grid shall be entitled to seek injunctive relief (or any other equitable remedy) in any court of competent jurisdiction and the undertaker irrevocably and unconditionally waives any right of objection in relation to National Grid's right to seek injunctive relief or any other equitable remedy.

### **Enactments and agreements**

**11.** Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

**12.** National Grid and the undertaker must each use their best endeavours to co-operate with the other party on the timing and method of execution of any works carried out under the Order or this Part of this Schedule in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the other party's operations.

### **Access**

**13.** If in consequence of the agreement reached in accordance with paragraph 4(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall

provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

**Arbitration**

**14.** Any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 27 (arbitration) of the Order.

## PART 4

### FOR THE PROTECTION OF DŴR CYMRU CYFYNGEDIG

1. The provisions in this Part of this Schedule have effect for the protection of DCC, unless otherwise agreed in writing between the undertaker and DCC.

2.—(1) In this Part of this Schedule—

“acceptable insurance” means a policy of public liability or third party liability insurance effected and maintained by the undertaker and available in the market on commercially reasonable terms having regard, amongst other matters, to premiums required and the policy terms obtainable, with a level of insurance cover to be agreed between the undertaker and DCC, during the construction of the works pursuant to this Order with a reputable insurer;

“accessories” has the same meaning as that set out in section 219 of the Water Industry Act 1991(aa) but also includes any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater or surface water and which is part of a sustainable drainage system;

“DCC apparatus” means all apparatus or accessories vested in or belonging to DCC for the purpose of carrying on its statutory undertaking including reservoirs, water treatment works and waste water treatment works;

“clearance area” means the area of land—

- (a) within 3 metres either side of the centre line of any public sewer or public water main that is less than 300mm in diameter;
- (b) within 6 metres either side of a public sewer or public water main where the public sewer or public water main is 300mm in diameter or more; or
- (c) within 10 metres either side of the centre line of a gravity sewer;

“DCC” means Dŵr Cymru Cyfyngedig, a limited company registered in Wales under Company No. 2366777 and having its registered office at Pentwyn Road, Nelson, Treharris, Mid Glamorgan CF46 6LY or its properly authorised agents or sub-contractors;

“draft specification” means a detailed plan, cross-section and description of the works to be prepared by the undertaker (including, without limitation, a method statement and risk assessment setting out the intention in respect of the works, construction methods and programmes, position of the affected DCC apparatus and intended works and a statement that to the best of the undertaker’s knowledge, and having used all reasonable care and skill to plan the works, the works will not cause damage to the DCC apparatus);

“functions” has the same meaning as in section 219 of the Water Industry Act 1991 and includes powers and duties;

“in” in a context referring to DCC apparatus in land includes a reference to DCC apparatus under, over or upon land;

“sustainable drainage system” means any structure designed to receive rainwater and other surface water which structure includes any feature or aspect of design that is intended to receive or facilitate the receipt of rainwater except a public sewer or a natural watercourse; and

“works” means any works forming part of the authorised development in, on, over or under any land purchased, held, or used under this Order that are near to, or will or may in any way affect any DCC apparatus together with all ancillary actions relating hereto.

(2) For the avoidance of doubt, all other terms are as defined in article 2 of this Order.

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(a) 1991 c.56.

3.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any DCC apparatus or its accessories or override or extinguish any easement or other interest of DCC or acquire any land or other interest of DCC identified in the book of reference or create any new rights over the same otherwise than by agreement with DCC in accordance with the provisions of this Part of this Schedule.

(2) Sub-paragraph (1) does not apply to the powers conferred on the undertaker by this Order to interfere temporarily with DCC's rights to access DCC apparatus or accessories but subject always to paragraphs 7 and 8 of this Part of this Schedule and to the undertaker giving DCC 28 days' notice of such interference.

### **Precedence of the Water Industry Act 1991**

4.—(1) Regardless of any provision of this Order and this Part of this Schedule the undertaker must comply fully with all provisions of the Water Industry Act 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DCC apparatus and nothing in this Order releases the undertaker from the requirement to comply with the provisions of the Water Industry Act 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DCC apparatus, including without limitation—

- (a) sections 41 to 44 in respect of water main requisitions;
- (b) section 45 in respect of any connections to a water main;
- (c) sections 98 to 101 in respect of sewer requisitions;
- (d) section 102 in respect of the adoption of sewers and disposal works;
- (e) section 104 in respect of the adoption of any sewers, drains or sewage disposal works as part of the development;
- (f) sections 106 to 109 (inclusive) in respect of any connections to public sewers;
- (g) section 111 in respect of the restrictions on use of public sewers;
- (h) sections 158 and 159 in respect of statutory rights of access to DCC apparatus;
- (i) section 174 in respect of offences of interference with works etc.;
- (j) section 178 in respect of obstruction of sewerage works etc.;
- (k) section 185 in respect of the removal, diversion or alteration of DCC apparatus.

(2) The arbitration provisions at article 27 of this Order do not apply where DCC uses a warrant of entry in accordance with the provisions of the Water Industry Act 1991.

### **Protection of DCC apparatus**

5.—(1) Not less than 28 days before starting the execution of any works that are within the clearance area or will, or could reasonably foreseeably affect, any DCC apparatus the removal or alteration of which has not been required by the undertaker under paragraph 4(1)(k), the undertaker must submit to DCC written notice together with a draft specification.

(2) DCC must examine the draft specification submitted under sub-paragraph (1) and give its written consent or proposed amendments (each not to be unreasonably withheld or delayed) to the draft specification (including the proposed commencement date and anticipated completion date) within 28 days from the date of receipt (and in the event of amendments the process in this sub-paragraph (2) must be repeated where those amendments are not accepted). For the avoidance of doubt, DCC's proposed amendments may include such reasonable requirements for the alteration (including but not limited to the extension) of DCC apparatus or otherwise for the protection of DCC apparatus, or for securing access to it.

(3) Once approved under sub-paragraph (2), the draft specification becomes the specification and the works must be executed only in accordance with the specification and such reasonable requirements as may be made in accordance with sub paragraph (2) and DCC is entitled to watch and inspect the execution of those works.

(4) Nothing in this paragraph 5 precludes the undertaker from submitting at any time, but in no case less than 28 days before commencing the execution of any works, a draft specification instead of the draft specification previously submitted, and having done so the provisions of this paragraph 5 apply to and in respect of the new draft specification.

(5) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency provided it has complied with paragraph 8 below, except that the undertaker must comply with sub-paragraphs (1) and (3) in so far as is reasonably practicable in the circumstances.

(6) DCC may opt to carry out any temporary or protective works specified under sub-paragraph (2) to DCC apparatus, and if DCC opts to do so it must—

- (a) agree the scope and timings of the works with the undertaker (and the undertaker must not unreasonably withhold or delay its agreement to the same);
- (b) provide an invoice together with supporting evidence of the estimated costs of the works on the basis of which it must agree with undertaker the reasonable costs of the works to be met by the undertaker;
- (c) following agreement and payment of the costs, DCC must as soon as reasonably practicable carry out and complete the works; and
- (d) notify the undertaker immediately in writing upon completion of the temporary or protective works.

(7) Only those contractors that satisfy DCC's reasonable health and safety requirements are permitted to make openings into or connections with or carry out any works on or within any public sewer or drain vested in DCC unless otherwise agreed with DCC.

(8) Only DCC is permitted to make openings into or connections with or carry out any works on or within any public water main vested in DCC unless otherwise agreed with DCC.

(9) Where DCC apparatus will be affected by the works the undertaker must determine the exact location of DCC apparatus prior to any works being carried out by the undertaker and the undertaker should contact DCC where trial holes are required.

(10) Any affected DCC apparatus which is no longer required by DCC but is not removed must be transferred to the undertaker by way of a deed of transfer from DCC at the undertaker's expense and on such terms as DCC reasonably requires.

## **Suspension of works**

**6.—**(1) DCC is entitled to instruct the undertaker to suspend the works if in DCC's reasonable opinion the actions of the undertaker, or those of its contractor(s) or subcontractor(s) in carrying out the works, have caused damage to any DCC apparatus or are likely to cause or result in damage to any DCC apparatus or have caused or are likely to cause damage to the environment arising as a result of damage to DCC apparatus.

(2) In the event of such instruction being given by DCC—

- (a) the undertaker must procure that it and its contractor(s) and subcontractor(s) immediately suspend or cease the works having due regard to health and safety factors and must discuss and agree with DCC the remedial actions required prior to resuming the works;
- (b) the undertaker and DCC must act reasonably and without delay in discussing and agreeing any remedial actions required prior to resuming the works;
- (c) DCC shall submit to the undertaker within 3 days following the issue of an instruction under sub-paragraph (1), a written notice specifying the reasons for requiring the works to be suspended;
- (d) in the event that DCC fails to supply the written notice mentioned in sub-paragraph (c) within 5 days of an instruction issued under sub-paragraph (1) DCC's instruction to suspend the works is void and the undertaker is entitled to recommence the works; and
- (e) DCC must commence, carry out and complete any remedial works pursuant agreed under this sub-paragraph, as soon as reasonably practicable and DCC must give the undertaker

notice immediately upon completion of such remedial works and on receipt of such notice the undertaker is entitled to resume the works.

(3) DCC is entitled to reclaim all reasonable costs of all remedial works undertaken in accordance with this paragraph 6.

### **Co-operation**

7.—(1) If either the undertaker or DCC (for the purpose of this paragraph 7 “the party” or together “the parties”) wishes to take any action which would impact on the ability of the undertaker to carry out the authorised development or DCC to carry out its statutory functions, the parties must use reasonable endeavours to co-operate with one another in order to align work streams so to minimise or avoid disruption to the other party’s works. In respect of the references to ‘work’ and ‘works’ in this sub-paragraph (1), to the extent that this refers to ‘work’ or ‘works’ to be undertaken by DCC, the definition of works in paragraph 2 of this Part of this Schedule does not apply.

(2) Subject to paragraph 8, differences or disputes arising between the undertaker and DCC under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and DCC, be determined by arbitration in accordance with article 27 (arbitration) of the Order.

### **Emergency works**

8.—(1) The undertaker is permitted to carry out emergency works provided that it first notifies DCC of the proposed emergency works. For the avoidance of doubt, in the event that DCC suffers any loss, cost or damage as a result of the emergency action taken by the undertaker without prior notification the indemnity in paragraph 10 applies.

(2) DCC is at all times permitted to carry out any emergency works in relation to its DCC apparatus within the order limits in accordance with Part II Schedule 6 of the Water Industry Act 1991.

(3) Emergency works required in order for DCC to fulfil its statutory functions under sub-paragraph (2) take precedence over works to be carried out by the undertaker and, in such circumstances, the undertaker must reschedule its works accordingly.

(4) In respect of the references to ‘work’ and ‘works’ in this paragraph 8, to the extent that this is ‘work’ or ‘works’ to be undertaken by DCC, the definition of works in paragraph 2 of this Part of this Schedule does not apply.

### **Insurance**

9. The undertaker must not commence any works under paragraph 5(1) to this Part of this Schedule unless and until the undertaker has procured acceptable insurance.

### **Damage to DCC apparatus**

10.—(1) Subject to sub-paragraphs (3), (4), (5) and (6), the undertaker indemnifies and hold harmless DCC against all claims demands costs damages expenses penalties and losses which DCC may have or sustain or become liable for in consequence of works under paragraph 5(1) to this Part of this Schedule in respect of—

- (a) the commencement, carrying out, execution or retention of the works or any breach of this Part of this Schedule relating to the performance of the works and must pay compensation for loss, damage or injury caused by the actions or default of the undertaker, its contractors, subcontractors, licencees, agents and invitees relating to the performance of the works; and
- (b) damage to the environment caused by the undertaker during any works including but not limited to pollution or contamination; and

(c) any breach of any stipulation or otherwise of any deeds of grant (or any renewal of any of the deeds of grant made on substantially the same terms provided that DCC has supplied the undertaker with a copy of the new document) arising from the works.

(2) Subject to sub-paragraphs (3), (4), (5) and (6), the undertaker must bear and pay the costs reasonably incurred by DCC in making good damage to DCC apparatus or restoring an interruption in the supply provided by DCC.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of DCC, its officers, servants, contractors or agents.

(4) DCC must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker.

(5) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and DCC in respect of any DCC apparatus laid or erected in land belonging to the undertaker on the date on which the Order is made.

(6) DCC must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 10 applies. If requested to do so by the undertaker, DCC must provide an explanation of how the claim has been minimised. The undertaker is only liable under this paragraph 10 for claims reasonably incurred by DCC.



## PART 5

### FOR THE PROTECTION OF ASSOCIATED BRITISH PORTS

**1.—(1)** In this Part of this Schedule—

“AB Ports” means Associated British Ports in its capacity as the owner, operator and harbour authority for the Port of Port Talbot;

“the dock” means the main inner dock at the Port of Port Talbot; and

“the minimum level” means +4.95 metres above ordnance datum Newlyn or any lower level that AB Ports and the undertaker agree at any time is acceptable within the dock for any given period.

(2) The provisions of this Part of this Schedule have effect for the protection of AB Ports unless otherwise agreed in writing between the undertaker and AB Ports.

**2.—(1)** Subject to the undertaker complying with paragraphs 3 and 4, AB Ports will use reasonable endeavours to ensure that the water level within the dock is maintained at the level which AB Ports considers necessary to ensure the satisfactory operation of the dock being not less than the minimum level.

(2) If the water level within the dock falls below the minimum level and remains below that level for more than 24 hours without AB Ports pumping water into the dock, the undertaker may, at its own cost, temporarily access the dock to pump water into the dock for the purpose of restoring the water level to the minimum level.

(3) The undertaker must notify AB Ports in writing before entering onto the dock for the purpose of exercising the right in sub-paragraph (2) and whilst exercising that right the undertaker must comply with any reasonable requirements imposed by AB Ports in the interests of health and safety and the security of the Port.

**3.** The undertaker must, on a monthly basis from commencement of the operation of the authorised development, provide to AB Ports records of the volumes of water abstracted from the River Afan (dock feeder channel) and the dock for the purpose of the authorised development and the Port Talbot steel works identifying the date and point of abstraction and the levels of water abstracted.

**4.—(1)** The undertaker must pay to AB Ports the costs reasonably incurred by AB Ports in—

(a) pumping water into the dock to maintain the minimum level and supplying, maintaining, repairing and renewing any plant or equipment used by AB Ports insofar as it is necessary for this purpose; and

(b) maintaining, repairing and cleansing the dock and taking such other actions as in the opinion of AB Ports may be necessary to prevent the creation of a nuisance or danger.

(2) AB Ports must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written evidence of the costs mentioned in sub-paragraph (1).

**5.** Differences arising between the undertaker and AB Ports under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and AB Ports, be determined by arbitration in accordance with article 27 (arbitration) of the Order.

## SCHEDULE 5

Article 26(2)

### PROCEDURE FOR DISCHARGE OF REQUIREMENTS

#### Applications made under requirements

1.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement (including agreement or approval in respect of part of a requirement) included in this Order the relevant planning authority must give notice to the undertaker of its decision on the application before the end of the decision period.

(2) For the purposes of sub-paragraph (1), the decision period is—

(a) in the case of requirement 4—

- (i) where no further information is requested under paragraph 2, 16 weeks from the day immediately following that on which the application is received by the relevant planning authority;
- (ii) where further information is requested under paragraph 2, 16 weeks from the day immediately following that on which the further information is received by the relevant planning authority; or
- (iii) such longer period as may be agreed by the undertaker and the relevant planning authority in writing before the end of the period in sub-paragraph (b)(i) or (b)(ii); and

(b) in the case of any other requirement—

- (i) where no further information is requested under paragraph 2, 8 weeks from the day immediately following that on which the application is received by the relevant planning authority;
- (ii) where further information is requested under paragraph 2, 8 weeks from the day immediately following that on which the further information is received by the relevant planning authority; or
- (iii) such longer period as may be agreed by the undertaker and the relevant planning authority in writing before the end of the period in sub-paragraph (i) or (ii).

#### Further information

2.—(1) In relation to any application to which this Schedule applies, the relevant planning authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) If the relevant planning authority considers such further information is necessary and the requirement does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates.

(3) If the requirement specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within 2 business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within 2 business days of receipt of such a request and in any event within 21 business days of receipt of the application.

#### Appeals

3.—(1) The undertaker may appeal in the event that—

(a) the relevant planning authority—

- (i) refuses an application for any consent, agreement or approval required by a requirement included in this Order;
- (ii) does not determine such an application within the time period set out in paragraph 1; or
- (iii) grants it subject to conditions;
- (b) on receipt of a request for further information pursuant to paragraph 2 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (c) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) expiry of the time period set out in paragraph 1;
- (b) the undertaker must submit the appeal documentation to the Secretary of State and on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultee (if applicable);
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person’s attention should be sent;
- (d) the relevant planning authority and the requirement consultee (if applicable) may submit written representations in respect of the appeal to the appointed person within 20 business days beginning with the day immediately following the date on which the appeal parties are notified of the appointment of the appointed person and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties may make any counter-submissions to the appointed person within 20 business days of receipt of written representations made under sub-paragraph (d); and
- (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) The appointment of a person under paragraph (2)(c) may be made by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) If the appointed person considers that further information is necessary to consider the appeal the appointed person must as soon as is practicable notify the appeal parties in writing specifying the further information required.

(5) Any further information specified under sub-paragraph (4) must be provided by the undertaker to the appointed person, the relevant planning authority and the requirement consultee (if applicable) on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the specified date but must otherwise be in accordance with the process and time limits set out in sub-paragraph (2)(d) to (f).

(6) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal, or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(7) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(8) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears that there is sufficient material to enable a decision to be made on the merits of the case.

(9) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(10) If an approval is given by the appointed person pursuant to this Schedule, it shall be deemed to be an approval for the purpose of Schedule 2 to this Order as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the appointed person's determination.

(11) The appointed person may or may not be a member of the Planning Inspectorate but shall be a qualified town planner of at least 10 years' experience.

(12) Except where a direction is given under sub-paragraph (13) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(13) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it shall be made, the appointed person must have regard to Welsh Government Circular NAFWC 07/2003 Planning (and analogous) Appeals and Call-in Procedures or any circular or guidance which may from time to time replace it.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises Tata Steel UK Limited (referred to in this Order as the undertaker) to construct, operate and maintain a gas-fired power station, a 66kV switchgear station building, an electrical cables connection and other related infrastructure on the site of the Port Talbot steelworks. The Order would permit the undertaker to acquire, compulsorily or by agreement; rights over certain land for the purposes of the development authorised by the Order.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 24 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at [ENTER LOCATION].

## **APPENDIX B: EXAMINATION LIBRARY**

## **Internal Power Generation Enhancement for Port Talbot Steelworks Document Library**

This document library relates to the Internal Power Generation Enhancement for Port Talbot Steelworks application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructures pages of the Planning Portal and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- This is a working document and will be updated periodically as the examination progresses.
- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate is published to the National Infrastructure Website but is not included within the document library as such advice is not an examination document.
- This document only contains references to documents submitted from the point of the submission of the application; therefore documents submitted to the Planning Inspectorate or issued by the Inspectorate during the pre-application stage will not be included.
- The order of documents within each sub-section is either chronological, numerical or alphabetical and confers no priority or higher status on those that have been listed first.

## EN010062 – Internal Power Generation Enhancement for Port Talbot Steelworks

### Document Library - Index

Category	Reference
<u>Pre-application and Acceptance Documents</u>  (to include scoping and screening documents, land rights documents, transboundary documents)	PRE-xxx
<u>Application Documents</u>	APP-xxx
<u>Adequacy of Consultation responses</u>	AoC-xxx
<u>Correspondence to the ExA</u>  (this only includes correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination; includes s56, s58 and s59 certificates)	CR-xxx
<u>Relevant Representations</u>	RR-xxx
<u>Procedural Decisions and Notifications from the ExA</u>  (includes Examining Authority's questions (ExA))	PD-xxx
<u>Events and Hearings</u>  (includes agendas for hearings and site inspections, audio recordings, Responses to Notification letters of hearings and pre-hearing submissions if containing information for the Examination)	EV-xxx



<b><u>Representations – by Deadline</u></b>	
<p><b><u>Deadline 1:</u></b></p> <ul style="list-style-type: none"> <li>• Statements of Common Ground (SoCG) requested by the ExA – see Annex G</li> <li>• Habitat Regulations Assessment (HRA) matrices from the applicant</li> <li>• Local impact reports (LIR) from any local authorities (see s60 of the Planning Act 2008)</li> <li>• Responses to the ExA’s first written questions</li> <li>• Comments on relevant representations (RRs)</li> <li>• Summaries of all RRs exceeding 1500 words</li> <li>• Written representations (WRs) by all interested parties</li> <li>• Summaries of all WRs exceeding 1500 words</li> <li>• Comments on any additional representations and submissions received prior to the examination</li> <li>• Submissions from interested parties recommending itinerary items for the accompanied site visit</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>	REP1-xxx
<p><b><u>Deadline 2:</u></b></p> <ul style="list-style-type: none"> <li>• Responses to comments on RRs</li> <li>• Comments on LIRs</li> <li>• Responses to comments on any additional representations and submissions received prior to the examination</li> <li>• Comments on responses to the ExA’s first written questions</li> <li>• Comments on WRs</li> <li>• Any revised draft DCO from applicant</li> <li>• Any further information requested by the ExA for this deadline)</li> </ul>	REP2-xxx
<p><b><u>Deadline 3:</u></b></p> <ul style="list-style-type: none"> <li>• Responses to comments on WRs</li> <li>• Written summary of the oral case put at the draft DCO hearing</li> <li>• Any documents/ information/amendments requested by the ExA</li> </ul>	REP3-xxx
<p><b><u>Deadline 4:</u></b></p> <ul style="list-style-type: none"> <li>• Written summaries of oral cases put at any issue specific hearings</li> <li>• Any updated SoCG</li> <li>• Any documents/information/amendments requested by the ExA for this deadline</li> <li>• Applicant’s final preferred draft DCO</li> </ul>	REP3-xxx

<u>Deadline 5:</u> <ul style="list-style-type: none"> <li>• Comments on applicant's final preferred draft DCO</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>	REP3-xxx
<u>Deadline 6:</u> <ul style="list-style-type: none"> <li>• Comments on REIS</li> <li>• Responses to the ExA's second written questions</li> <li>• Written summaries of oral cases put at the hearings of 14-16 April (if held)</li> <li>• Responses to comments on Applicant's final preferred draft DCO</li> <li>• Any documents/information/amendments requested by the ExA for this deadline</li> </ul>	REP3-xxx
<u>Deadline 7:</u> <ul style="list-style-type: none"> <li>• Comments on responses to the ExA's second written questions</li> </ul>	REP3-xxx
<u>Additional Submissions</u>	AS-xxx
<u>Other Documents</u>  (includes s127/131/138 information, applicant's hearing notices)	OD-xxx

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### Document Library

#### Pre-application Documents

PRE-001	<a href="#">Tata Steel Transboundary Screening</a>
PRE-002	<a href="#">Late responses to Secretary of State's scoping consultation</a>
PRE-003	<a href="#">Late Response OFWAT (REDACTED)</a>
PRE-004	<a href="#">Secretary of State's Scoping Opinion</a>
PRE-005	<a href="#">TATA Steel Scoping Report</a>
PRE-006	<a href="#">Note of Introductory Meeting with Tata Steel - 4 June 2013</a>

#### Application Documents

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APP-183	<a href="#">2.05 Indicative Site Layout Plans (SUBMISSION)</a>
APP-184	<a href="#">2.06 Indicative elevations-sections-floorplans (SUBMISSION)</a>
APP-185	<a href="#">2.07.1 Nature Conservation Sites (SUBMISSION)</a>
APP-186	<a href="#">2.07.2 Sites of Landscape Importance (SUBMISSION)</a>
APP-187	<a href="#">2.07.3 Water Bodies in a River Basin Management Plan (SUBMISSION)</a>
APP-188	<a href="#">2.08 Historic Environment Features (SUBMISSION)</a>

APP-189	<a href="#">DCO Order Limits.zip</a>
APP-190	<a href="#">5.01 Consultation Report</a>
APP-191	<a href="#">5.01.1 Consultation Report - Summary (SUBMISSION)</a>
APP-192	<a href="#">5.02 Statement of Statutory Nuisance (SUBMISSION)</a>
APP-193	<a href="#">5.03 No Significant Effects Report (SUBMISSION)</a>
APP-194	<a href="#">5.04 Details of Other Consents and Licences (SUBMISSION)</a>
APP-195	<a href="#">3.01 rev.1 -Draft Development Consent Order (Revision 1)</a>
APP-196	<a href="#">Applicants explanatory notes on the draft DCO (Revision 2) including Comparison of Revision 1 and Revision 2</a>
APP-197	<a href="#">Draft Development Consent Order (Revision 2)</a>
APP-198	<a href="#">Explanatory Notes on DCO Rev 1 &amp; Comparison of Rev 0 and Rev 1</a>
APP-199	<a href="#">4.03 - Rev.1 Book of Reference</a>
APP-200	<a href="#">4.03 - Rev.1 - Explanatory comments on revised BOR and comparison with submission version</a>
APP-201	<a href="#">Draft Development Consent Order (Revision 3)</a>
APP-202	<a href="#">Explanatory notes on the draft Development Consent Order (Revision 3) including Comparison of Revision 2 and Revision 3</a>
APP-203	<a href="#">DPD1.01 Design Principles Document</a>
APP-204	<a href="#">MAH1.01 High Level Assessment of Major Accident Hazards</a>
APP-205	<a href="#">Draft Development Consent Order (Revision 4)</a>
APP-206	<a href="#">Explanatory Notes on DCO Rev 4 &amp; Comparison of Rev 3 and Rev 4</a>
APP-207	<a href="#">Explanatory Memorandum (Revision 1)</a>
APP-208	<a href="#">Draft Development Consent Order (Revision 5)</a>
APP-209	<a href="#">Draft DCO (Rev 5) comparison between revisions 4 and 5</a>
APP-210	<a href="#">Draft Development Consent Order (Revision 6)</a>
APP-211	<a href="#">Draft DCO (Rev 6) comparison between revisions 5 and 6</a>
APP-212	<a href="#">Draft DCO (Rev 6) comparison between Rev 0 and Rev 6</a>
APP-213	<a href="#">Explanatory Memorandum (Revision 2)</a>
<b>Adequacy of Consultation Responses</b>	
AoC-001	<a href="#">Adequacy of Consultation Response - Brecon Beacons National Park Authority</a>
AoC-002	<a href="#">Adequacy of Consultation Response - Bridgend County Borough Council</a>
AoC-003	<a href="#">Adequacy of Consultation Response - Neath Port Talbot County Borough Council</a>
AoC-004	<a href="#">Adequacy of Consultation Response - Carmarthenshire County Council</a>
<b>Relevant Representations</b>	
RR-001	<a href="#">Civil Aviation Authority</a>
RR-002	<a href="#">City and County of Swansea</a>
RR-003	<a href="#">Network Rail</a>
RR-004	<a href="#">South Wales Police</a>
RR-005	<a href="#">The Coal Authority</a>
RR-006	<a href="#">Natural Resources Wales</a>
RR-007	<a href="#">National Grid Electricity Transmission Plc</a>
RR-008	<a href="#">Royal Mail Group Ltd</a>
RR-009	<a href="#">Associated British Ports</a>
RR-010	<a href="#">Western Power Distribution</a>
RR-011	<a href="#">Public Health England</a>
RR-012	<a href="#">Abertawe Bro Morgannwg University Health Board</a>
RR-013	<a href="#">Neath Port Talbot County Borough Council</a>



RR-014	<u>Mid and West Wales Fire and Rescue Services</u>
<b>Procedural Decisions and Notifications from the Examining Authority</b>	
PD-001	<u>Notification of Hearings and Accompanied Site Visit</u>
PD-002	<u>Notification of Decision to Accept Application</u>
PD-003	<u>Section 55 Checklist</u>
PD-004	<u>Examining Authority's First Round of Written Questions</u>
PD-005	<u>Rule 6 letter</u>
PD-006	<u>Rule 8 Letter</u>
PD-007	<u>Rule 8(3) letter, variation to the timetable (2 January 2015)</u>
PD-008	<u>Rule 17 Letter - request for information from the applicant (30 January 2015)</u>
PD-009	<u>Rule 17 Letter - request for information from the Welsh Government (3 February 2015)</u>
PD-010	<u>Examining Authority's Second Round of Written Questions</u>
PD-011	<u>Notification of Second Round of Written Questions and Issue of the RIES</u>
PD-012	<u>Rule 17 and 8(3) - request for information from the applicant (15 May 2015)</u>
PD-013	<u>Rule 17 and 8 (3) - request for further info from the applicant and Associated British Ports (20 May 2015)</u>
PD-014	<u>Section 99 Letter - notification regarding close of examination</u>
<b>Correspondence to the Examining Authority (ExA)</b>	
<b>Certificates:</b> <i>Certificates of compliance with s.56 &amp; s.59 of the Planning Act 2008 and Regulation 13 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009</i>	
CR-001	<u>Certificates of Compliance with Regulation 13 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009, and s.56 and s.59 of the Planning Act 2008</u>

## Representations

### Deadline 1 – 15 January 2015

- Statements of Common Ground (SoCG) requested by the ExA
- Habitat Regulations Assessment (HRA) matrices from the applicant
- Local impact reports (LIR) from any local authorities
- Responses to the ExA's first written questions
- Comments on relevant representations
- Summaries of all RRs exceeding 1500 words
- Written representations by all interested parties
- Summaries of all WRs exceeding 1500 words
- Comments on any additional representations and submissions received prior to the examination
- Submissions from interested parties recommending itinerary items for the accompanied site visit
- Any further information requested by the ExA for this deadline

#### Notifications

- Notification by interested parties of wish to be heard at an open floor hearing
- Notification of wish to be heard at a compulsory acquisition hearing
- Notification by interested parties of wish to make oral representations at any issue specific hearing, including those on the draft Development Consent Order (DCO), environmental matters (including Environmental Impact Assessment (EIA) and Habitats Regulations Assessment (HRA))
- Notification by interested parties of their intention to attend the accompanied site visit
- Notification by statutory parties of wish to be considered as an interested party

REP1-001	<a href="#">Associated British Port's response to the ExA's 1st written questions</a>
REP1-002	<a href="#">Neath Port Talbot's response to the ExA's 1st written questions</a>
REP1-003	<a href="#">Tata Steel UK Limited's response to the ExA's 1st written questions</a>
REP1-004	<a href="#">Western Power Distribution response to the ExA's 1st written questions</a>
REP1-005	<a href="#">Local Impact Report - City &amp; County of Swansea</a>
REP1-006	<a href="#">Local Impact Report - Neath Port Talbot CBC</a>
REP1-007	<a href="#">Natural Resources Wales submission for deadline 1</a>
REP1-008	<a href="#">Written Representation by Associated British Ports</a>
REP1-009	<a href="#">Written Representation by GTC Group</a>
REP1-010	<a href="#">Written Representation by Health and Safety Executive</a>
REP1-011	<a href="#">Written Representation by Neath Port Talbot County Borough Council</a>
REP1-012	<a href="#">Written Representation by Network Rail Infrastructure Limited</a>
REP1-013	<a href="#">Written Representation by National Grid Electricity Transmission Plc</a>
REP1-014	<a href="#">Applicant's Statement of Progress relating to Statements of Common Ground</a>

### Deadline 2 – 5 February 2015

- Responses to comments on RRs
- Comments on LIRs
- Responses to comments on any additional representations and submissions received prior to the examination
- Comments on responses to the ExA's first written questions
- Comments on WRs
- Any revised draft DCO from applicant
- Any further information requested by the ExA for this deadline

REP2-001	<a href="#">Applicant Comments on Local Impact Reports</a>
REP2-002	<a href="#">Applicant Comments on responses to ExA's 1st Written Questions</a>
REP2-003	<a href="#">Applicant Comments on Written Representations</a>
REP2-004	<a href="#">Applicants response to Rule 17 Letter dated 30 January 2015</a>

REP2-005	<a href="#">Civil Aviation Authority response to Rule 17 Letter dated 30 January 2015</a>
<b>Deadline 3 – 17 February 2015</b> <ul style="list-style-type: none"> <li>• Responses to comments on WRs</li> <li>• Written summary of the oral case put at the draft DCO hearing</li> <li>• Any documents/ information/amendments requested by the ExA</li> </ul>	
REP3-001	<a href="#">Natural Resources Wales - deadline 3 submission</a>
REP3-002	<a href="#">Neath Port Talbot County Borough Council - deadline 3 submission</a>
REP3-003	<a href="#">Tata Steel UK Limited - Summary of oral case made at the Issue Specific Hearing on the draft Development Consent Order</a>
REP3-004	<a href="#">City and County of Swansea - deadline 3 submission</a>
<b>Deadline 4 – 5 March 2015</b> <ul style="list-style-type: none"> <li>• Written summaries of oral cases put at any issue specific hearings</li> <li>• Any updated SoCG</li> <li>• Any documents/information/amendments requested by the ExA for this deadline</li> <li>• Applicant's final preferred draft DCO</li> </ul>	
REP4-001	<a href="#">Associated British Ports - representation for Deadline 4</a>
REP4-002	<a href="#">Natural Resources Wales - representation for Deadline 4</a>
REP4-003	<a href="#">Neath Port Talbot County Borough Council - representation for Deadline 4</a>
REP4-004	<a href="#">Tata Steel UK Limited representation for Deadline 4</a>
REP4-005	<a href="#">Statement of Common Ground between Natural Resources Wales and Tata Steel UK Ltd</a>
<b>Deadline 5 – 19 March 2015</b> <ul style="list-style-type: none"> <li>• Comments on applicant's final preferred draft DCO</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>	
REP5-001	<a href="#">Addleshaw Goddard on behalf of Network Rail Infrastructure Limited - submission for deadline 5</a>
REP5-002	<a href="#">Neath Port Talbot County Borough Council - submission for deadline 5</a>
<b>Deadline 6 – 23 April 2015</b> <ul style="list-style-type: none"> <li>• Comments on REIS</li> <li>• Responses to the ExA's second written questions</li> <li>• Written summaries of oral cases put at the hearings of 14-16 April (if held)</li> <li>• Responses to comments on Applicant's final preferred draft DCO</li> <li>• Any documents/information/amendments requested by the ExA for this deadline</li> </ul>	
REP6-001	<a href="#">Associated British Ports - submission for deadline 6</a>
REP6-002	<a href="#">National Grid Electricity's response to the ExA's 2nd written questions</a>
REP6-003	<a href="#">Natural Resources Wales response to the ExA's 2nd written questions</a>
REP6-004	<a href="#">Tata Steel UK Limited's response to the ExA's 2nd written questions</a>
<b>Deadline 7 – 11 May 2015</b> <ul style="list-style-type: none"> <li>• Comments on responses to the ExA's second written questions</li> </ul>	
REP7-001	<a href="#">Associated British Ports Comments on responses to ExA second Written Questions</a>
REP7-002	<a href="#">Applicant Comments on responses to ExA second Written Questions</a>
REP7-003	<a href="#">Draft Statement of Common Ground between Applicant and Neath Port Talbot County Borough Council</a>

<b>Events and Hearings</b>	
<b>Preliminary Meeting – 9 December 2014</b>	
EV-001	<a href="#">Preliminary Meeting Audio Recording</a>
EV-002	<a href="#">Preliminary Meeting Note</a>
<b>Issue Specific Hearing on the Draft DCO – 12 February 2015</b>	
EV-003	<a href="#">Agenda for the Issue Specific Hearing on the draft DCO</a>
EV-004	<a href="#">Issue Specific Hearing on the draft DCO Audio Recording - Part 1</a>
EV-005	<a href="#">Issue Specific Hearing on the draft DCO Audio Recording - Part 2</a>
<b>Accompanied Site Visit – 24 February 2015</b>	
EV-006	<a href="#">Accompanied Site Visit Itinerary 24 February 2015</a>
EV-007	<a href="#">Examining Authority's Note of Accompanied Site Visit</a>
<b>Open Floor Hearing - 24 February 2015</b>	
EV-008	<a href="#">Open Floor Hearing Agenda 24 February 2015</a>
EV-009	<a href="#">Open Floor Hearing Audio Recording</a>
<b>Compulsory Acquisition Hearing- 25 February 2015</b>	
EV-010	<a href="#">Compulsory Acquisition Hearing and Issue Specific Hearing on environmental matters - Agenda</a>
EV-011	<a href="#">Audio Recording - Compulsory Acquisition Hearing</a>
<b>Issue Specific Hearing on Environmental Matters - 25 February 2015</b>	
EV-012	<a href="#">Audio Recording - Issue Specific Hearing</a>
<b>Issue Specific Hearing to address outstanding issues - 15 April 2015</b>	
EV-013	<a href="#">Copy of Rule 13(6) notice as published in the South Wales Evening Post</a>
EV-014	<a href="#">Notification of additional Hearings</a>
EV-015	<a href="#">Issue Specific Hearing Agenda 15 April 2015</a>
EV-016	<a href="#">Audio Recording - Issue Specific Hearing</a>
<b>Open Floor Hearing - 15 April 2015</b>	
EV-017	<a href="#">Open Floor Hearing Agenda 15 April 2015</a>
EV-018	<a href="#">Audio Recording - Open Floor Hearing</a>
<b>Additional Submissions</b>	
AS-001	<a href="#">Additional Submission from Powys County Council</a>
AS-002	<a href="#">Ben Lewis (GVA) on behalf of Tata Steel UK Limited - Revised building layouts</a>
AS-003	<a href="#">Duncan O'Connor (Pinsent Masons) on behalf of Tata Steel UK Limited - Errata for the Consultation Report</a>
AS-004	<a href="#">Duncan O'Connor (Pinsent Masons) on behalf of Tata Steel UK Ltd - Clarification on the 'No Significant Effects Report' (doc. 5.03)</a>
AS-005	<a href="#">Rhondda Cynon Taf County Borough Council - Observations of the highways and transportation section</a>
AS-006	<a href="#">Tata Steel UK Ltd - Photomontages of the revised parameters</a>
AS-007	<a href="#">Tata Steel UK Ltd - Correspondence from the Applicant, Habitats Screening Report Rev 2, Report to Inform an Appropriate Assessment and Compare version of the Habitats Screening Report (Rev 0 and 2)</a>
AS-008	<a href="#">Network Rail Infrastructure Limited - update on the current negotiations</a>
AS-009	<a href="#">Welsh Government - Response to Rule 17 letter of 3 February 2015</a>

AS-010	<u>Joint statement by Tata Steel UK Limited and Network Rail</u>
AS-011	<u>Tata Steel UK Ltd comments on ABP response to 20 May Rule 17 Request</u>
AS-012	<u>Tata Steel UK Ltd comments on ABP response to 20 May Rule 17 Request - Rev 2</u>
AS-013	<u>Associated British Ports responses to the ExA's questions dated 20 May 2015, and proposed protective provisions</u>
AS-014	<u>Tata Steel UK Limited - Response to Rule 8(3) and Rule 17 letter of 15 May 2015 requesting further information</u>
AS-015	<u>Welsh Government - Response to Rule 8(3) and Rule 17 letter of 15 May 2015 requesting further information</u>
AS-016	<u>Associated British Ports - Response to Rule 8(3) and Rule 17 letter of 20 May 2015 requesting further information</u>
AS-017	<u>GTC Response to Rule 8(3) and Rule 17 letter of 20 May 2015 requesting further information</u>
AS-018	<u>Natural Resources Wales - Response to Rule 8(3) and Rule 17 letter of 20 May 2015 requesting further information</u>
AS-019	<u>Tata Steel UK Limited - Response to Rule 8(3) and Rule 17 letter of 20 May 2015 requesting further information</u>
AS-020	<u>Statement of Common Ground between Applicant and City &amp; County of Swansea</u>
AS-021	<u>Statement of Common Ground between Applicant and Neath Port Talbot County Borough Council</u>
AS-022	<u>Applicant's final examination submission</u>  <u>NB Appendix 1 (Draft DCO (Rev 6) comparison showing changes made between revisions 5 and 6) has been substituted and published separately - APP-211</u>
<b>Other Documents</b>	
OD-001	<u>Transboundary Screening Matrix</u>
OD-002	<u>Report on the Implications for European Sites (RIES)</u>

## **APPENDIX C: EVENTS IN THE EXAMINATION**

## APPENDIX C: EVENTS IN THE EXAMINATION

The Table below lists the main 'events' occurring during the Examination and the main procedural decisions taken by the Examining Authority (ExA).

DATE	EXAMINATION EVENT
<b>10 December 2014</b>	Preliminary Meeting and start of Examination
<b>18 December 2014</b>	<p>The examination timetable (Rule 8 letter) was sent to interested parties</p> <p>Procedural decision following Preliminary Meeting</p> <p>ExA First round of Written Questions</p>
<b>5 January 2015</b>	Issue of Rule 8(3) Variation to exam timetable
<b>15 January 2015</b>	<p><b>Deadline for the receipt by the ExA of:</b></p> <ul style="list-style-type: none"> <li>• Statements of Common Ground (SoCG) requested by the ExA</li> <li>• Habitat Regulations Assessment (HRA) matrices from the applicant</li> <li>• Local impact reports (LIR) from any local authorities (see s60 of the Planning Act 2008)</li> <li>• Responses to the ExA's first written questions</li> <li>• Comments on relevant representations (RRs)</li> <li>• Summaries of all RRs exceeding 1500 words</li> <li>• Written representations (WRs) by all interested parties</li> <li>• Summaries of all WRs exceeding 1500 words</li> <li>• Comments on any additional representations and submissions received prior to the examination</li> <li>• Submissions from interested parties recommending itinerary items for the accompanied site visit</li> <li>• Any further information requested by the ExA for this deadline</li> </ul> <p><b>Notifications</b></p> <ul style="list-style-type: none"> <li>• Notification by interested parties of wish to be heard at an open floor hearing</li> <li>• Notification of wish to be heard at a compulsory acquisition hearing</li> <li>• Notification by interested parties of wish to make oral representations at any issue specific hearing, including those on the draft Development Consent Order (DCO), environmental matters (including Environmental</li> </ul>

<b>DATE</b>	<b>EXAMINATION EVENT</b>
	Impact Assessment (EIA) and Habitats Regulations Assessment (HRA) <ul style="list-style-type: none"> <li>• Notification by interested parties of their intention to attend the accompanied site visit</li> <li>• Notification by statutory parties of wish to be considered as an interested party</li> </ul>
<b>19 January 2015</b>	Notification by the ExA of date, time and place for; <ul style="list-style-type: none"> <li>• Any Accompanied site visit</li> <li>• Open Floor Hearing</li> <li>• Compulsory Acquisition Hearing</li> <li>• Issue specific hearing on environmental matters</li> </ul>
<b>30 January 2015</b>	Issue of Rule 17 request for further information from the applicant
<b>3 February 2015</b>	Issue of Rule 17 request for further information from the Welsh Government
<b>5 February 2015</b>	Deadline for the receipt by the ExA of: <ul style="list-style-type: none"> <li>• Responses to comments on RRs</li> <li>• Comments on LIRs</li> <li>• Responses to comments on any additional representations and submissions received prior to the examination</li> <li>• Comments on responses to the ExA's first written questions</li> <li>• Comments on WRs</li> <li>• Any revised draft DCO from applicant</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>
<b>12 February 2015</b>	Issue specific hearing on the draft Development Consent Order
<b>17 February 2015</b>	Deadline for the receipt by the ExA of: <ul style="list-style-type: none"> <li>• Responses to comments on WRs</li> <li>• Written summary of the oral case put at the draft DCO hearing</li> <li>• Any documents/ information/amendments requested by the ExA</li> </ul>
<b>24 February 2015</b>	Site Visit (Accompanied)
<b>24 February 2015</b>	Open Floor Hearing
<b>25 February 2015</b>	Compulsory Acquisition Hearing



<b>DATE</b>	<b>EXAMINATION EVENT</b>
<b>25 February 2015</b>	Issue Specific Hearing on environmental matters
<b>5 March 2015</b>	<p>Deadline for the receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Written summaries of oral cases put at any issue specific hearings</li> <li>• Any updated SoCG</li> <li>• Any documents/information/amendments requested by the ExA for this deadline</li> <li>• Applicant's final preferred draft DCO</li> </ul>
<b>19 March 2015</b>	<p>Deadline for the receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on applicant's final preferred draft DCO</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>
<b>19 March 2015</b>	Notification by the ExA of additional Issue Specific and Open Floor Hearings
<b>26 March 2015</b>	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> <li>• the Report on Implications for European Sites (RIES)</li> <li>• ExA's second written questions</li> </ul>
<b>15 April 2015</b>	Issue Specific Hearing on Outstanding Issues
<b>15 April 2015</b>	Open Floor Hearing
<b>23 April 2015</b>	<p>Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• Comments on RIES</li> <li>• Responses to the ExA's second written questions</li> <li>• Written summaries of oral cases put at the hearings of 15 April 2015</li> <li>• Responses to comments on Applicant's final preferred draft DCO</li> <li>• Any documents/information/amendments requested by the ExA for this deadline</li> </ul>
<b>11 May 2015</b>	<p>Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• Comments on responses to the ExA's second written questions</li> </ul>

<b>DATE</b>	<b>EXAMINATION EVENT</b>
<b>15 May 2015</b>	Issue of the ExA's further written questions under Rule 8 (3) and Rule 17 for the applicant
<b>20 May 2015</b>	Issue of the ExA's further written questions under Rule 8(3) and Rule 17 for the applicant and Associated British Ports
<b>9 June 2015</b>	Close of examination

## **APPENDIX D: LIST OF ABBREVIATIONS**

## **APPENDIX D: LIST OF ABBREVIATIONS**

AA	Appropriate Assessment
ABP	Associated British Ports
AOD	Above Ordnance Datum
AONB	Area of Outstanding National Beauty
AQS	Air Quality Strategy
ASV	Accompanied Site Visit
AVTS	Afan Valley Trunk Sewer
BBNP	Brecon Beacons National Park
BBNPA	Brecon Beacons National Park Authority
BCBC	Bridgend County Borough Council
BFG	Blast Furnace Gas
BTA	Boiler Turbo Alternator
CA	Compulsory Acquisition
CABE	Chartered Association of Building Engineers
CCC	Carmarthen County Council
CCGT	Combined Cycle Gas Turbine
CCR	Carbon Capture Ready
CCS	Carbon Capture Storage
CCSC	City and County of Swansea
CCW	Countryside Commission for Wales
CHP	Combined Heat and Power
CoCP	Code of Construction Plan
CO2	Carbon Dioxide
CPDA	Crime Prevention Design Advisor
DAM	Development Advice Map
Db	Decibels
DCC	Dwr Cymru Cyfyngedig (Welsh Water)
DCLG	Department for Communities and Local Government
DCO	Development Consent Order
DECC	Department of Energy and Climate Change
DEFRA	Department for Environment, Food and Rural Affairs
DMP	Dust Management Plan
DNO	Distribution Network Operator
DPD	Design Principles Document
DQRA	Detailed Quantitative Risk Assessments
EA	Environment Agency
EEA	European Economic Area
EIA	Environmental Impact Assessment
EM	Explanatory Memorandum
EPS	Emission Performance Standards
ERFRMP	Emergency Response and Flood Risk Management Plan
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
FCA	Flood Consequence Assessment
FRA	Flood Risk Assessment
GGAT	Glamorgan Gwent Archaeological Trust

GIS	Gas Insulated Switchgear
GWA 2006	Government of Wales Act 2006
ha	Hectares
HMP	Habitat Management Plan
HRA	Habitats Regulations Assessment
HSE	Health and Safety Executive
HSR	Habitats Screening Report
IROPI	Imperative Reasons of Overriding Public Interest
IPC	Infrastructure Planning Commission
ISH	Issue Specific Hearing
km	Kilometres
Kv	Kilovolt
LCPD	Large Combustion Plant Directive
LDP	Local Development Plan
LHA	Local Highways Authority
LIR	Local Impact Report
LPA	Local Planning Authority
LSE	Likely Significant Effect
LVIA	Landscape and Visual Impact Assessment
m	Metres
MHWS	Mean High Water Springs
MMO	Marine Management Organisation
MP	Minister of Parliament
MWe	Megawatt Electrical
MWth	Megawatt Thermal
NERC	Natural Environment and Rural Communities
NGET	National Grid Electricity Transmission
Ngrid	National Grid
NOx	Nitrogen Oxide
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPTCBC	Neath Port Talbot County Borough Council
Nrail	Network Rail
NRW	Natural Resources Wales
NSER	No Significant Effects Report
NSIP	Nationally Significant Infrastructure Project
OFH	Open Floor Hearing
PA2008	The Planning Act 2008
PCC	Powys County Council
PDR	Peripheral Distributor Road
PFRA	Preliminary Flood Risk Assessment
PHE	Public Health England
PINS	The Planning Inspectorate
PM	Preliminary Meeting
PNI	Protection of National Infrastructure
PPG	Planning Policy Guidance
PPS	Planning Policy Statement
PROW	Public Right Of Way
RBD	River Basin District
RBMP	River Basin Management Plan

RCTCBC	Rhondda Cynon Taf County Borough Council
RIAA	Report to Inform an Appropriate Assessment
RIES	Report on the Implications for European Sites
RR	Relevant Representation
SAC	Special Areas of Conservation
SNCB	Statutory Nature Conservation Board
SoCG	Statement of Common Ground
SoS	Secretary of State
Sox	Sulphur Oxide
SO2	Sulphur Dioxide
SPG	Supplementary Planning Guidance
SSSI	Site of Special Scientific Interest
SU	Statutory Undertakers
SuDs	Sustainable Drainage Systems
SWP	South Wales Police
TAN	Technical Advice Note
TCPA	Town and Country Planning Association
UDP	Unitary Development Plan
UK	United Kingdom
UKC	Under Keel Clearance
USV	Unaccompanied Site Visit
WECTU	Wales Extremism and Counter Terrorism Unit
WFD	Water Framework Directive
WG	Welsh Government
WPD	Western Power Distribution