ABERGELLI POWER LIMITED ("the Applicant")

WRITTEN SUMMARY OF THE APPLICANT'S ORAL CASE PUT AT THE DEVELOPMENT CONSENT ORDER ("DCO") ISSUE SPECIFIC HEARING

WEDNESDAY 13 DECEMBER 2018 at 10:00

1. BACKGROUND

1.1 The Issue Specific Hearing ("**ISH**") on the draft Development Consent Order ("**DCO**") was held on 13 December 2018 at 10:00 at The Village Hotel, Langdon Road, Swansea, SA1 8QY.

1.2 The ISH followed the agenda published by the Examining Authority ("**ExA**") on 6 December 2018 ("**the Agenda**"). The format of this note follows that of the Agenda. The Applicant's substantive oral submissions commenced at item 2 of the Agenda and this not does not cover items which were procedural or administrative in nature.

2. AGENDA ITEM 2 – INTRODUCTION OF THE PARTICIPATING PARTIES

2.1 The Examining Authority (the "**ExA**"): - Planning Inspector, Martin Broderick.

2.2 The Applicant:

2.2.1 Speaking on behalf of the Applicant: - Nick McDonald (Legal Director at Pinsent Masons LLP)

2.2.2 Present from the Applicant: - Kirstin Gardner (Stag Energy)

2.2.3 The Applicant's consultants and legal advisers: - Kate Jones (Senior Associate at Pinsent Masons LLP) and Catherine Anderson (AECOM, consultant for the Applicant).

2.3 The following parties participated in the ISH:

2.3.1 City and County of Swansea ("**CCS**"): - Andrew Ferguson (Principal Planning Officer) and Jonathan Wills (Senior Lawyer)

2.3.2 Natural Resources Wales ("**NRW**") – Louise Edwards (Senior Planning Adviser) and Hannah Roberts (Case Manager)

2.3.3 Loxley Solicitors – Richard Price representing Wynne Watkins, Michael Edwards and Rediplay Limited

2.4 The hearing used the draft DCO submitted at Deadline 1 (Examination library reference REP1-014) with tracked changes as a working copy for the hearing, with reference made where relevant to further updates submitted by the Applicant at Deadline 2 (Examination library reference REP2-006).

3. **AGENDA ITEM 4 - DEVELOPMENT CONSENT ORDER ARTICLES**

Ref	Issue raised by the ExA	Applicant's Response
		Part 1
1	Article 2 - definitions	Mr Ferguson noted that CCS' submissions have been made in writing, but that it is useful to discuss some of these issues. <u>Definition of "commence"</u> CCS made representations in relation to the definition of commence, in terms of including fencing in the definition such that it is excluded from triggering commencement, and potential problems this causes with Requirement 5, which relates to permanent and temporary fencing. The Applicant has sought to provide further clarification but CCS request further clarification in the DCO. Mr McDonald stated that the Applicant did provide further explanation at reference 20.8-20.9 of the Applicant's response to CCS' Local Impact Report ("LIR") submitted at Deadline 2, and considers that the definition of commence and Requirement 5 operate together as intended. The Applicant is content to review those again and discuss further with CCS, and look to provide further clarification if as a result it is felt to be necessary. The ExA asked whether there is any precedent for this definition in other DCOs. Mr McDonald confirmed that there are other DCOs that have included fencing within the concept of preliminary works which do not trigger 'commencement'. The ExA asked whether this is included in any Welsh DCOs. Mr McDonald stated that the Applicant will address this in terms of Welsh DCOs in writing at Deadline 3.

		[*Post hearing note: There is precedent for this wording in other Welsh DCOs. Swansea Bay Tidal Generating Station Order 2015 and the Glyn Rhonwy Pumped Storage Generating Station Order 2017 include the "erection of any temporary means of enclosure" within the definition of 'commence'*.] <u>Definition of "maintain"</u> Mr Ferguson raised concerns with the definition of maintain, specifically the words "remove" and "reconstruct" as stated in CCS' previous discussions in Deadline 2. CCS also has concerns that the DCO is not the same as planning permission and the TCPA principles that govern how planning permission can only be built out once may not apply. Mr Ferguson stated that the case law provided by the Applicant is noted but that this is a separate consent under a different regime. When looking at the Trump International Golf Club Scotland Limited and Dunnett Investments Limited cases (submitted by CCS at Deadline 2 as Appendix I and Appendix J), 'reconstruct' and 'remove' provides significant scope for works that can be undertaken provided it is not the whole development. Mr Ferguson raised concerns that the current terminology could mean the decommissioning requirement is circumvented. Mr Ferguson also stated that there is no longer a concern with the term "replace" and that it is sufficient in the definition of maintain. The ExA asked for clarification that the concern is that the Applicant can repower the generating station on basis of definition of maintain. Mr Ferguson confirmed this is the concern and that this is interlinked with concerns raised with the lifetime of the consent and the decommissioning requirement. Mr McDonald stated that the Applicant has previously provided representations in page 2 of its written summary of oral submissions made at the previous ISH submitted at Deadline 1. CCS' LIR raised further concerns which have been addressed by the Applicant at page 19 of the response to CCS' LIR. Mr McDonald stated that the activities which CCS would like struck out of the definition are necessary and a legitimate part of maintenance - if part of the generating station breaks down the Applicant will need to be able to remove and replace it. The case law cited by the Applicant applies to a DCO - the Applicant remains of the view that the same principles are applicable to a DCO, and that the same issues arise to be considered for a Planning Permission. Mr McDonald stated that the definition of maintain will ultimately come down to judgment by the planning authority on whether activities are properly 'maintenance'. Mr McDonald noted that the definitions of "development" in the Town and Country Planning Act ("TCPA") 1990 and the Planning Act 2008 (the "PA 2008") regimes are the same.

		The ExA questioned if the Applicant's expert witness yesterday in the Compulsory Acquisition hearing said maintenance will include replacement of the turbine after 12.5 years. Mr McDonald confirmed that there are two elements to maintenance. There is the maintenance regime known from the start, which are planned maintenance activities and outages. That will include items being taken off site, refurbished and brought back on site. There can also be unplanned maintenance and outages, where maintenance activities may need to take place that are not part of that planned regime. The ExA queried whether there are any made DCOs in Wales where this definition has been adopted. Mr McDonald stated that the definition included has been commonly included across various generating station DCOs, such as that for the Wrexham Energy Centre. This is to be confirmed in writing at Deadline 3. The ExA asked whether the definition is along the lines or exactly the same as in previous DCOs. Mr McDonald stated that the Applicant has sought to provide further comfort through additional drafting in the definition, and the definition in other DCOs has not included that additional drafting and therefore could be viewed as wider than what the Applicant is proposing. The Wrexham Gas Fired Generating Station Order 2017 does include the terms "adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not the whole of, the authorised development" and the Applicant seeks similar wording as well as further amendments submitted at Deadline 2. *[Post hearing note: the Wrexham Gas Fired Generating Station Order 2017 and the Hirwaun Generating Station Order 2015 include the following definition of 'maintain': ""maintain" includes, to the extent assessed in the environmental statement, inspect, repair, adjust, alter,* ***remove, refurbish, reconstruct, replace*** *and improve any part, but not the whole, of the authorised development and "maintenance" and "maintaining" are to be construed accordingly".* Mr Ferguson stated the Applicant has tried to overcome some of the concerns raised by CCS in their Deadline 2 submission, but that there is still a concern that the Applicant can remove 95% of work number 1 and still comply with the definition of maintain on the face of it. Mr McDonald explained that the definition is also caveated by reference to the effects assessed in the Environmental Statement (the "ES") and so has to be read with what that assessment concluded regarding maintenance. The Applicant would be undertaking maintenance activities as required during the lifetime of

		the operation and requires that the definition clearly permits it to do those activities. The alternative would be having to seek further consents under the PA 2008 to carry out those activities. Mr McDonald noted that CCS' concerns related in part to maintenance activities and the interaction between this and Requirement 27 (decommissioning) - the Applicant considers that the two operate together and are drafted so as to properly secure the decommissioning. The Applicant does not consider that the DCO would give it the ability to decommission without following the proper process of discharging Requirement 27 and obtaining approval to do so. Mr Ferguson stated that CCS has no issue with the Applicant seeking to maintain the development. However, there is little in the ES referring specifically to maintenance and therefore it would be useful for the Applicant to provide the "known regime" and query if the words "remove" and "refurbish" are deleted if that would not still allow the Applicant to take things away, "replace", while ensuring the issues raised by CCS do not become relevant in the future. The Applicant offered to provide a short note explaining the likely maintenance regime for the Project.(See below). The ExA asked if there is a precedent in Wales for the requested deletions. Mr Ferguson stated that he is not sure if this is considered in any detail in any other cases, particularly as some of these issues may turn up in 5, 10 or 15 years time. Mr Ferguson did not point to a precedent. [*Post-hearing note*: *in relation to the maintenance of the Project, the Applicant provides the following indication of the likely activities. The Generating Equipment will undergo both scheduled and unscheduled maintenance activities throughout its operational life. The Applicant proposes to contract with an Own Equipment Manufacturer (OEM) for both scheduled and unscheduled maintenance support. Typically this covers parts, parts repair and labour for a range of maintenance and inspection activities.* *General maintenance will be carried out by the Applicant on a day-to-day basis to keep the plant as required by good industry practice and OEM recommendations. Examples of typical activities would include operational inspection, lubrication, calibration, adjustment, packing of valves, provision of fluids, greases and replacement of consumable materials, filters, strainers and cartridges, maintenance or replacement of sensors, fuses, gauges, switches and light bulbs.* *The Applicant will also carry out routine scheduled maintenance and inspection of the Generating Equipment as required by good industry practice and OEM recommendations - these are generally*

		undertaken on a rolling annual basis. Examples of activities include: air inlet opening, inspection and cleaning; compressor stator and blades opening man-holes, visual inspection of first row of vanes/blades; visual inspection of accessible areas of combustion chamber; turbine stator and rotor visual inspection of first and last row vanes/blades; and turning gear inspection. *Preventative maintenance will also be undertaken which will involve more significant work, including the supply of parts. Certain parts will be held by the OEM supply chain and transported to site as required to replace components or allow refurbishment for future use. Examples of activities (in addition to the rolling annual activity) include: opening of compressor casing, inlet guide vane inspection, variable guide vane inspection, recoating of compressor vanes/blades, inspection and replacement of burners; opening of turbine stator and rotor non destructive examination of casing and blades; compressor & turbine bearing inspection; GT auxiliary hydraulic, lubrication and jacking oil systems; generator clutch, static excitation system slip rings inspection; generator stator test and inspection; cooler and ventilation unit checks.* *Unscheduled maintenance of any components will also need to be undertaken as required, and will be carried out as swiftly as possible to minimise downtime and loss of availability (as with any production facility). In such an event (and depending on the nature of the problem) it may be necessary to undertake significant work involving mobile plant and man power to remove major components of the Generating Equipment for repair or refurbishment in specialised off-site OEM facilities.* *When scheduled or unscheduled maintenance is to occur to certain components (such as the gas turbine (GT), generator etc.), the buildings housing them need to be taken into account. They are functional elements of the Generating Equipment, which provide weather proofing and acoustic attenuation. With an unscheduled maintenance event, and to effectively maintain the Generating Equipment, it is normal practice to remove cladding, insulation, and the general fabric of the buildings. This is achieved using (for example) mobile cranes, Mobile Elevated Working Platforms (MEWPS), tele-handlers, heavy load transporters etc. to put into effect the disassembly of the equipment using OEM procedures. This then allows removal of the faulty component and replacement with back-up components or if necessary a loan-unit. Implicit with all these activities is the availability of an access road capable of accommodating heavy load transporters for major components to/from specialised off-site OEM facilities at short notice.* *Following removal and repair or refurbishment of the affected components it is necessary to reverse this process and replace or re-install refurbished components, inspect components for correct installation, reconstruct the fabric of buildings, and finally re-commission the plant.*

		The above activities are necessary to maintain the Generating Equipment and are standard practice to return it to service as soon as possible and minimise downtime/loss of availability.]
2	Start up and shut down periods	Mr Ferguson stated that the concern with the shut down period is that this period includes use of machinery, such as road sweepers and wheel washers, and people on site which do cause noise and disturbance. The start up and shut down periods add an additional hour to the working day. Mr McDonald stated that CCS addressed this in the LIR. The Applicant considers that due to the nature of the activities that are permitted and defined in Article 2 there would be no significant effect on the local community and these activities are necessary and appropriate. CCS at Appendix D of their Deadline 2 submission stated that 15 minutes either side of the working day may be sufficient - the Applicant does not agree that 15 minutes is sufficient given the workforce that will be present on site for some of the construction period. The Applicant considers that even 30 minutes may not be sufficient but this is an issue for the Applicant to manage, where shut down may start earlier than the final 30 minute period. The ExA queried if the Applicant is happy that this is assessed in the ES. Mr McDonald confirmed that this is addressed in reference 17 of the Applicant's written summary of the oral case in Deadline 1. This will be confirmed in Deadline 3. Mr Ferguson stated that whilst maintaining that start up and shut down added an extra hour to the day, which CCS does not agree with, CCS also has concerns with the start time, where starting before 8am has caused issues on other sites due to people on site causing noise and disturbance. *[Post-hearing note: the Applicant has considered the topics in the Environmental Statement for which the assessments could be affected by the inclusion of 30 minute start up and shut down periods, as included in the draft DCO. Information on each is set out below. It is clear that the assessments in the Environmental Statement remain robust and correct.* ***Noise and Vibration:*** *In BS 5228 the day time hours are defined as 07:00 to 19:00 Monday to Friday and 07:00 to 13:00 on Saturdays. In terms of the standard methodology this means that the day's activities can be averaged over that 12 hour period when assessing the construction noise impact (as stated in Tables 7.7 and 7.8 of the ES [APP-042]). The proposed construction hours for the Project are 08:00 to 18:00 with a start-up/shut down period of 30 minutes either side. These periods both fall within the BS*

		5228 Daytime definition. The indicative construction noise levels (ES Chapter 7 [APP-042], Tables 7.16 to 7.19) were predicted over the ten hour proposed construction period, and these predictions were compared with the twelve hour BS 5228 criteria. The ES assessment basis therefore represents a worst case as, if the same proposed construction activities had been averaged over the full twelve hour period, the predicted levels would have been slightly lower. The activities associated with the start-up and shut-down periods will produce less sound than the construction activities themselves. Therefore if those periods were included in the calculation (for either the full BS 5228 twelve hours, or the eleven hour start-up-construction-shut-down period) the predicted indicative levels would have been lower. *The predicted indicative construction noise levels for the Project were below the LOAEL level as stated in ES Chapter 7 [APP-042] Table 7-7, apart from at NSR6. This was due to a very brief period during construction of the Gas Connection, which passes within 60 m of NSR6. As such, the significance of effects is predicted to be Negligible for the NSRs during the various construction phases. The specific inclusion of the start-up and shut-down periods would give slightly lower indicative levels but would not result in any change to the assessment.* ***Air Quality:*** *Air Quality: Air quality effects during the construction phase of works were assessed in accordance with the Institute of Air Quality Management (IAQM) guidance for assessing the impacts of construction and demolition works on dust and PM10. The assessment methodology takes account of the location of receptors to the site, the sensitivity of those receptors to dust which may cause nuisance and PM10 which may affect human health and uses this to determine the sensitivity of the area to dust deposition and airborne PM10. Each activity phase of the works is then assessed, i.e. demolition, earthworks, construction and trackout (transfer of material from site to roads) in terms of the scale of works (area, volume of material number of vehicles on the site etc.) and determine the risk that nuisance dust effects or air quality effects may occur then sets out the required mitigation in order to minimise this risk to negligible. The assessment methodology is not time based as on certain construction works activities may take place 24 hours a day and as such as long as the appropriate mitigation levels are applied at all times that work is taking place, as identified in the air quality assessment, then these are appropriate to reduce the risk of impacts on ait quality and nuisance dust deposition to a negligible level during normal operating hours and during start-up/shut-down. As such no changes to effects are therefore predicted due to start-up and shut down periods.*
Part 2		

3	Benefit of the Order (Article 6)	No comments were made on Article 6 by CCS.
4	Transfer of the benefit of the Order (Article 7)	No comments were made on Article 7 by CCS. Mr McDonald stated that the Applicant at the Deadline 1 submission in reference 1.7.4 of the Applicant's response to the ExA's First Written Question explained that this change does not amend the substance of the article, but that the changes reflect the Secretary of State's ("**SoS**") preferred drafting in recent DCOs that have been made.
Part 3		
5	Streets.	It was confirmed that there were no changes to the articles relating to streets.
Part 4		
5	Reprise of Applicants response to ExA question 1.7.5. Time provisions in Article 17 changed to 28 days.	Mr McDonald stated that Article 17 was altered at Deadline 1 requiring the Applicant to provide 28 days notice to access land for surveys, rather than 14 days, following the request made at the first ISH on the draft DCO. The Applicant would (as for all powers in respect of third party land) enter by agreement where possible. This power is a reserved power to ensure the Applicant can undertake the necessary surveys on third party land to, for example, carry out noise surveys and thus discharge requirements. The Applicant is content to amend the article and has provided a longer notice period. No other comments were made on the article by CCS or other interested parties.
Part 5		
6	General	Mr McDonald explained that Part 5 provides various powers of acquisition the Applicant seeks in respect of the Order Land, and that it matches closely with what is provided for in the Model Provisions and various other DCOs. It adopts the same hierarchical order in terms of the interests sought in land. The Applicant is only seeking the relevant land interest that is necessary to enable it to implement, operate, maintain and decommission the project, such that freehold interest is only sought where it is necessary and justified. The Applicant sought acquisition of new rights where relevant parts of the project can be delivered with only that interest, and only temporary possession where land is required for construction only.

		The Applicant believes it is proportionate and that this is an approach that is balanced to ensure that the Applicant can deliver the project with no matters preventing it, whilst ensuring that interference with land outside the Applicant's control is limited as far as possible in relation to its spatial extent and the powers/ land interests sought by the Applicant.
7	Article 23(3), 25, 26 and 27 changes	Mr McDonald explained that the changes made at Deadline 1 are to reflect changes related primarily to legislation, particularly the Neighbourhood Planning Act 2017. This is similar to those applied in other DCOs that have been recently made including Silvertown Tunnel Order 2018. No Welsh DCOs have been made in the relevant period since the primary legislation has been changed, so there are no other examples of Welsh DCOs that have considered those matters, but the legislative changes apply equally to England and Wales. These changes do not change the substance of compulsory acquisition powers sought. Mr Price confirmed that he had no submissions on these articles.
8	Reprise of Applicant's response to ExA question 1.7.7. Article 40 (certification of plans etc. changes)	Mr McDonald explained that Article 40 secures that certain documents issued to the SoS are certified to ensure clarity on approved documents going forward. Requirements 16, 18 and 22 refer to plans that will be produced as part of the detailed design prior to construction – these do not exist at this stage or at the stage of the DCO being granted. Where appropriate, those requirements are tied to outline plans that are in existence now and submissions to discharge requirements have to be in accordance with those outline plans. By way of example, Requirement 18 requires a dust management plan to be submitted and approved regarding work number 5 and that document must follow the CEMP, which is to be certified under Article 40. No other parties made any comments on Article 40.
9	Article 42(6) change	Mr McDonald stated that this Article was amended at Deadline 1 to reflect a request from CCS. Where the Applicant is seeking consent, the information provided to the person from whom consent is sought must include the relevant article of the DCO under which consent is sought. This is set out in the Schedule of Changes submitted at Deadline 1. Mr Ferguson stated that this amendment is welcomed by CCS.

4. **AGENDA ITEM 5 – SCHEDULE 1 AUTHORISED DEVELOPMENT**

Ref	Issue raised by the ExA	Applicant's Response
10	Integral Development the Applicant's position	Mr McDonald stated the Applicant's position is that the information included in Schedule 1 of the DCO is properly regarded as part of the Nationally Significant Infrastructure Project ("**NSIP**") and integral to it. Development not included in Schedule 1, being the Electrical Connection and the Gas Connection, are Associated Development ("**AD**") and cannot be included in Schedule 1 due to the application of the PA 2008 in Wales. The Applicant's position regarding these matters is set out in the Explanatory Memorandum and the Statement of Reasons submitted with the application. This is set out in page 10 of the written summary of the oral submission at Deadline 1 and in section 3 of the Applicant's response to the Written Representations submitted at Deadline 2. Mr Ferguson stated that CCS can understand the confusion caused in the past regarding the electrical and gas connections, for example, Hirwaun Generating Station is an indication of what has been considered previously by the SoS. Mr Ferguson stated that it has been clear throughout this Project in terms of what has and has not been considered within the DCO, and the ES considers all work items together. From CCS' perspective it is clear what is and is not included and CCS is happy with the approach taken. The ExA queried the status of the gas and electrical planning applications. Mr Ferguson explained that CCS approved both applications subject to conditions on 6 December 2018. (See Appendices 1 and 2 to the Applicant's written summary of oral submissions for the EIA ISH, submitted at Deadline 3 for copies of the decision notices as issued). Mr Price stated that his submissions were made on behalf of all 3 respondents that he represents. The respondents submit that the draft DCO is invalid as currently drafted and submitted as it does not comply with the requirements of the PA 2008. Mr Price stated that the Applicant has incorrectly interpreted and applied the DCLG guidance regarding AD. Mr Price explained that the Applicant, in its response to the written representations, points out that the original 2009 DCLG guidance included grid connections in the indicative list of AD. The 2009 DCLG guidance was replaced in 2013 and the latest guidance omits reference to grid connections, but Annex A includes access arrangements which include vehicular and pedestrian access ways. Mr Price stated it is important to place the DCLG guidance in the context of the current project. The DCLG guidance recognises it is of limited relevance to Wales, but regarding NSIPs more generally the guidance is clear that each project should be treated on a case by case basis (as per

		paragraph 5 of guidance) and it is therefore clear that examples in Annexes should not be treated as AD as a matter of course or that such development is not integral to a project. Mr Price stated that where development constitutes an integral part, it cannot be AD under section 115 of the PA 2008. The Written Representation submitted on behalf of the 3 respondents made reference to the case *Redcar and Cleveland Borough Council) v Secretary of State for Business, Enterprise and Regulatory Reform [2008] EWHC 1847 (Admin)* ("**Redcar**") and the Applicant responded on the relevance of this case to the project. Mr Price stated disagreement with the conclusions reached by the Applicant on that case. The Applicant quotes Mr Justice Sullivan regarding the judgment at paragraph 6.2.6 of the response. The decision maker in considering if a DCO should be granted is required to define the place the electricity is generated. Mr Justice Sullivan concluded that it is appropriate to include all elements in a single application compared to, for example, wind turbines in large areas. The physical proximity or geographical considerations are critical in defining if the electrical or gas connections are integral. This is distinguishable from Redcar as in the current project both the gas and electrical connection are in the Order Land, despite being excluded from the DCO development. This points to them being integral. The electrical connection runs along the same route as the access road, albeit the electrical connection is shorter and more proximate to the generation station, whereas the access road is included in the DCO and the electrical connection is not. Mr Price stated that a determinative question to ask when considering if an element is part of the generating station is where the electricity is generated. The response is that the electrical and gas connections do not generate electricity, but by the same token, how can the access road be integral? The respondents submit that the Applicant's approach to the DCO is inconsistent. Mr Price stated that the Applicant points to strictly objective and rigid interpretations which have been transplanted from Hirwaun into the project. The SoS did not provide a proper explanation of why the gas and electrical connection in Hirwaun should be excluded, except for the case law that the SoS had regard to. Regarding Redcar and other DCOs made in Wales, and referred to by the SoS in Hirwaun, these are distinguishable from the Applicant's project as there are substantial distances. Mr Price stated that the applicant in the Hirwaun case obtained Counsel's opinion, and that clearly supported the view that the electrical connection and gas connection were integral to that project. The SoS in reaching its decision in Hirwaun did so contrary to the local authority, examiner and applicant, and the ExA is not bound by the Hirwaun decision. The electrical and gas connection should be included as integral to the project and should have been included in the DCO. Therefore, the draft DCO is invalid and should not be granted.

		Mr McDonald explained that in relation to the AD guidance and what is or is not in the 2009 or 2013 versions of it, the 2013 version of the guidance includes in Annex A connections to electricity networks and in Annex B underground and overhead lines, and gas pipelines. The Applicant agrees that the AD guidance is guidance, and it is clear that it does not and cannot set the legal position and interpretation of the law alone. The Guidance is one of the elements which, as per the Applicant's response to the Written Representations submitted at Deadline 2, the Applicant has considered in constructing the DCO and in forming its view of what is integral to the NSIP and what is not. Mr McDonald stated that regarding the *Redcar* case, the Applicant disagrees with the respondent's reading of elements of that and whilst the Applicant does consider that Redcar has some relevance as it was addressing a generating station and what it encompasses, it was considering a different regime which has a concept of ancillary facilities, but not a concept of AD, and does not include compulsory acquisition being included as an element of the project. Paragraph 4.26 of the response to the Written Representations identifies the key point from Redcar, which is not whether electricity is of use or has been converted to a usable form, but where it is generated. The connections were regarded as ancillary facilities in Redcar, not as being integral to the generating station. The Applicant does not agree that because the Order land includes the electrical and gas connections, that it must mean that they are integral. Their inclusion in the Order land is a reflection of the terms of section 122 of the PA 2008, which permits compulsory acquisition to be sought over land, including where the land is required for the NSIP or is to facilitate or is incidental to the NSIP development. The fact that the electrical connection is on the similar route to the access route does not indicate that the electrical connection must be integral – that reflects the Applicant's design process. Mr McDonald stated that the Applicant has designed its project and sited it close to where the electrical connection can be made to the substation and has designed and consulted on the routes of the access road and has determined which of those should be considered to be taken forward. The Applicant then considered the appropriate way in which these elements must be consented and what powers of compulsory acquisition are available. It is sensible that the electrical connection and access routes are along similar routes and the Applicant considers this to assist in minimising, for example, the environmental effects and the extent to which it is necessary to use land not in control of the Applicant. Mr McDonald expressed that the Applicant remains firmly of the view that the draft DCO is valid and that Schedule 1 seeks consent for the NSIP, as it must, and that elements that are not included within it but are part of the project are AD for which consent cannot be sought in Wales.

		The ExA asked if CCS had considered whether they could have accepted the access road as a planning application. Mr Ferguson stated that CCS had not considered the point. CCS accepted the Applicant's explanation regarding the position for the electrical connection and the gas connection but CCS did not consider whether the access road should be submitted via the planning permission route. Mr Price stated that the Applicant refers to guidance and electricity networks, but his understanding is that the electrical connection is not an electricity network and that electricity network suggests that electricity is delivered to a large area, which is not the purpose of the Applicant's electrical connection. Mr Price clarified that he was not suggesting that the electrical and gas connection being in the Order land meant that they must be integral, but does suggest that it points to them being integral. The proximity of the electrical connection and the route of the access road suggests that they are proximate to the main plant and therefore must be integral. Mr Price stated that to exclude one and include another seems incoherent. Mr McDonald confirmed that these matters would be followed up in writing at Deadline 3. [*Post hearing note*: *The Applicant has set out in its Response to written representations of Michael Edwards, Wynne Watkins and Rediplay Limited at Deadline 2 why the Applicant considers that the access road is integral to the development. Please refer to page 9 and paragraphs 4.20 – 4.23.* *There is no direct access to the site from the public highway, and given the large plant and volume of construction equipment required to construct the project, it would not be possible to construct the project without first constructing a suitable route to site.* *The route designed is a permanent route as it is a critical part of the operation of the generating station that access is available for operational, maintenance and safety reasons at all times. The newly constructed section over which rights are sought serves no other purpose than facilitating the construction and operation of the generating station.* *The plant will require scheduled maintenance during its lifetime, which will require access for plant and machinery and may require removal of large items for servicing or repair. In the event of unscheduled maintenance, it is possible that the Applicant may need to remove plant from the site for maintenance or repair and a suitable access road is integral to this occurring.*

		The access road will then be needed for the decommissioning of the power generation plant. *Without a suitable access in place at all times, the Generating Equipment cannot operate to generate electricity, which is the function of the generating station and the reason it is an NSIP.* *As set out in the Deadline 2 response to written representations, the Applicant has considered how access roads have been treated in other, similar generating station projects in Wales. The Applicant notes that in a range of decisions, access roads have been treated as being capable of being integral to the power generation plant. The access road will need to remain in place permanently to afford the necessary protection to the Welsh Water main (which supplies water to Swansea) as the protective bridge structure will be required at all times to avoid damage to Welsh Water's pipeline.* *The proposed development does not include any AD. The Applicant has included only the elements of its proposed project within the description of the authorised development in the DCO which are part of/integral to the generating station which is the NSIP under section 15 of the Act.* *However, in determining which development could be included in the application, the Applicant has had regard to the provisions of Section 115 of the PA 2008 and also the Guidance on AD.* *The Electrical Connection and the Gas Connection are not included in the authorised development, as they are considered by the Applicant not to be integral to the NSIP, applying the reasoning employed by the Secretary of State in several previous decisions including in relation to Hirwaun Power and the Wrexham Gas Fired Generating Stations.* *The 2013 Guidance lists in Annex A as examples of AD, connections to electricity networks (Page 6). It also lists in Annex B (page 8) gas pipelines and pressure reduction stations as examples of specific types of AD associated with onshore generating stations, and overhead / underground cables.* *The Applicant has acknowledged, in applying the guidance that the lists in the Annexes are illustrative only and do not, by themselves determine whether development is or is not AD (see para 12 third bullet of the guidance). The Applicant has therefore applied the core principles set out in paragraph 5, and considered the guidance provided by previous Secretary of State decisions in the specific context of this project.*

		The Gas and Electrical Connections are connected to the NSIP and required to facilitate the generation of electricity, but neither the Gas Connection nor the Electrical Connection form part of the apparatus where electricity is generated. *The Applicant set out in writing its views at Deadline 2 in response to the written representations of Michael Edwards, Wynne Watkins and Rediplay Limited. The Applicant's written response contains consideration of relevant case law, including Redcar, setting out the Applicant's response to the contention that the gas and electrical connection should be considered to be integral.* *The Applicant also notes that the planning applications to CCS submitted by the Applicant for the Gas and Electrical Connections were considered and determined last week and planning permission for each application was granted on 6 December 2018. Copies of the decision notices will be submitted by the Applicant at Deadline 3 for the Examining Authority's reference*. (See Appendix 1 to the Applicant's written summary of oral submissions for the EIA ISH, submitted at Deadline 3)]

6. **AGENDA ITEM 6 - SCHEDULE 2 REQUIREMENTS**

Ref	Issue raised by the ExA	Applicant's Response
11	Requirement 3(5) change	Mr McDonald explained that sub-paragraph 5, added at Deadline 1, is to secure that the landscaping plan will be reviewed every five years. The Applicant has had further discussions on the draft DCO with CCS on 12 December 2018 and following CCS' Deadline 2 submissions. The Applicant has agreed that paragraph 5 can be made more clear, by providing for submission, approval and implementation of the reviews and any measures recommended. This change will be made in the draft DCO at Deadline 4. In the meantime, the Applicant anticipates having the time to update the draft DCO and provide that to CCS and discuss it further with CCS during January. The hope is that what is submitted at Deadline 4 is, subject to the remaining areas of disagreement, as close as the parties can get to an agreed form of document. Mr Ferguson stated that CCS welcomes the ongoing dialogue and that the Applicant is seeking to address CCS' concerns.

12	Requirement 8 to require pre-construction ecological constraints surveys to be undertaken ahead of commencing work onsite. NRW view	Mr McDonald stated that Requirement 8 secures the pre-construction ecological surveys and paragraph 5 was added at Deadline 1 to ensure that the surveys are not carried out and then go beyond their shelf life. The Applicant agrees that the surveys are to be re-done if 2 years pass. This was discussed on 12 December 2018 with CCS and it was agreed that further changes would make it clearer so that the 2 year time period runs from the earliest of the surveys which are secured and to ensure that implementation of the results of the survey are clearly secured as well. This is a matter to be discussed further with CCS. The Applicant agrees with the principle, but a draft needs to be provided. Ms Roberts stated that NRW are in support of Requirement 8 and the addition of paragraph 5 for a survey to be provided that is less than 2 years old. Ms Roberts also noted that paragraph 1 has been slightly amended to include works 3, 4 and 5. Ms Roberts confirmed NRW are happy with these requirements.
13	Requirement 10 – Invasive species	Mr McDonald stated that the changes made at Deadline 1 are agreed with CCS to reflect the relevant work numbers which are needed to be complied with. The Applicant is discussing further changes with CCS following the Deadline 2 submission to provide in the relevant requirements that the qualifications of the persons undertaking the relevant activity should be set out specifically. This is agreed by the Applicant and will be included at Deadline 4.
14	Requirement 11(4) – Bats	NRW welcomed the addition of the 2 years.
15	Requirement 12 – Reptiles	NRW stated that reptiles fall outside NRW's remit, and that this is a matter for CCS. Mr Ferguson stated that CCS welcomes the approach subject to minor variations agreed.
16	Requirement 27 – Decommissioning strategy	Mr McDonald explained that the Applicant made changes to Requirement 27 at Deadline 1 and Deadline 2. The changes are to provide details of what must be included in the decommissioning strategy and are akin to the matters listed in Requirement 17 (CEMP) regarding the construction stage. Since Deadline 1, further changes were made by the Applicant at Deadline 2 to take into account further comments from CCS. The wording at the start of Requirement 27(1), "unless otherwise agreed", was struck out and is understood to be agreed with CCS. The Applicant also removed reference to "must be approved in writing" as this is not a matter in the Applicant's control in terms of timing at that stage. Further discussions have also taken place with CCS in relation to reference to approval being needed and changes will be inserted to reflect those discussions at Deadline 4.

		Mr McDonald explained that the Applicant and CCS remain of different views in relation to the inclusion of reference to "other consents" in Requirement 27(3) - this is set out in page 13 of the written summary of oral submissions at Deadline 1. Mr McDonald stated that the Applicant had attempted to address CCS' concerns by amending the drafting to require the Applicant to confirm to CCS what the relevant consents are and the Applicant's programme for obtaining them. The applicant must then apply in accordance with the programme. A reference to the timetable for decommissioning is also to be added to requirement 27(3). Mr McDonald stated that decommissioning is adequately secured by Requirement 27 and backed up with the enforcement powers in the PA 2008. This is in addition to the Environmental Permit surrender process which the Applicant will do at the relevant time, working with NRW, and will require the operator of the site to show that the site will be left in no worse condition than it is now. There are also record keeping requirements in the Environmental Permit where the Applicant must record the state of the land before development is implemented and on an on-going basis throughout the projects life. The surrender is judged against this. Mr Ferguson confirmed that CCS is happy with the changes suggested by the Applicant, but that a couple of minor tweaks are required. CCS considers paragraph 3 to be imprecise and does not feel that it meets the relevant tests in the Planning Circular, and therefore it would be unenforceable. Mr Ferguson stated that the Applicant at Deadline 2 makes reference to them not wanting to be criminally liable, which suggests that it is not enforceable if they do not secure the necessary consents. CCS considers that requiring the applicant to apply for consents does not guarantee that they would be granted. CCS would have to consider whether it is expedient to enforce and would consider at the relevant time if there were issues obtaining other consents. The applicant should take comfort from that. Mr McDonald stated that the written summary of oral submissions at reference 18 submitted at Deadline 1 has addressed these matters.
17	Status of Environmental Permit application to Natural Resources Wales	The ExA queried the current status of the Environmental Permit application. Ms Louise Edwards explained that this was updated yesterday, on 12 December 2018, and is moving to the next stage of the application. There will be consultation on the draft permit and this will be advertised on the NRW website for 1 month. Ms Louise could not confirm when the decision would be made, but it cannot be made until consultation has been concluded. NRW will seek to obtain this information.

		The Applicant will liaise with NRW at Deadline 3 or Deadline 4 if there is a publically available document and submit this to the ExA. (See Appendix 1). Mr Jones (of Welsh Water) confirmed that there has been positive dialogue with the Applicant. Mr Jones stated that through dialogue with the Applicant, it is believed that concerns over the strategic water main crossing will be resolved and that suitably worded conditions and requirements can be included, including a requirement that Welsh Water should be consulted on the suitable design of the access road. Mr Jones confirmed that the Protective Provisions have been resolved. Mr McDonald confirmed that there are 2 ways in which the elements of the project which interact with the water main are controlled in the DCO. Requirement 4 secures that certain details regarding highway and accesses must be submitted and approved and in respect of the electrical connection, as indicated by Mr Jones, the Protective Provisions have been issued subject to conditions that details must be submitted to CCS and approved, which requires consultation with Welsh Water as part of the process. The second control is that the Protective Provisions, which will be included in the DCO at Deadline 4, provide for certain controls regarding the Applicant's activities within the set clearance distance from the water main and provide that approval must be sought and obtained by Welsh Water on the details of the works, how they will be carried out and how the water main will be protected. Mr McDonald stated that these are the two routes which Welsh Water has influence and control, being through the DCO and through the Protective Provisions. Welsh Water confirmed that with those controls in place, they were content.
18	Time limit for operation Requirement?	Mr McDonald stated that the ES submitted with the application is based on an assumed operational life of 25 years, being the design life of the project. Other similar DCOs have not included a provision limiting the operational lifetime of the project, and the ES for those other projects have been similarly based on an assumed design life of 25 years. This assumption does not indicate or guarantee that this is the period when the project will necessarily stop operating and immediately be decommissioned, or that the DCO must be time limited. Mr McDonald stated that the 25 year period is included as an assumption as transparent basis for the assessments in the ES to be carried out. It is not correct to conclude that the ES being constructed in that way means that the DCO must be limited to that period. To provide the SoS with further comfort in relation to this and the information on the environmental effects on the project, the Applicant undertook a sensitivity analysis found at Appendix 7 to the written summary of the oral submissions at Deadline 1.

		This sensitivity note considered whether the effects would be different if the project operated for a longer period than 25 years. Each expert witness topic chapter author considered a fresh assessment and whether in a 30 year scenario or a longer scenario whether the effects concluded would be different. The conclusion of the sensitivity analysis demonstrated that conclusions reached on environmental effects remain robust and reasonable beyond 25 years. The Applicant is of the view that the ES does not stand as a justification for including an operational time limit and the Applicant doe not consider any other reason for including one. The ExA asked the Applicant if there are any uncertainties contained in the assessment regarding emissions and the potential for new carbon regulations to be implemented in the future which may be more stringent than now. Mr McDonald stated that in any process of undertaking an ES and looking into the future there is an inherent challenge in trying to predict future baselines and there is an application of professional judgment which needs to be made. In relation to the example of emissions, the effects necessarily have to be judged against current regulations for a generating station and the Applicant does not know what these will become in the future. The direction of travel in relation to these over a considerable number of years is that they have become more stringent over time and it is fair to expect that to continue, however the Applicant did not take that into account in the assessment and assumed it will not be further constrained. The ExA asked if no worst case scenario or conservative assessment was taken. Mr McDonald explained that if there were further constraints, they will apply through the EP process. The DCO is a consent which tends to be granted, if the SoS decides, at day 1 and then this is subject to any variations by the Applicant. The EP can evolve over time and requirements that the operator has to comply with under the EP can evolve over time and can become more stringent. Therefore, emissions are controlled directly by the EP. The ExA stated it is a necessity for the EIA to assess what is being consented. The ExA asked if this is a lifetime of 25 years. Mr McDonald stated that the Applicant has applied for a DCO which does not provide for an operational time limit. In that respect, the references to the 25 year design life in the ES could perhaps be described informally now as a red herring in the Applicant's view. Whilst it provides a framework under which the ES was carried out, it does not in fact make any difference to the environmental effects to the project. The

		Applicant's view is that the SoS can lawfully grant the DCO in terms proposed by the Applicant and will not be in breach of EIA Regulations in doing so. The ExA queried whether the Applicant considered the effect of uncertainties in light of the temporal scale as it expands out, e.g. there is more certainty over the first 25 years than the next 25 years and further out. The ExA asked if there is uncertainty, and whether the ES has limitations. Mr McDonald stated that the Applicant cannot provide a definitive future baseline at a point of 25 years or 35 years, but the Applicant's position is that this does not introduce uncertainty in relation to the conclusions of the effects. The ExA stated that it does introduce uncertainty because of the degree of uncertainty in predicting the future and asked if the uncertainty will go up in magnitude if it operates past 25 years. Mr McDonald stated that it is perhaps relevant to split the ES into different topics, as some effects are likely to be felt necessarily incurred at day 1, for example the impacts on ecology on the site. The Applicant has considered a reasonable worst case scenario of 25 years as a basis for the assessment. To the extent that a longer duration would need to be considered against a changing baseline, then what the ExA suggests is correct that, for those topics, the effects increase as temporal scale increases. Mr Ferguson stated that the 25 years was included in the ES and is potentially misleading to the members of the public and to officers of CCS. When the drainage officers were consulted for example, they commented in light of the 25 year life time of the development rather than the open ended lifetime as it currently is. Mr Ferguson stated if it is open ended CCS has concerns on certain topics. This goes back to definition of maintain where CCS considers that there is potential for this to be in existence for a long time. Ms Louise stated that the EP will not have a time limit and will regulate the site until it ceases operations. The site is regulated annually, but this is to be confirmed by NRW. The ExA stated that what is assessed in the EIA has to represent what the DCO is granting consent for. Mr McDonald stated that this is understood and that the Applicant will review what has been submitted at Deadline 1 and consider what further could be helpfully submitted at Deadline 3.

		[*Post hearing note: Ms Anderson at the ISH hearing on environmental matters held on the afternoon of 13 December provided a statement as follows to the ExA in relation to this topic.* *Ms Anderson stated that 25 years operational life is the basis of the assessment and this is outlined in section 4.7 of the ES. This section outlines that the assumptions and limitations of the ES include the use of a 25 year life span as a reasonable worst case, as it is based on the design life of the equipment (which is the manufacturers' expectation of how long the equipment will last subject to maintenance and normal operation), for the basis of assessment.* *Out of the topics contained within the ES which relate to operational effects, these primarily relate to landscape and emissions to air, land and water.* *Regarding emissions to air, there are two points to consider which are:* 1. *At all time, the Project will be regulated by the EP, which is reviewed annually and the operator will be expected to comply with BAT which requires continual improvement in performance.* 2. *If there are changes in the legislative framework, then the operators will have to comply with those via the permit as the appropriate regulatory regime. The DCO will not do this. It is acknowledged that the Environmental Permit will provide the operational control mechanisms in relation to any emissions and also require these emissions to be reduced should new legislation be imposed. An example of where this has already happened in practice is the removal of the Large Combustion Plant Directive and the implementation of the Industrial Emissions Directive. The Project would either be required to shut down should it not be able to comply with these emissions requirements, or to implement additional mitigation measures to comply with the required emissions targets.* *Ms Anderson explained that the assessment of 25 years provides a worst case scenario for the EIA, but the sensitivity analysis provided as Appendix 7 of Deadline 1 response demonstrates that should the Applicant have assessed a 35 year scenario, there are no identified changes to the assessments or significance of effects for each of the Chapters 6-14. As outlined in the Applicant's Deadline 2 response to the LIR, the conclusions of the ES therefore remain valid for an operational lifetime of the Project of 35 years or longer (up to 52 years in the case of drainage).* *Ms Anderson stated that the approach taken is consistent with other EIAs undertaken for projects of this type, such as Wrexham gas fired power generating station, where the ES assumed the same 25 years duration and the same climate change allowances as used in the current application. The Wrexham project*

		has been granted with no time limit on operation. It is our opinion, which we have outlined in the response to the CCS LIR points 21.1 – 21.3, that the assessment in the ES is robust, complete and accurate.]
19	Bond for decommissioning Requirement. Reprise of Applicant's response to ExA question 1.0.5	Mr McDonald stated that the Applicant responded to this matter at page 15 of its written summary of oral submissions at Deadline 1. Requirement 27 provides a clear mechanism for ensuring decommissioning takes place. This requirement sits with the Applicant and cannot be passed to another operator unless that other operator is approved by Ofgem (where it has a section 6 licence for the generation of electricity under the Electricity Act 1989) or the SoS approves the transfer of the DCO. Mr McDonald explained that the breach of Requirement 27 is a criminal offence, which is a serious sanction. In addition, the Proceeds of Crime Act 2002 also allows local authorities to seek to recover the profits accruing to businesses and individuals who breach planning control. There is no national or local policy and no precedent for decommissioning security for gas fired generating stations. Mr Ferguson clarified that in CCS' submission, the costs should be secured via a repayable bond. Should the site be decommissioned in accordance with Requirement 27, the monies will be repaid to the Applicant. CCS has no assurance of what happens if the Applicant goes into liquidation. There may not be a policy basis specifically but CCS considers this to be an important and relevant matter for the SoS to have regard to. The bond is seen as a safeguard or guarantee to the public purse. A bond was provided for in Mynydd y Gwair Wind Farm, and CCS will provide details at Deadline 3. The ExA asked if CCS had experience perhaps in the area of coal field remediation? Mr Ferguson stated that he could not give examples directly, but the local authority is aware of other sites where companies go into liquidation and the public purse is left with the costs for restoration.
20	Enforcement payment costs. Reprise of Applicant's response to ExA question 1.0.6	The Applicant has included a provision for fees payable for discharge of requirements in Schedule 12 of the DCO and stated that it was agreed. Mr McDonald explained that this was partially incorrect on part of the Applicant. The parties are agreed in principle that it is appropriate that fees are payable in respect of discharge of requirements. The Applicant intends to discuss further with CCS the fees payable for discharge of requirements both in terms of the quantum and the appropriate mechanism for securing them. Mr McDonald stated that the Applicant has not proposed to provide monitoring or enforcement costs and does not propose to do so. These are matters CCS deals with as part of their statutory functions. The

		government has not provided for monitoring or enforcement fees to be payable in general and the Applicant does not consider that they should be paid here. Mr Ferguson stated that CCS indicated fees in the Deadline 2 submission. Mr Ferguson stated that CCS have had a brief discussion with the Applicant before the hearing and will work with the Applicant to discuss the form and content of the fees payable. The ExA asked if this would be better included in the section 106 agreement. Mr Ferguson stated that monitoring and enforcement could be included in the section 106 agreement. CCS regards enforcement as discretionary, not statutory. CCS does not necessarily get fees for that in their function. The ongoing monitoring will require elements of review that CCS will have to do, regarding landscape and noise, and CCS believe that this should be paid by the Applicant.

7. **AGENDA ITEM 7 - SCHEDULE 8 MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIONS**

Ref	Issue raised by the ExA	Applicant's Response
21	Changes	Mr McDonald explained that the changes were part of the changes made in the compulsory acquisition articles and that these relate to changes made in the related primary legislation that concerns compulsory acquisition. The changes made are to reflect those that have been drafted into most recent DCOs, such as the Silvertown Tunnel Order 2018. The ExA queried if this reflects the Silvertown Tunnel drafting exactly or if they are slightly different. Mr McDonald stated that there may be differences as different powers were sought in the Silvertown Tunnel Order 2018. [*Post hearing note*: *the Applicant has reviewed the differences in the changes to Schedule 8 compared to those in the Silvertown Tunnel Order 2018 and there are no substantive differences except for the inclusion of sub-paragraphs 11-14 in paragraph 10 of Schedule 8, which is not contained in the Silvertown Tunnel Order 2018 in relation to the matters the Upper Tribunal is to take into account in making its determination*.]

8. **AGENDA ITEM 8 - SCHEDULE 11 PROVISIONS FOR THE PROTECTION OF SPECIFIED UNDERTAKERS**

Ref	Issue raised by the ExA	Applicant's Response
22	Reprise of Protective Provisions	Mr McDonald stated that there has been good progress in respect of the Protective Provisions with a number of parties. As of last night, 12 December 2018, the Protective Provisions with Western Power Distribution are now in agreed form. This is a change from the position reported at the compulsory acquisition hearing on 12 December 2018. To the extent that they are in an agreed form, revised protective provisions will be incorporated into the draft DCO submitted at Deadline 4. The Applicant hopes to achieve agreement with more of the Statutory Undertakers by Deadline 4, but it would be optimistic to say that all will be agreed by that Deadline. Given the state of negotiations, the Applicant does not anticipate any issues with these being agreed before the end of examination. Mr Jones confirmed on behalf of Welsh Water that the Protective Provisions have been agreed.

9. **AGENDA ITEM 9 - SCHEDULE 12 – PROCEDURE FOR THE DISCHARGE OF REQUIREMENTS**

Ref	Issue raised by the ExA	Applicant's Response
23	Paragraph 2(2) – 28 days	Mr McDonald stated this is updated to refer to 28 day periods in 2 places following discussions with CCS. Mr Ferguson confirmed that CCS welcomes the change.
24	Paragraph 3 – Fees	Mr McDonald stated that this is a matter addressed above and will be updated further. Mr McDonald stated it will be discussed whether the DCO is the appropriate place for this to be set out, or whether perhaps it is better placed in the section 106 agreement or a different document.

		Mr McDonald confirmed that the Applicant is happy to remove 2(b)(i) following comments from CCS at Deadline 2 that it does not want to be in a position where it retains money to credit against future applications. CCS has concerns regarding refunding a fee and does not consider it appropriate as CCS may have undertaken a lot of work to get to that stage. CCS is concerned that such provisions will drive undesirable behaviours. Mr McDonald stated that the Applicant considers Schedule 12 is set up to appropriately provide a procedure for determination of discharge of a requirement and that, subject to discussion regarding quantum of fees payable, the incentives which are set up within it are appropriate and the risks fall to the Applicant where the project can be delayed if there is a refusal driven by the terms of Schedule 12. The Applicant is aware of this and has considered this in drafting Schedule 12 and considers it appropriate in its current form.

10. **AGENDA ITEM 10 – SECTION 106 AGREEMENTS**

Ref	Issue raised by the ExA	Applicant's Response
25	City and County of Swansea	Mr McDonald stated that the section 106 agreement with CCS is proposed with 3 main heads of obligations. Education and employment schemes have been discussed further between the parties. The agreement is now with the Applicant to update the drafting following the principle discussions. This will be sent to CCS to review in January. The third obligation relates to PRoW and the Applicant has proposed drafting and is awaiting information from CCS regarding the quantum of contribution required to deliver improvements and measures to PRoW which are anticipated to come from the obligation. Mr Ferguson confirmed agreement with the Applicant that the section 106 is progressing between the parties. Mr Ferguson raised that if there is a requirement for a bond, this could go into the section 106 agreement. Mr Ferguson confirmed the parties can reach an agreement before the end of the examination.

APPENDICES

Appendix	Title
Appendix 1	Copy of consultation draft Environmental Permit published by Natural Resources Wales

Appendix 1

Copy of draft Environmental Permit published by Natural Resources Wales

Permit with introductory note

The Environmental Permitting (England & Wales) Regulations 2016

Drax Power Limited

Abergelli OCGT Plant
Abergelli Farm
Abergelli
Swansea
SA5 7NN

Permit number

EPR/XXXXXXXX

Abergelli OCGT Plant

Permit number EPR/XXXXXX

Introductory note

This introductory note does not form a part of the permit

The main features of the permit are as follows:

This permit controls the operation of a large combustion plant. The relevant listed activity is Section 1.1 A(1)(a): Burning fuel in an appliance with a rated thermal input of 50 megawatts or more.

The installation uses a single open cycle gas turbine burning natural gas and has a net thermal input of 748MW.

Fuel is burnt in the combustion chamber from where hot gases expand through the gas turbine driving an electrical generator to produce up to 299MW of electrical energy. The plant has been designed and runs as a peaking power station supplying electricity to the National Electricity Transmission System for up to 2250 hours per year (1500 hours per 5-year rolling average) at times of high demand or during periods of instability in the grid.

The Installation only burns natural gas, however there is an emergency diesel generator and fire pump fuelled by diesel. This generator allows the safe shutdown of the power station and provides electricity to essential building systems during times of power failure. Both the emergency generator and fire pump fall within the scope of the Medium Combustion Plant Directive.

Natural gas is brought to the installation by a pipeline linked to the National Transmission System approximately 1km from the power station. There is no natural gas stored on-site.

The Installation uses a fin fan cooling system to dispose of waste heat generated from the infrastructure operating onsite. Waste heat from the turbine exits via the stack, thus eliminating the requirement for large quantities of cooling water.

There is no release to surface water or land of process effluent. The only discharge is clean surface water run-off via the site surface water drainage system. The effluent is passed through an oil interceptor prior to discharge. There is a penstock valve present, meaning the system can be isolated in the event of spillage on-site.

Other process releases, including effluent from toilet facilities and from the cleaning of turbine blades and used lubricants is removed from site by tanker for off-site disposal.

The installation is run remotely from the control room of Drax Power Station in Selby. Drax Power Limited operates an Environmental Management System (EMS) certified to ISO14001. This EMS will be extended to include the Abergelli installation.

The status log of the permit sets out the permitting history, including any changes to the permit reference number

Status Log of the permit		
Detail	**Date**	**Comments**
Application PAN-002743	Duly made 29/05/18	Application for a new 748MW thermal input gas-fired power station
Schedule 5 request for more information	14/06/18	Further information sought regarding air quality modelling and environmental impact assessment
Schedule 5 Information received	03/07/18	
Schedule 5 request for more information	03/08/18	Further information sought regarding noise assessment and modelling
Schedule 5 Information received	10/08/18	
Permit Issued EPR/xxxxxxxx	Xx/xx/xx	

End of Introductory Note

Permit

The Environmental Permitting (England and Wales) Regulations 2016

Permit number
EPR/XXXXXXX

The Natural Resources Body for Wales ("Natural Resources Wales") authorises, under regulation 13 of the Environmental Permitting (England and Wales) Regulations 2016

Drax Power Limited ("the operator"),

whose registered office is
Drax Power Station
Drax
Selby
North Yorkshire
YO8 8PH

company registration number **4883589**

to operate an installation at
Abergelli OCGT Plant
Abergelli Farm
Abergelli
Swansea
SA5 7NN

to the extent authorised by and subject to the conditions of this permit.

Name	Date
	xx/xx/xx

Authorised on behalf of Natural Resources Wales

Conditions

1 Management

1.1 General management

1.1.1 The operator shall manage and operate the activities:

(a) in accordance with a written management system that identifies and minimises risks of pollution, including those arising from operations, maintenance, accidents, incidents, non-conformances, closure and those drawn to the attention of the operator as a result of complaints; and

(b) using sufficient competent persons and resources.

1.1.2 Records demonstrating compliance with condition 1.1.1 shall be maintained.

1.1.3 Any person having duties that are or may be affected by the matters set out in this permit shall have convenient access to a copy of it kept at or near the place where those duties are carried out.

1.2 Energy efficiency

1.2.1 The operator shall:

(a) take appropriate measures to ensure that energy is used efficiently in the activities;

(b) take appropriate measures to ensure the efficiency of energy generation at the permitted installation is maximised;

(c) review and record at least every four years whether there are suitable opportunities to improve the energy efficiency of the activities; and

(d) take any further appropriate measures identified by a review.

1.3 Efficient use of raw materials

1.3.1 The operator shall:

(a) take appropriate measures to ensure that raw materials and water are used efficiently in the activities;

(b) maintain records of raw materials and water used in the activities;

(c) review and record at least every four years whether there are suitable alternative materials that could reduce environmental impact or opportunities to improve the efficiency of raw material and water use; and

(d) take any further appropriate measures identified by a review.

1.4 Avoidance, recovery and disposal of wastes produced by the activities

1.4.1 The operator shall take appropriate measures to ensure that:

(a) the waste hierarchy referred to in Article 4 of the Waste Framework Directive is applied to the generation of waste by the activities; and

(b) any waste generated by the activities is treated in accordance with the waste hierarchy referred to in Article 4 of the Waste Framework Directive; and

(c) where disposal is necessary, this is undertaken in a manner which minimises its impact on the environment.

1.4.2 The operator shall review and record at least every four years whether changes to those measures should be made and take any further appropriate measures identified by a review.

2 Operations

2.1 Permitted activities

2.1.1 The operator is only authorised to carry out the activities specified in schedule 1 table S1.1 (the "activities").

2.2 The site

2.2.1 The activities shall not extend beyond the site, being the land shown edged in green on the site plan at schedule 7 to this permit.

2.3 Operating techniques

2.3.1 The activities shall, subject to the conditions of this permit, be operated using the techniques and in the manner described in the documentation specified in schedule 1, table S1.2, unless otherwise agreed in writing by Natural Resources Wales.

2.3.2 For the following activities referenced in schedule 1, table S1.1: LCP002743. Without prejudice to condition 2.3.1, the activities shall be operated in accordance with the "Electricity Supply Industry IED Compliance Protocol for Utility Boilers and Gas Turbines revision 1 dated December 2015 (as corrected March 2017) or any later version unless otherwise agreed in writing by Natural Resources Wales.

2.3.3 If notified by Natural Resources Wales that the activities are giving rise to pollution, the operator shall submit to Natural Resources Wales for approval within the period specified, a revision of any plan or other documentation ("plan") specified in schedule 1, table S1.2 or otherwise required under this permit which identifies and minimises the risks of pollution relevant to that plan , and shall implement the approved revised plan in place of the original from the date of approval, unless otherwise agreed in writing by Natural Resources Wales.

2.3.4 Any raw materials or fuels listed in schedule 2 table S2.1 shall conform to the specifications set out in that table.

2.3.5 For the following activities referenced in schedule 1, table S1.1: LCP002743. The activities shall operate for less than 1,500 hours per year as a rolling average over a period of five years.

2.3.6 For the following activities referenced in schedule 1, table S1.1: LCP002743. The end of the start-up period and the start of the shutdown period shall conform to the specifications set out in Schedule 1, tables S1.2 and S1.5.

2.3.7 For the following activities referenced in schedule 1, table S1.1: LCP002743. The effective Dry Low NOx threshold shall conform to the specifications set out in Schedule 1, tables S1.2 and S1.6.

2.3.8 The operator shall ensure that where waste produced by the activities is sent to a relevant waste operation, that operation is provided with the following information, prior to the receipt of the waste:

(a) the nature of the process producing the waste;

(b) the composition of the waste;

(c) the handling requirements of the waste;

(d) the hazardous property associated with the waste, if applicable; and

(e) the waste code of the waste.

2.3.9 The operator shall ensure that where waste produced by the activities is sent to a landfill site, it meets the waste acceptance criteria for that landfill.

2.3.10 Limited Operating hours MCPs detailed in Schedule 1, table S1.1: MCP1 and MCP2, which are exempt from compliance with Emission Limit Values shall:

(a) not exceed 500 hours operation in a year as a rolling average over a 3-year period

(b) the year refers to a 12-month period of operation not a calendar year

(c) once 3 years have been established, the average is calculated on a rolling annual basis thereafter

(d) no more than 750 hours may be operated by a Limited Operating hours MCP in any single year.

2.4 Improvement programme

2.4.1 The operator shall complete the improvements specified in Schedule 1 Table S1.3 by the date specified in that table unless otherwise agreed in writing by Natural Resources Wales.

2.4.2 Except in the case of an improvement which consists only of a submission to Natural Resources Wales, the operator shall notify Natural Resources Wales within 14 days of completion of each improvement.

2.5 Pre-operational conditions

2.5.1 The activities shall not be brought into operation until the measures specified in schedule 1 table S1.4 have been completed

3 Emissions and monitoring

3.1 Emissions to water, air or land

3.1.1 There shall be no point source emissions to water, air or land except from the sources and emission points listed in schedule 3 tables S3.1 and S3.2.

3.1.2 The limits given in schedule 3 shall not be exceeded.

3.1.3 The Operator shall carry out monitoring of groundwater at least once every 5 years and of soil at least once every 10 years; to the monitoring plan agreed in writing with Natural Resources Wales under Pre-Operational Condition 1.

3.2 Emissions of substances not controlled by emission limits

3.2.1 Emissions of substances not controlled by emission limits (excluding odour) shall not cause pollution. The operator shall not be taken to have breached this condition if appropriate measures, including, but not limited to, those specified in any approved emissions management plan, have been taken to prevent or where that is not practicable, to minimise, those emissions.

3.2.2 The operator shall:

(a) if notified by Natural Resources Wales that the activities are giving rise to pollution, submit to Natural Resources Wales for approval within the period specified, an emissions management plan which identifies and minimises the risks of pollution from emissions of substances not controlled by emission limits;

(b) implement the approved emissions management plan, from the date of approval, unless otherwise agreed in writing by Natural Resources Wales.

3.2.3 All liquids in containers, whose emission to water or land could cause pollution, shall be provided with secondary containment, unless the operator has used other appropriate measures to prevent or where that is not practicable, to minimise, leakage and spillage from the primary container.

3.3 Odour

3.3.1 Emissions from the activities shall be free from odour at levels likely to cause pollution outside the site, as perceived by an authorised officer of Natural Resources Wales, unless the operator has used appropriate measures, including, but not limited to, those specified in any approved odour management plan, to prevent or where that is not practicable to minimise the odour.

3.3.2 The operator shall:

(a) if notified by Natural Resources Wales that the activities are giving rise to pollution outside the site due to odour, submit to Natural Resources Wales for approval within the period specified, an odour management plan which identifies and minimises the risks of pollution from odour;

(b) implement the approved odour management plan, from the date of approval, unless otherwise agreed in writing by Natural Resources Wales.

3.4 Noise and vibration

3.4.1 Emissions from the activities shall be free from noise and vibration at levels likely to cause pollution outside the site, as perceived by an authorised officer of Natural Resources Wales, unless the operator has used appropriate measures, including, but not limited to, those specified in any approved noise and vibration management plan to prevent or where that is not practicable to minimise the noise and vibration.

3.4.2 The operator shall:

(a) if notified Natural Resources Wales that the activities are giving rise to pollution outside the site due to noise and vibration, submit to Natural Resources Wales for approval within the period specified, a noise and vibration management plan which identifies and minimises the risks of pollution from noise and vibration;

(b) implement the approved noise and vibration management plan, from the date of approval, unless otherwise agreed in writing by Natural Resources Wales.

3.5 Monitoring

3.5.1 The operator shall, unless otherwise agreed in writing by Natural Resources Wales, undertake the monitoring specified in the following tables in schedule 3 to this permit:

(a) point source emissions specified in tables S3.1 and S3.2; and

(b) process monitoring specified in table S3.3.

3.5.2 The operator shall maintain records of all monitoring required by this permit including records of the taking and analysis of samples, instrument measurements (periodic and continual), calibrations, examinations, tests and surveys and any assessment or evaluation made on the basis of such data.

3.5.3 Monitoring equipment, techniques, personnel and organisations employed for the emissions monitoring programme specified in condition 3.5.1 shall have either MCERTS certification or MCERTS accreditation (as appropriate), where available, unless otherwise agreed in writing by Natural Resources Wales.

3.5.4 Permanent means of access shall be provided to enable sampling/monitoring to be carried out in relation to the emission points specified in Schedule 3 Tables S3.1 and S3.2 unless otherwise agreed in writing by Natural Resources Wales.

3.6 Monitoring for Large Combustion Plant

3.6.1 All monitoring required by this permit shall be carried out in accordance with the provisions of Annex V of the Industrial Emissions Directive and the LCP Bref BAT Conclusions.

3.6.2 If the monitoring results for more than 10 days a year are invalidated within the meaning set out in condition 3.6.7, the operator shall:

(a) within 28 days of becoming aware of this fact, review the causes of the invalidations and submit to Natural Resources Wales for approval, proposals for measures to improve the reliability of the continuous measurement systems, including a timetable for the implementation of those measures; and

(b) implement the approved proposals.

3.6.3 Continuous measurement systems on emission points from the LCP shall be subject to quality control by means of parallel measurements with reference methods at least once every calendar year.

3.6.4 Unless otherwise agreed in writing by Natural Resources Wales in accordance with condition 3.6.5 below, the operator shall carry out the methods, including the reference measurement methods, to use and calibrate continuous measurement systems in accordance with the appropriate CEN standards.

3.6.5 If CEN standards are not available, ISO standards, national or international standards which will ensure the provision of data of an equivalent scientific quality shall be used, as agreed in writing with Natural Resources Wales.

3.6.6 Where required by a condition of this permit to check the measurement equipment, the operator shall submit a report to Natural Resources Wales in writing, within 28 days of the completion of the check.

3.6.7 Where Continuous Emission Monitors are installed to comply with the monitoring requirements in schedule 3, tables S3.1; the Continuous Emission Monitors shall be used such that:

a) for the continuous measurement systems fitted to the LCP release points defined in Tables S3.1 the validated hourly, monthly, annual and daily averages shall be determined from the measured valid hourly average values after having subtracted the value of the 95% confidence interval;

b) the 95% confidence interval for nitrogen oxides and sulphur dioxide of a single measured result shall be taken to be 20%;

c) the 95% confidence interval for dust releases of a single measured result shall be taken to be 30%;

d) the 95% confidence interval for carbon monoxide releases of a single measured result shall be taken to be 10%;

e) an invalid hourly average means an hourly average period invalidated due to malfunction of, or maintenance work being carried out on, the continuous measurement system. However, to allow some discretion for zero and span gas checking, or cleaning (by flushing), an hourly average period will count as valid as long as data has been accumulated for at least two thirds of the period (40 minutes). Such discretionary periods are not to exceed more than 5 in any one 24-hour period unless agreed in writing. Where plant may be operating for less than the 24-hour period, such discretionary periods are not to exceed more than one quarter of the overall valid hourly average periods unless agreed in writing; and

f) any day, in which more than three hourly average values are invalid shall be invalidated.

4 Information

4.1 Records

4.1.1 All records required to be made by this permit shall:

(a) be legible;

(b) be made as soon as reasonably practicable;

(c) if amended, be amended in such a way that the original and any subsequent amendments remain legible, or are capable of retrieval; and

(d) be retained, unless otherwise agreed in writing by Natural Resources Wales, for at least 6 years from the date when the records were made, or in the case of the following records until permit surrender:

(i) off-site environmental effects; and

(ii) matters which affect the condition of the land and groundwater.

4.1.2 The operator shall keep on site all records, plans and the management system required to be maintained by this permit, unless otherwise agreed in writing by Natural Resources Wales.

4.2 Reporting

4.2.1 The operator shall send all reports and notifications required by the permit to Natural Resources Wales using the contact details supplied in writing by Natural Resources Wales.

4.2.2 A report or reports on the performance of the activities over the previous year shall be submitted to Natural Resources Wales by 31 January (or other date agreed in writing by Natural Resources Wales) each year. The report(s) shall include as a minimum:

(a) a review of the results of the monitoring and assessment carried out in accordance with the permit including an interpretive review of that data;

(b) the annual production /treatment data set out in schedule 4 table S4.2;

(c) the performance parameters set out in schedule 4 table S4.3 using the forms specified in table S4.4 of that schedule.

(d) the hours of operation in any year shall be reported to Natural Resources Wales by 31 January in the following year.

4.2.3 Within 28 days of the end of the reporting period the operator shall, unless otherwise agreed in writing by Natural Resources Wales, submit reports of the monitoring and assessment carried out in accordance with the conditions of this permit, as follows:

(a) in respect of the parameters and emission points specified in schedule 4 table S4.1;

(b) for the reporting periods specified in schedule 4 table S4.1 and using the forms specified in schedule 4 table S4.4; and

(c) giving the information from such results and assessments as may be required by the forms specified in those tables.

4.2.4 The operator shall, unless notice under this condition has been served within the preceding four years, submit to Natural Resources Wales, within six months of receipt of a written notice, a report assessing whether there are other appropriate measures that could be taken to prevent, or where that is not practicable, to minimise pollution.

4.3 Notifications

4.3.1 The Operator shall

(a) in the event that the operation of the activities gives rise to an incident or accident which significantly affects or may significantly affect the environment, the operator must immediately—

(i) inform Natural Resources Wales,

(ii) take the measures necessary to limit the environmental consequences of such an incident or accident, and

(iii) take the measures necessary to prevent further possible incidents or accidents;

(b) in the event of a breach of any permit condition, the operator must immediately—

(i) inform Natural Resources Wales, and

(ii) take the measures necessary to ensure that compliance is restored within the shortest possible time;

(c) in the event of a breach of permit condition which poses an immediate danger to human health or threatens to cause an immediate significant adverse effect on the environment, the operator must immediately suspend the operation of the activities or the relevant part of it until compliance with the permit conditions has been restored.

4.3.2 Any information provided under condition 4.3.1(a)(i), or 4.3.1 (b)(i) where the information relates to the breach of a limit specified in the permit, shall be confirmed by sending the information listed in schedule 5 to this permit within the time period specified in that schedule.

4.3.3 Where Natural Resources Wales has requested in writing that it shall be notified when the operator is to undertake monitoring and/or spot sampling, the operator shall inform Natural Resources Wales when the relevant monitoring and/or spot sampling is to take place. The operator shall provide this information to Natural Resources Wales at least 14 days before the date the monitoring is to be undertaken.

4.3.4 Natural Resources Wales shall be notified within 14 days of the occurrence of the following matters, except where such disclosure is prohibited by Stock Exchange rules:

Where the operator is a registered company:

(a) any change in the operator's trading name, registered name or registered office address; and

(b) any steps taken with a view to the operator going into administration, entering into a company voluntary arrangement or being wound up.

Where the operator is a corporate body other than a registered company:

(a) any change in the operator's name or address; and

(b) any steps taken with a view to the dissolution of the operator.

In any other case:

(a) the death of any of the named operators (where the operator consists of more than one named individual);

(b) any change in the operator's name(s) or address(es); and

(c) any steps taken with a view to the operator, or any one of them, going into bankruptcy, entering into a composition or arrangement with creditors, or, in the case of them being in a partnership, dissolving the partnership.

4.3.5 Where the operator proposes to make a change in the nature or functioning, or an extension of the activities, which may have consequences for the environment and the change is not otherwise the subject of an application for approval under the Regulations or this permit:

(a) Natural Resources Wales shall be notified at least 14 days before making the change; and

(b) the notification shall contain a description of the proposed change in operation.

4.3.6 Natural Resources Wales shall be given at least 14 days' notice before implementation of any part of the site closure plan.

4.3.7 Where the operator has entered into a climate change agreement with the Government, Natural Resources Wales shall be notified within one month of:

(a) a decision by the Secretary of State not to re-certify the agreement;

(b) a decision by either the operator or the Secretary of State to terminate the agreement; and

(c) any subsequent decision by the Secretary of State to re-certify such an agreement.

4.3.8 The operator shall inform Natural Resources Wales in writing of the closure of any LCP within 28 days of the date of closure

4.4 Interpretation

4.4.1 In this permit the expressions listed in schedule 6 shall have the meaning given in that schedule.

4.4.2 In this permit references to reports and notifications mean written reports and notifications, except where reference is made to notification being made “immediately”, in which case it may be provided by telephone.

Schedule 1 - Operations

Table S1.1 Activities		
Activity listed in Schedule 1 of the EP Regulations	**Description of specified activity and WFD Annex I and II operations**	**Limits of specified activity and waste types**
Section 1.1 A (1) (a): Burning any fuel in an appliance with a rated thermal input of 50 megawatts or more.	LCP002743: Production of electricity in an open cycle gas turbine (OCGT) with a net thermal input of approximately 748MW operating on natural gas. Producing up to 299MW electrical output. MCP1: Operation of one emergency diesel generator (<2MW) MCP2: Operation of one diesel driven fire pump (<2MW)	From receipt of natural gas to the discharge of exhaust gases from the associated 35m stack, and the generation of electricity. All activities to be carried out within a dedicated building Dry Low NOx burners are to be used From receipt of gas oil for the emergency generator and fire pump to discharge of exhaust gases and the generation of electricity for use on site. No electricity shall be exported to the grid from the emergency generator.
Directly Associated Activities		
	Gas Reception Facility (GRF)	From receipt of natural gas at Grid pressure to dispatch of natural gas at the flow and pressure required for input to the gas turbine.
	Main cooling system	Fin fan air cooling utilised within a closed cycle cooling system.
	Raw materials storage	From receipt and storage of raw materials, intermediates, products to their use and the dispatch from the Installation.
Tank Farms	Waste tanks	Storage of waste and associated emissions. All storage tanks are contained within a bund complying with relevant guidelines and in an area with sealed drainage.
	Surface water drainage	From collection of rainwater through operation of oil-water separators, oil in water monitor and attenuation basin to discharge to an un-named watercourse at the equivalent greenfield run-off rate.

Table S1.2 Operating techniques		
Description	**Parts**	**Date Received**
Application	Part B2 of the application form - Sections 5b	22/05/18
Application	Part B3 of the application form - Sections 2, 3a, 3c, 4a, 4b, 5a, 6a, 6c, 6d, 6e and Appendix 1.	22/05/18
Application	Abergelli Power Limited – Application for an environmental permit – Application Supporting Document	22/05/18
Response to 1st Schedule 5 RFI	Response to air quality questions relating to start-up and shut-down impacts	22/06/18
Response to 1st Schedule 5 RFI	Further response to air quality questions relating to start-up and shut-down impacts – percentage impact increase.	03/07/18
Response to 2nd Schedule 5 RFI	Response to noise questions – sound power levels for individual pieces of equipment	03/08/18
Response to 2nd Schedule 5 RFI	Response to noise questions – relating to start-up/shut-down impacts	10/08/18

Table S1.3 Improvement programme requirements		
Ref.	**Requirement**	**Date**
IC1	The Operator shall submit a report in writing to Natural Resources Wales for approval. The report shall define and provide a written justification of the "minimum start up load" and "minimum shut-down load", for the LCP as required by the Commission Implementing Decision 2012/249/EU in terms of: i. The output load (i.e. electricity, heat or power generated) (MW); and ii. This output load as a percentage of the rated thermal output of the combustion plant (%). And / Or iii. At least three criteria (operational parameters and/or discrete processes as detailed in the Annex of the commissioning decision) or equivalent operational parameters that suit the technical characteristics of the plant, which can be met at the end of start-up or start of shut-down as detailed in Article (9) 2012/249/EU.	Within 4 months of the completion of commissioning
IC2	The Operator shall submit a report in writing to Natural Resources Wales for approval. The report shall define an output load or operational parameters and provide a written justification for when the dry low NO_x operation is effective. The report shall also include the NO_x profile through effective dry low NO_x to 70% and then to full load.	Within 4 months of the completion of commissioning
IC3	The Operator shall propose an achievable emission limit value (ELV) for carbon monoxide expressed as an annual mean of validated hourly averages. If the proposed ELV deviates from the indicative BAT AEL for CO of 40mg/m^3 then an associated BAT justification shall be submitted to Natural Resources Wales for approval in the form of a written report.	Within 4 months of the completion of commissioning

Table S1.3 Improvement programme requirements		
Ref.	**Requirement**	**Date**
IC4	The Operator shall provide a report in writing to Natural Resources Wales for approval which provides the net rated thermal input and net rated electrical output for LCP002743. Evidence to support this figure, in order of preference, shall be in the form of: - a) Performance test results* during contractual guarantee testing or at commissioning (quoting the specified standards or test codes); b) Manufacturer's contractual guarantee value; c) Published reference data, e.g., Gas Turbine World Performance Specifications (published annually); d) Design data, e.g., nameplate rating of a boiler or design documentation for a burner system; e) Operational efficiency data as verified and used for heat accountancy purposes; f) Data provided as part of Due Diligence during acquisition. *Performance test results shall be used if these are available.	Within 4 months of the completion of commissioning
IC5	The Operator shall submit a written report to Natural Resources Wales for approval on the commissioning of the installation. The report shall summarise the environmental performance of the plant as installed against the design parameters set out in the application. The report shall also include a review of the performance of the facility against the conditions of this permit and details of procedures developed during commissioning for achieving and demonstrating compliance with permit conditions.	Within 4 months of the completion of commissioning
IC6	Following successful commissioning and establishment of routine steady operation, the Operator shall undertake noise monitoring at the nearest local receptors for both normal operation and for periods of start-up and shut-down. This shall include: • A full noise monitoring survey and assessment meeting the BS4142:2014 standard • 1/3rd octave and narrow band (FFT) measurements to identify any tonal elements or low frequency noise • Reference to the World Health Organisation guidelines for community noise • Reference to the Noise Action Plan for Wales Upon completion of the work, a written report shall be submitted to Natural Resources Wales. The report shall refer to the predictions in the report produced as part of the application. If rating levels likely to cause adverse impact at sensitive receptors are detected, the report shall include an assessment of the most suitable abatement techniques, an estimate of the cost and a proposed timetable for their installation.	Within 6 months of the completion of commissioning
IC7	The Operator shall submit a written report to Natural Resources Wales on the implementation of its Environmental Management System and the progress made in the certification of the system by an external body or if appropriate submit a schedule by which the EMS will be certified.	Within 12 months of the date commissioning

Table S1.3 Improvement programme requirements		
Ref.	**Requirement**	**Date**
IC8	The Operator shall submit a written summary report to Natural Resources Wales which presents the results of calibration and verification testing to confirm that the performance of Continuous Emission Monitors for parameters as specified in Table S3.1 complies with the requirements of BS EN 14181, specifically the requirements of QAL1, QAL2 and QAL3.	Initial calibration report to be submitted to Natural Resources Wales within 3 months of completion of commissioning Full summary evidence compliance report to be submitted within 18 months of commissioning
IC9	The Operator shall propose achievable emission limit values (ELV) for NO_x and CO expressed as a daily mean of validated hourly averages from Minimum start-up load (MSUL) to baseload. This must be supported by a summary of emissions data. Justification shall be submitted to Natural Resources Wales for approval in the form of a written report.	Within 6 months of the completion of commissioning

Table S1.4 Pre-operational measures	
Ref.	**Pre-operational measures**
PO1	At least 1 month prior to the commencement of commissioning, the Operator shall submit the written monitoring plan referenced in Condition 3.1.3 for the monitoring of soil and groundwater for approval by Natural Resources Wales. The monitoring plan shall demonstrate how the Operator will meet the requirements of Articles 14(1)(b), 14(1)(e) and 16(2) of the IED. The monitoring plan shall be implemented in accordance with the written approval from Natural Resources Wales.
PO2	At least 1 month prior to the commencement of commissioning; the Operator shall provide a written commissioning plan, including timelines for completion, for approval by Natural Resources Wales. The commissioning plan shall include the expected emissions to the environment during the different stages of commissioning, the expected durations of commissioning activities and the actions to be taken to protect the environment, you will report to Natural Resource Wales if actual emissions exceed expected emissions and compliance with LCP Bref BAT-AELs, Annex V, Part 2 NOx limits to be qualified from 70% load to baseload. Commissioning shall be carried out in accordance with the commissioning plan as approved.
PO3	At least 1 month prior to the commencement of commissioning the Operator shall supply an as-built drainage plan for the Installation, covering all aspects of the system listed in the Application Supporting Document.

Table S1.5 Start-up and Shut-down thresholds		
Emission Point and Unit.	**"Minimum Start-Up Load"** **Load in MW and as percent of rated power output (%) and discrete processes**	**"Minimum Shut-Down Load"** **Load in MW and as percent of rated power output (%) and discrete processes**
A1	To be agreed in writing with Natural Resources Wales following completion of IC1	To be agreed in writing with Natural Resources Wales following completion of IC1

Table S1.6 Effective Dry Low NO_x thresholds	
Emission Point and Unit Ref.	**Effective Dry Low NO_x threshold** **Load in MW and as percent of rated power output (%) and discrete processes**
A1	To be agreed in writing with Natural Resources Wales following completion of IC2

Schedule 2 - Waste types, raw materials and fuels

Table S2.1 Raw materials and fuels	
Raw materials and fuel description	**Specification**
Diesel	Not exceeding 0.1% w/w sulphur content

Schedule 3 – Emissions and monitoring

Table S3.1 Point source emissions to air from Gas Turbine >100MWth

Emission point ref. & location	Source	Parameter	Limit (including unit)-these limits do not apply during start up or shut down. Note 2	Reference period	Monitoring frequency	Monitoring standard or method
A1 [point A1 on-site plan in schedule 7]	LCP002743 Gas turbine fired on natural gas	Oxides of nitrogen (NO and NO_2 expressed as NO_2)	50 mg/m^3 Effective Dry Low NO_x to baseload Note 1 70% to baseload Note 1	Monthly mean of validated hourly averages	Continuous	BS EN 14181
			50 mg/m^3 Effective Dry Low NO_x to baseload Note 1 70% to baseload Note 1	Daily mean of validated hourly averages	Continuous	BS EN 14181
			TBC following completion of IC9 From MSUL to baseload Note 3	Daily mean of validated hourly averages	Continuous	BS EN 14181
			100 mg/m^3 Effective Dry Low NO_x to baseload Note 1 70% to baseload Note 1	95% of validated hourly averages within a calendar year	Continuous	BS EN 14181

Table S3.1 Point source emissions to air from Gas Turbine >100MWth						
Emission point ref. & location	**Source**	**Parameter**	**Limit (including unit)-these limits do not apply during start up or shut down.** Note 2	**Reference period**	**Monitoring frequency**	**Monitoring standard or method**
			35 mg/m^3 Effective Dry Low NO_x to baseload Note 1	Annual mean of validated hourly averages	Continuous	BS EN 14181
A1 [point A1 on-site plan in schedule 7]	LCP002743 Gas turbine fired on natural gas	Carbon monoxide	100 mg/m^3 Effective Dry Low NO_x to baseload Note 1 70% to baseload Note 1	Monthly mean of validated hourly averages	Continuous	BS EN 14181
			110 mg/m^3 Effective Dry Low NO_x to baseload Note 1 70% to baseload Note 1	Daily mean of validated hourly averages	Continuous	BS EN 14181
			TBC following completion of IC9 From MSUL to baseload Note 3	Daily mean of validated hourly averages	Continuous	BS EN 14181
			200 mg/m^3 Effective Dry Low NO_x to baseload Note 1 70% to baseload Note 1	95% of validated hourly averages within a calendar year	Continuous	BS EN 14181

Table S3.1 Point source emissions to air from Gas Turbine >100MWth						
Emission point ref. & location	**Source**	**Parameter**	**Limit (including unit)-these limits do not apply during start up or shut down.** Note 2	**Reference period**	**Monitoring frequency**	**Monitoring standard or method**
			TBC following completion of IC3 Effective Dry Low NO_x to baseload Note 1	Annual mean of validated hourly averages	Continuous	BS EN 14181
		Oxygen	-	-	Continuous As appropriate to reference	BS EN 14181
		Water Vapour	-	-	Continuous As appropriate to reference	BS EN 14181
A1 [point A1 on-site plan in schedule 7]	LCP002743 Gas turbine fired on natural gas	Stack gas temperature	-	-	Continuous As appropriate to reference	Traceable to national standards
		Stack gas pressure	-	-	Continuous As appropriate to reference	Traceable to national standards
		Stack gas volume flow	-	-	Continuous	BS EN 16911 & Environment Agency Technical Guidance Note M2

Table S3.1 Point source emissions to air from Gas Turbine >100MWth						
Emission point ref. & location	**Source**	**Parameter**	**Limit (including unit)-these limits do not apply during start up or shut down.** [Note 2]	**Reference period**	**Monitoring frequency**	**Monitoring standard or method**
		Sulphur dioxide	-	-	6 monthly by calculation	Agreed in writing with NRW
		Dust	-	-	6 monthly by calculation	Agreed in writing with NRW
A2 [point 5 on-site plan in schedule 7]	Emergency Diesel Generator	No limit set	No Monitoring Required			
A3 [point 6 on-site plan in schedule 7]	Diesel Fire pump	No limit set	No Monitoring Required			

Note 1: This ELV applies between the effective dry low NO_x threshold and baseload once IC5 has been completed. Effective dry low NO_x thresholds are defined in Table S1.6 (following completion of IC2), until IC5 has been completed the 70% to baseload threshold applies.
Note 2: ELV averaging periods and applicable load ranges may be rationalised upon receipt and approved in writing by Natural Resources Wales following completion of Improvement Condition IC5, if sufficient justification and evidence is provided.
Note 3: This ELV applies between the minimum start-up load (MSUL) (as defined in Schedule 6) and baseload.

Table S3.2 Point Source emissions to water (other than sewer) and land – emission limits and monitoring requirements						
Emission point ref. & location	**Source**	**Parameter**	**Limit (incl. unit)**	**Reference Period**	**Monitoring frequency**	**Monitoring standard or method**
W1 – un-named tributary of the River Afon Llan on the Eastern boundary of the site	Accumulated surface and roof water run-off	No Parameters set	No visible oil or grease	No Monitoring Required		

Table S3.3 Process monitoring requirements				
Emission point reference or source or description of point of measurement	**Parameter**	**Monitoring frequency**	**Monitoring standard or method**	**Other specifications**
W1	Oil and Grease	Continuous	-	Oil in water detector – to monitor the clean surface water discharge
LCP002743	Net electrical efficiency	After commissioning and then after each modification that could significantly affect these parameters	EN Standards or equivalent	To be measured at ISO baseload conditions

Schedule 4 - Reporting

Parameters, for which reports shall be made, in accordance with conditions of this permit, are listed below.

Table S4.1 Reporting of monitoring data

Parameter	Emission or monitoring point/reference	Reporting period	Period begins
Emissions to air Parameters as required by condition 3.5.1	A1	Every 3 months for continuous monitoring	1 January, 1 April, 1 July, 1 October
	A1 – Sulphur Dioxide	6 monthly	1 January, 1 July
	A1 - Dust	6 monthly	1 January, 1 July

Table S4.2: Annual production/treatment

Parameter	Units
Power generated	MWh
Number of hours MCP1 (emergency generator) is operational	Hours
Number of hours MCP2 (fire pump) is operational	Hours

Table S4.3 Chapter III Performance parameters for reporting to DEFRA

Parameter	Frequency of assessment	Units
Thermal Input Capacity for LCP	Annually	MW
Annual Fuel Usage for LCP	Annually	TJ
Total Emissions to Air of NO_x for LCP	Annually	t
Total Emissions to Air of SO_2 for LCP	Annually	t
Total Emissions to Air of particulate matter (dust) for LCP	Annually	t
Operating Hours for LCP (Load Factor)	Annually	h

Table S4.4 Reporting forms

Media/ parameter	Reporting format	Starting Point	NRW recipient	Date of form
Air & Energy	Form IED AR1 – SO_2, NO_x and dust mass emission and energy	xx/xx/xx	SI	12/06/16
LCP	Form IED HR1 – operating hours	xx/xx/xx	SI	12/06/16
Air	Form IED CON 2 – continuous monitoring	xx/xx/xx	SI	12/06/16
CEMs	Form IED CEM – invalidation log	xx/xx/xx	SI	12/06/16
Air	Form IED PM1 – discontinuous monitoring and load	xx/xx/xx	SI	12/06/16

Schedule 5 - Notification

These pages outline the information that the operator must provide.

Units of measurement used in information supplied under Part A and B requirements shall be appropriate to the circumstances of the emission. Where appropriate, a comparison should be made of actual emissions and authorised emission limits.

If any information is considered commercially confidential, it should be separated from non-confidential information, supplied on a separate sheet and accompanied by an application for commercial confidentiality under the provisions of the EP Regulations.

Part A

Permit Number	
Name of operator	
Location of Facility	
Time and date of the detection	

(a) Notification requirements for any malfunction, breakdown or failure of equipment or techniques, accident, or emission of a substance not controlled by an emission limit which has caused, is causing or may cause significant pollution	
To be notified within 24 hours of detection	
Date and time of the event	
Reference or description of the location of the event	
Description of where any release into the environment took place	
Substances(s) potentially released	
Best estimate of the quantity or rate of release of substances	
Measures taken, or intended to be taken, to stop any emission	
Description of the failure or accident.	

(b) Notification requirements for the breach of a limit	
To be notified within 24 hours of detection unless otherwise specified below	
Emission point reference/ source	
Parameter(s)	
Limit	
Measured value and uncertainty	
Date and time of monitoring	
Measures taken, or intended to be taken, to stop the emission	

Time periods for notification following detection of a breach of a limit	
Parameter	**Notification period**

(c) Notification requirements for the detection of any significant adverse environmental effect	
To be notified within 24 hours of detection	
Description of where the effect on the environment was detected	
Substances(s) detected	
Concentrations of substances detected	
Date of monitoring/sampling	

Part B - to be submitted as soon as practicable

Any more accurate information on the matters for notification under Part A.	
Measures taken, or intended to be taken, to prevent a recurrence of the incident	
Measures taken, or intended to be taken, to rectify, limit or prevent any pollution of the environment which has been or may be caused by the emission	
The dates of any unauthorised emissions from the facility in the preceding 24 months.	

Name*	
Post	
Signature	
Date	

* authorised to sign on behalf of the operator

Schedule 6 – Interpretation

“accident” means an accident that may result in pollution.

“application” means the application for this permit, together with any additional information supplied by the operator as part of the application and any response to a notice served under Schedule 5 to the EP Regulations.

“authorised officer” means any person authorised by Natural Resources Wales under section 108(1) of The Environment Act 1995 to exercise, in accordance with the terms of any such authorisation, any power specified in section 108(4) of that Act.

“average over the sampling period” means average value of three consecutive measurements of at least 30 minutes each.

“base load” means: (i) as a mode of operation, operating for >4000hrs pa; and (ii) as a load, the maximum load under ISO conditions that can be sustained continuously, i.e. maximum continuous rating.

“calendar monthly mean” means the value across a calendar month of all validated hourly means.

“CEN” means Commité Européen de Normalisation.

“Commissioning” means testing of the installation that involves any operation of a Large Combustion Plant referenced in schedule 1, table S1.1.

“Daily average” means the average over a period of 24 hours of valid hourly averages obtained by continuous measurements.

“DLN” means dry, low NO_x burners.

“emissions to land” includes emissions to groundwater.

“emissions of substances not controlled by emission limits” means emissions of substances to air, water or land from the activities, either from the emission points specified in schedule 3 or from other localised or diffuse sources, which are not controlled by an emission limit.

“Energy efficiency” the annual net plant energy efficiency means the value calculated from the operational data collected over the year.

“EP Regulations” means The Environmental Permitting (England and Wales) Regulations SI 2016 No.1154 and words and expressions used in this permit which are also used in the Regulations have the same meanings as in those Regulations.

“groundwater” means all water, which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil.

“Industrial Emissions Directive” means DIRECTIVE 2010/75/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2010 on industrial emissions.

“large combustion plant” or “LCP” is a combustion plant or group of combustion plants discharging waste gases through a common windshield or stack, where the total thermal input is 50 MW or more, based on net calorific value. The calculation of thermal input, excludes individual combustion plants with a rated thermal input below 15MW.

“LCP Bref BAT Conclusions” means Commission implementing decision (EU) 2017/1442 of 31 July 2017 establishing best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and the Council, for large combustion plant, published 17 August 2017.

“MCERTS” means the Environment Agency’s Monitoring Certification Scheme.

“MCR” means maximum continuous rating.

“MSDL” means minimum shut-down load as defined in Implementing Decision 2012/249/EU.

“MSUL” means minimum start-up load as defined in Implementing Decision 2012/249/EU.

“Natural gas” means naturally occurring methane with no more than 20% by volume of inert or other constituents.

“ncv” means net calorific value.

“Net electrical efficiency” means the ratio between the net electrical output (electricity produced minus the imported energy) and the fuel/feedstock energy input (as the fuel/feedstock lower heating value) at the combustion unit boundary over a given period of time.

“NRW” means Natural Resources Wales.

“operational hours” are whole hours commencing from the first unit ending start up and ending when the last unit commences shut down.

“quarter” means a calendar year quarter commencing on 1 January, 1 April, 1 July or 1 October.

“RFI” means Request for Further Information

“SI” means site inspector.

“Waste Framework Directive” or “WFD” means Waste Framework Directive 2008/98/EC of the European Parliament and of the Council on waste.

Where a minimum limit is set for any emission parameter, for example pH, reference to exceeding the limit shall mean that the parameter shall not be less than that limit.

Unless otherwise stated, any references in this permit to concentrations of substances in emissions into air means:

- in relation to emissions from combustion processes, the concentration in dry air at a temperature of 273K, at a pressure of 101.3 kPa and with an oxygen content of 3% dry for liquid and gaseous fuels, 6% dry for solid fuels; and/or
- in relation to emissions from gas turbine or compression ignition engine combustion processes, the concentration in dry air at a temperature of 273K, at a pressure of 101.3kPa and with an oxygen content of 15% dry for liquid and gaseous fuels; and/or
- in relation to emissions from combustion processes comprising a gas turbine with a waste heat boiler, the concentration in dry air at a temperature of 273K, at a pressure of 101.3kPa and with an oxygen content of 15% dry, unless the waste heat boiler is operating alone, in which case, with an oxygen content of 3% dry for liquid and gaseous fuels; and/or
- in relation to emissions from non-combustion sources, the concentration at a temperature of 273K and at a pressure of 101.3 kPa, with no correction for water vapour content.

“year” means calendar year ending 31 December.

“yearly average” means the average over a period of one year of validated hourly averages obtained by continuous measurements.

Schedule 7 - Site plan

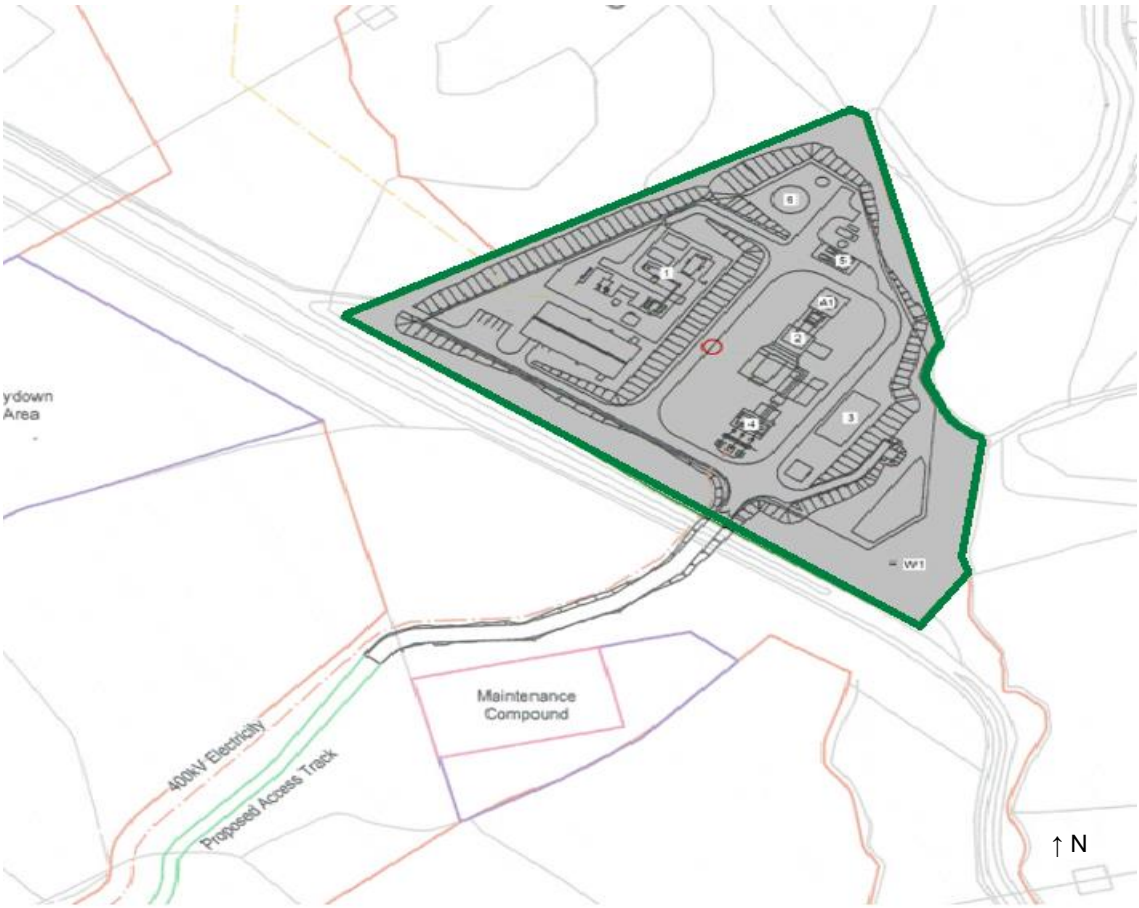

Figure 3: Installation layout

Key

— Installation boundary

— Development Consent Order boundary

● Site centre (NGR 265530, 201300)

A1 Air discharge point

W1 Water discharge point.

1. Gas receiving station.
2. Gas turbine.
3. Fin fan cooler.
4. Transformers and switchgear.
5. Emergency diesel generator.
6. Fire water tank and fire pumps.

END OF PERMIT