Appendix E

CCS Response to Applicants Comments On Local Impact Report

LIR Reference	Applicants Response	CCS Response
Air Quality		
9.12	The maximum internal stack tip diameter for the stack is 7 m as stated in Table 6-7 of the ES [APP-042], whereas the external diameter of the stack is 12 m (Table 3-3), which is used as a worst-case for the visual impact assessment. The external dimeter may be reduced, dependent on the final design of the stack; however this will not alter the internal diameter and so will not affect the dispersion modelling.	Whilst CCS welcome the clarification, the response does not clarify whether the modelling would be different if the internal stack diameter is larger than 7m as this is not secured in the DCO itself. Schedule 1 of the Draft DCO provides for a maximum external diameter of 12m. There is no control of the internal stack diameter and CCS remain unclear whether this would need to be included.
Noise and Vibration		
10.14	Table 3 of Requirement 25 of the draft DCO [APP-014] gives operational noise limits for the Project. These were set at the lowest level at each receptor which would result in a minor effect. In other words noise levels which meet the operational noise limits listed in the DCO will result in negligible effects. ES [APP-042] Chapter 7: Noise and Vibration uses the same principles to assess the expected effects of the predicted sound emissions from the Project but does not list the operational noise limits themselves. Tables 7-12 and 7-14 in the ES [APP-042] identify that the onset of minor effects for residential properties would be expected to occur with rating levels more than 5 dB above the representative background sound level. This is the basis for the operational noise limits included in Table 3 of Requirement 25 of the draft DCO	The comments from the applicant regarding operational noise levels being set at 5dB above background e. g. 39dB nighttime at Cefn Betingau, would be characterised as being indicative of having an adverse impact (BS4142). Whilst CCS understands what the applicant is trying to say about setting operational noise levels (rating levels) at the lowest minor effect and so resulting in negligible effects; the exact wording of the Requirement potentially allows an adverse impact to occur. The response goes on to state that there is the potential to lower plant noise if acoustic characteristics require. CCS maintain that if this is possible, limits should be lowered to ensure there is no adverse impact in the first instance. As suggested at the Issue Specific Hearings, it is suggested that the applicant's consultants and the Council's Pollution Control department liaise further on this issue to try and reach agreement.

	[APP-014]. The differences between the operational noise limits and the predicted rating levels shown above are a function of the conditions of the Project Site. The rating levels are based on the predicted specific plant sound level at each receptor. The predicted levels are highest at those receptors closest to the Project Site. But the background sound levels are unrelated to the distance from the Project Site as the sound sources contributing to the background sound level are located at various points none of which are on the Project. As the operational noise limits are based upon the background sound levels they too are independent of distance from the Project Site. As a result, there is essentially only one crucial location, Cefn Betingau ((Noise Sensitive Receptor (NSR) 1), which is closest to the Project Site and has the lowest background sound level of 34 dB. Lletty Morfil (NSR5), on the other hand is furthest from the Project Site and has the highest background sound level of 38 dB. As a result the same plant sound output produces very different BS 4142 assessments for the two NSRs. A plant designed to meet the operational noise limit at Cefn Betingau (NSR1) will result in rating levels considerably below the operational noise limits at the other receptors. The predictions in Table 7-21 show night time rating levels 1 dB below the operational noise limit at Cefn Betingau and 11 dB below the operational noise limit at Lletty Morfil (NSR5). The operational noise limits are rating levels, so include penalties for the character of the sound. ES [APP-042]	

	Chapter 7: Noise and Vibration includes a 3 dB penalty in the predictions to reflect the intermittent nature of the source (it is a peaking plant), therefore the specific sound level (before character penalties added) at Cefn Betingau (NSR1) was 4 dB below the operational noise limit. If the sound produced by the plant includes other characteristics that would attract character penalties (tonality, impulsiveness) then these additional penalties would have to be added as well to allow comparison with the operational noise limits. It is the intention of the detailed design to avoid this but if such characteristics cannot be avoided then the specific sound level of the plant will be lower to allow for the addition of the penalties in the rating level for comparison with the operational noise limit.	
10.15	The Development Consent Order ("DCO") was amended for Deadline 1 to include a definition of "shut down period" and "start-up period" to define the activities that can be carried out during the period set out in Requirement 23 of the draft DCO.	CCS do not consider that a start up and shut down period that extends the working day by a further hour in this rural locale is acceptable. In this rural setting, it is considered that the activities alluded to could be incorporated into the working day. The Council have had experience with construction sites and complaints relating to vehicles arriving and workers shouting etc. causing disturbance before 8am. Given the quiet nature of the immediate area it is possible that activity on site from 7:30, albeit not plant/machinery noise has the potential to cause disturbance and harm to amenity. The shut down period is less of a concern. The working day on site already extends to 10 hours a day during the week and 5 hours a day on the weekend which are considered sufficient time to ensure no detrimental impact on residential amenity as a result of noise and disturbance.

		In any event, these periods are considered excessive.
20.2 - 20.7 Definition of maintain	The DCO at Deadline 1 was amended to include additional wording in Requirement 27 to ensure that the decommissioning strategy requirement was triggered by the substantial removal of the generating station. The Applicant considers that deletion of the words "remove" and "reconstruct" would prevent legitimate maintenance work being undertaken which does require the removal of components for maintenance work, and their reinstatement. The Applicant has amended the draft DCO to clarify that the undertaker may not remove or reconstruct the whole of work no. 1. No further amendments to the draft DCO are proposed by the Applicant at Deadline 2 in relation to the definition of maintain.	Whilst the DCO has been amended to refer to the removal of the generating station, the revised wording has little effect in that it still refers to part of, but not the whole as has been explained in Appendix D of the Council's Deadline 2 submission. It is considered that the term "replace and improve" is sufficient to encapsulate what is likely to be required as part of any maintenance works. As has been noted before, there is little reference within the ES to what maintenance works are expected and it may aid the Examination to have a schedule of anticipated maintenance works to consider this further. Reconstruct implies by its very definition that something will be rebuilt despite the applicant stating that permission can only be implemented once. This definition extends beyond the scope of what is considered to be maintenance. Remove refers to taking something away. There is no requirement to put something back in its place so it is not clear how this forms part of general maintenance. Whilst the Council has raised concerns about "replace and improve" in previous correspondence (and maintains these concerns as they also permit significant changes), they are more akin to what would be expected as routine maintenance. CCS maintain that a DCO is not akin to planning permission and in line with case-law, should be clear on the face of the permission. The inclusion of a definition of "maintenance" within the legislation further reinforces the distinction between DCO and planning permission. As has been clarified previously, CCS concern in this respect is two-fold. Firstly, that the plant could be reconstructed continuously (providing it is not the

		whole) so that it is permanent in nature and never deteriorates which goes beyond the scope of the ES. Secondly, the plant could be removed (again, providing it is not the whole) without being controlled by a decommissioning strategy. CCS would have less concerns if a time limit was put on the permission overall and the word "remove" was removed from the definition and not replaced.
20.8 – 20.9 Commencement	The Applicant does not agree with this comment. Requirement 5 obliges the Applicant to seek approval for temporary fencing erected in connection with the authorised development. The exclusion of temporary fencing from the definition is to ensure that whilst the survey works required to be conducted prior to commencement of development (and which are excluded from the definition of commencement) are ongoing, appropriate safety fencing/barriers can be erected. APL would be left in breach of the DCO if the temporary fencing required during intrusive ground survey or during invasive species remediation could not be erected without triggering commencement of the DCO. The Applicant has not therefore amended the definition.	CCS would query how this fencing is distinguishable from temporary fencing included within Requirement 5 and how any person interested in the consent can distinguish between the two. As noted in the LIR, if fencing can be erected without having to be agreed, fencing could be erected around the whole site that defeats the purpose of Requirement 5 and its objectives (designed for species access for example). CCS would seek clarification on how this temporary fencing can be differentiated from temporary fencing associated with the work and what controls CCS would have to seek removal of said fencing if it is not considered acceptable on a longer term basis. How could CCS guarantee that the whole of the site boundary isn't fenced with temporary fencing under this definition?
20.20 Requirement 3 – provision and maintenance of landscaping	The Applicant amended the draft DCO at Deadline 1 to include a requirement for the landscaping plan to be reviewed by the Applicant every 5 years for the operational life of the development, and for the reviewed plan to be submitted to the relevant local planning authority for approval. The objective of the review is clearly stated to be to ensure that the management and maintenance objectives set out in the outline landscape and ecological mitigation	Requirement 3(5) does not state that the review must be submitted for the written approval of the Local Planning Authority and this is an important omission. The current drafting states that the review needs to be submitted for review by the Local Planning Authority. It doesn't state that that the LPA has to be in agreement or approve the plan. On current drafting, although the applicant has to do is submit their review.

	strategy are being met.	This needs to be amended and provision for any measures included within any subsequent review to be undertaken within the next available planting season.
20.28 Requirement 9 – Ecological Management Plan	Please see the Applicant's comments on paragraphs 11.38 and 11.39 above under section 11 (ecology) for the Applicant's response to this issue. For the reasons explained above, the Applicant does not consider that any amendments are required to the requirement.	It is queried why the applicant considers that provision needs to be built into the landscaping management plan explicitly but not the ecological management plan. Again, monitoring will be sent to the LPA. The responses don't state that these need to be agreed in writing with the LPA who may not concur with the conclusions outlined in the review. Whilst the final LEMS is to be approved, this does not mean that subsequent reviews (obviously undertaken at a later date) would be approved so the Council would not have any future control over the reviews or their outcome. As noted in Dunnett (Appendix I to the Council's Deadline 2 Submission) which is referenced in CCS Response to the Written Summary of Applicant's Oral Submission including Appendices (submitted at Deadline 2), a permission should be clear on the face of it. Therefore, the Requirement should be amended to include a review mechanism and subsequent implementation of any required works and shouldn't be left to the LEMS which isn't suitable for this purpose.
20.34 Requirement 13 – Archaeology	The Applicant considers that the requirement as drafted contains an appropriate mechanism for the timetable for production of an interpretative report. The Applicant has not mandated a particular number of days or weeks in the draft requirement, as the level of complexity in an interpretative report will depend upon what is found and being reported upon. As such, the Applicant considers that it is proportionate and appropriate for the requirement to provide for the undertaker to propose a programme for the preparation of the report (once its scope is known). The relevant planning authority is to approve the programme under the requirement, and the	Requirement 13(5) ends with the following: In the event that archaeological assets are discovered during the watching brief, a programme for preparation and submission of an interpretative report must be agreed with the relevant planning authority and an interpretative report submitted to the relevant planning authority in accordance with the agreed programme. As currently drafted, there is no timescale for when this subsequent programme has to be submitted if archaeological assets are found. The Council are concerned about the submission of the interpretive report per se, but don't have a time limit for this.

	undertaker must then prepare the report in accordance with the approved timetable.	
20.41 Requirement 17 - CEMP	The Applicant considers that it is not necessary for this to be included in the CEMP explicitly. Out of hours working is already controlled by Requirement 23, and cannot be undertaken without the prior written consent of the relevant planning authority (which may be issued subject to conditions). It is more appropriate in the Applicant's view to have regard to the particular works proposed to be undertaken out of hours in order to determine which notifications and procedures are appropriate.	CCS are concerned that residents would not be provided with sufficient warning about potential out of hours working as it would be down to a late agreement with the Council and no formal mechanism for notifying residents in advance. CCS are likely to receive complaints if the hours are extended and residents are not notified and without an appropriate procedure in place, CCS may not agree to any additional working hours. As such, it is suggested that a procedure is included to set out what steps the applicant's liaison officer will take to notify residents when hours will be extended on site. It is anticipated that the applicant would have an idea in advance when these works are likely to be programmed in and will avoid last minute requests when residents will have no time to plan for the changes. For the avoidance of doubt, the Council do not consider that this agreement would be akin to discharging a Requirement (in that the Council would have 8 weeks to consider), but is expected to be a more informal procedure, probably undertaken via email. As such, the ability to attach conditions isn't clear and it would be of greater benefit to all parties to have a clear procedure in place for this process from the start. Residents can then comment on this in advance as they may make suggestions that could significantly improve the dissemination of information to them during these periods.
20.47 Requirement 23 – Construction Hours	The Applicant has, as indicated in the first Issue Specific Hearing, included a definition of "shut down period" and "start-up" period in Article 2 of the draft DCO submitted at Deadline 1. Please see the Applicant's commentary in reference 17 of agenda item 6 of the	CCS would reiterate the comments raised at 10.15 above in response and have provided comments in the Written Summary of Oral Submissions for Issue Specific Hearing 2 (submitted for this deadline).

	Written Summary of Oral Submissions for Issue Specific Hearing 1 (submitted by the Applicant at Deadline 1).	
20.49 Requirement 23 – construction hours	The Applicant considers that the definitions included for start up and shut down periods are appropriate and that there is no evidenced basis to conclude that there would be any noise nuisance to residents. The definition of shut down period included in the DCO at Deadline 1 does not enable any plant or machinery to be operated, other than site maintenance machinery (such as generators, wheel washes and road sweepers). Generators may be required to run outside of construction hours, and wheel washes and road sweepers necessarily need to run until the last vehicle leaves the site to ensure that there is no transfer or deposition of mud on the road. These items of machinery will not result in a noise nuisance to residents.	CCS would again reiterate concerns highlighted above and note that the applicant states in Issue Specific Hearing 1 that these effects had not been considered in the ES. There is therefore no evidence that indicates these are not going to be an issue based on predicted noise levels. It is also noted that machinery would be allowed within the current definition and it is assumed that this noise has not been assessed. It may be that these processes would not impact on residents but no evidence / data to support that assertion has been submitted. In terms of evidence, this site is not in operation so no 'evidence' can be provided in this regard. However, the Council has had complaints from other development sites previously where work has commenced before 8am and this site is more sensitive given its rural location. This is therefore of concern to the Council.
20.52 Requirement 27 – decommissioning strategy	Requirement 27 has been amended at Deadline 2 to clarify that the decommissioning strategy must be submitted within 24 months. The timetable for approval of the strategy is as set out in Schedule 12 to the Order. Requirement 27(1) requires the submission by the Applicant to include a timetable and Requirement 27(3) requires implementation in accordance with the approved scheme (which includes the timetable), the Applicant therefore considers that the drafting as proposed at Deadline 1 already addresses these points.	Requirement 27 (as currently drafted in Version 2) does not provide for the decommissioning strategy requiring the written approval of the Local Planning Authority. The current wording states that a strategy has to be submitted, but there is no mechanism to achieve written approval. This aspect would need to be amended. The Council reiterate their concern with regards to the wording of 27(3) which would not be enforceable if the applicant didn't seek to obtain the necessary consents and a suggested additional subsection to require the applicant to submit applications for the necessary consents does still not ensure that they would be actively sought. The current wording provides a 'get-out' clause for the applicant as noted in the applicant's response to 21.13 below. The current wording would not be enforceable as applicant acknowledges in

		their response to 21.13. CCS has clarified this previously and this further supports the requested bond in these circumstances.
20.53 Requirement 27 – decommissioning strategy	Please see the Applicant's response to this point in reference 18 of agenda item 6 of the Written Summary of Oral Submissions for Issue Specific Hearing 1 (submitted by the Applicant at Deadline 1).	The response to the question above also covers this point and the applicant's response to 21.13 highlights that the applicant acknowledges Requirement 27 is not enforceable and is imprecise. It also highlights that it is defective as a Requirement in this regard. It would not meet the relevant tests of a condition set out in Circular 016/2014 (The Use of Planning Conditions for Development Management).
Issues the Council consider should be included within the DCO		
21.1 Time Limit for the Duration of the Consent	It is not considered necessary to impose a time limit for the operation of the plant. The selection of the 25 years operational period is a sensible and realistic period included in the ES to provide a basis in which the assessment can be done. It is necessary to make assumptions to allow the assessments to be carried out. At Deadline 1, APL provided a sensitivity analysis to demonstrate, on a topic by topic basis, that in the event that the operational life of the project were to exceed 25 years, the conclusions in the ES would still remain the same. This is further explained in reference 21 of agenda item 6.5 of the Applicant's Written Summary of Oral Submissions for Issue Specific Hearing 1 (submitted by the Applicant at Deadline 1).	CCS concerns are twofold in this respect. Firstly, the operational time life indicated in the ES is misleading as it was considered by CCS staff that this is the lifetime of the development when providing comments and this is not now the case. Secondly, concerns are raised with regards to drainage attenuation which has only been designed for a specific lifetime when climate change allowances are not as conservative as they are in future years (as indicated by the sensitivity analysis extending up to 2069). When considered in conjunction with no time limit on the permission and the definition of "maintain" as currently worded, the plant could be in operation in perpetuity, significantly beyond the 25 year operational period, the 35 year period indicated in the sensitivity analysis and the design life of the drainage attenuation.
21.3	The ES has assessed the operational effects of the project as permanent. Please see the explanation set out in respect of paragraph 21.2 above. This is explained in the methodology section of the ES and in the individual topic chapters. The Applicant therefore considers that the assessment in the ES is robust,	Whilst the ES may have assessed the effects as permanent, it also referred to the 25 year design life throughout the document. Drainage is one area of concern that the design has not assessed beyond 2069.

	complete and accurate. In some topic areas, the planned decommissioning of the power generation plant would result in a reduction in significant effects and this is explained in the decommissioning section of each chapter.	
21.4 and 21.5	The Applicant included in the draft DCO at Deadline 1 provisions for the relevant local planning authority to be paid a fee for discharge of requirements. Please see Schedule 12 Paragraph 3 in the draft DCO submitted at Deadline 1.	CCS would refer to their Deadline 2 comments with regards to charging. It remains imperative that funding is put in place to cover the costs of discharging Requirements and ongoing monitoring and enforcement. Prior to the Issue Specific Hearings, APL and CCS agreed to discuss this issue in further detail to see whether agreement could be reached on the funding mechanisms to be included and this will be considered further in the new year.
21.12	The Applicant reiterates that there is no policy basis for a decommissioning bond. CCS has not in its LIR identified any policy basis for a bond.	The Council have maintained throughout the process that matters that need to be taken into consideration need to both important and relevant and the bond would meet both of these criteria as has been specified previously in various responses along with the reasoning behind this. Notwithstanding this, Planning Policy Wales (Edition 10) was released in December 2018 and replaces previous iterations. Despite the stage of applications, it therefore provides the national planning policy context that can be material to decisions. The applicant referred to the update themselves in Hearing 2 with regards to the intention to restrict coal-related development except in exceptional circumstances. PPW 10 has shifted in focus and its primary objective is to ensure that the planning system contributes towards the delivery of sustainable development and improves the social, economic, environmental and cultural well-being of Wales, as required by the Planning (Wales) Act 2015, the Well-being of Future Generations (Wales) Act 2015 and other key legislation. Figure 3 Provides the key planning principles with the Maximising Environmental Protection and Limiting Environmental Impact section states: “The polluter pays principle applies where pollution cannot be prevented and

		applying the precautionary principle ensures cost effective measures to prevent environmental damage." This is important and supports the Council's case in requesting a fully repayable bond for decommissioning. Paragraph 5.2.24 states that "Energy-related developments should be decommissioned and sites remediated as soon as their use ceases. Planning authorities should use planning conditions or legal agreements to secure the decommissioning of developments and associated infrastructure, and remediation of the site." Therefore, as well as being both important and relevant, there is national policy backing the stance adopted by the Council. As noted above, Requirement 27 does not adequately secure the decommissioning of the project in its own right and concerns have also been raised in the event that the company went into liquidation (that has impacted on mining schemes previously in South Wales). Whilst not directly relevant (as it relates to minerals), Policy 5.14.47 also states that "Sites left unrestored for a long period or delay in legitimate restoration is not acceptable. To address the uncertainty of local communities about the completion of restoration proposals and having regard to the polluter pays principle, wherever it is reasonable to do so, authorities may require financial guarantees as a means of ensuring that sites will be restored properly and in a reasonable time period. An authority may require financial guarantees by way of a Section 106 planning obligation/ agreement as part of the approval of planning permission to ensure that restoration will be fully achieved."
21.13	The Applicant's position is on the basis that it should not be criminally liable under the DCO for failure to decommission if in the intervening period between DCO grant and decommissioning, other consent requirements are imposed. There is no suggestion from the Applicant that it will not decommission at the relevant time, but that there is a need to recognise that	The applicant's response is very important and supports the Council's position in regards to the enforceability of Requirement 27 as currently worded. The applicant does not want to be criminally liable (via enforcement proceedings) if they do not decommission the power plant. This is wholly unacceptable as it renders the whole Requirement imprecise and unenforceable.

	if other permissions are required, the Applicant must be afforded the opportunity to obtain them.	This reiterates the importance of the provision of the bond under the "polluter pays" principle identified in Planning Policy Wales. The Council are of the view that if one of the necessary consents could not be obtained for any legitimate reason (such as the presence of European Protected Species for example), then the Council would have to take a pragmatic view in the public interest as to whether to proceed with enforcement action as well as consider whether it would itself comply with relevant legislation/ duties in its actions. Decommissioning should not be left to the Environmental Permit as it forms part of the DCO application, has been assessed as such in the ES and it is imperative that Requirement 27 can be enforced.
Section 106 Agreement		
22.5	As set out above, the Applicant included in the draft DCO at Deadline 1 provisions for the relevant local planning authority to be paid a fee for discharge of requirements. Please see Schedule 12 Paragraph 3 in the draft DCO submitted at Deadline 1. The Applicant does not consider it to be necessary or justifiable for the planning authority to request payment for performing its statutory duties as the enforcing authority for the DCO. This is a public function that the authority receives funding from Central Government to perform.	As set out in response to 21.4 and 21.5 above, the Council do not consider the proposals put forward for charging for the discharge of Requirements are commensurate with the time that would be involved in determining these Requirements. However, CCS will continue to liaise with the applicant in this regard. CCS wishes to clarify that enforcement is not a statutory duty and is undertaken on a discretionary basis to ensure that the planning regime is effectively controlled. Therefore, the Council do not receive any funding for undertaking this element per se. CCS considers that it is in the applicant's own interest to provide funding for enforcement complaints to ensure a prompt resolution to issues. Without the necessary funding in place, Officers may take longer to resolve issues which could stop development in the interim period.