

From: [Abergelli Power](#)
To: [Jones, Hefin](#)
Subject: FW: Abergelli Power DCO - Swansea LDP - Inspectors' Binding Report
Date: 11 February 2019 11:12:38
Attachments: [image001.jpg](#)
[image002.jpg](#)

From: Ferguson, Andrew [mailto:Andrew.Ferguson@swansea.gov.uk]
Sent: 04 February 2019 12:55
To: Abergelli Power
Cc: Kirstin Gardner
Subject: RE: Abergelli Power DCO - Swansea LDP - Inspectors' Binding Report

Morning Hefin,

**RE: Abergelli Power DCO- Swansea LDP Update
FOR INFORMATION**

In the Council's Deadline 4 comments submitted last week, I stated that the Inspectors' Binding Report into the LDP was expected this week. It has now been submitted to the LPA. I appreciate that this email is after Deadline 4 and will formally reference this in the Council's Deadline 5 comments but I thought it may be of use to the Examining Authority at an earlier stage. I have copied the applicant in as well so that they are aware of the current situation with the LDP.

The Inspectors' Final Report on the Examination into the Swansea LDP 2010 - 2025 has now been published and can be viewed via the link below:

<https://www.swansea.gov.uk/ldp>

The Inspectors' Report concludes that, subject to implementation of the binding changes set out within it, the Swansea LDP satisfies the requirements of the relevant legislation and meets the necessary 'tests of soundness'. The Inspectors have confirmed that the Council has provided sufficient evidence to support the Plan, and that they consider the LDP policies and proposals will realistically be delivered. The binding changes are broadly consistent with those set out in the schedule of Matters Arising Changes to the Deposit Plan that arose out of the Examination process, which were subject to public consultation at the end of 2018. The full extent of these changes are highlighted in the Inspectors Report.

The Swansea LDP, as amended by the binding changes set out in the Inspectors Report will now move forward to formal Plan adoption stage. These matters are scheduled to be discussed at a public meeting of full Council on the 28th February 2019.

I trust this information is of use to you.

Regards,
Andrew

Andrew Ferguson
Prif Swyddog Cynllunio (Ardal 1) / Principal Planning Officer (Area 1)

Cynllunio ac Adfywio'r Ddinas / Planning and City Regeneration
Cyngor Abertawe / Swansea Council
Ffon / Tel: [REDACTED]

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gweinyddydd@abertawe.gov.uk

Bydd yr holl ohebiaeth a anfonir at y Cyngor neu ganddo yn destun cofnodi a/neu fonitro yn unol â'r ddeddfwriaeth berthnasol
Croesewir gohebiaeth yn y Gymraeg a byddwn yn ymdrin â gohebiaeth Gymraeg a Saesneg i'r un safonau ac amserlenni.

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From: [Ferguson, Andrew](#)
To: [Jones, Hefin](#); [Abergelli Power](#)
Subject: FW: Abergelli Power Ltd - Late Deadline 4 Submission from City and County of Swansea
Date: 06 February 2019 15:04:47
Attachments: [image001.jpg](#)
[image003.jpg](#)
[Examination - Second Written Questions.doc](#)
[Swansea LDP Examination Inspectors Report 31 Jan 2019.pdf](#)
[Swansea LDP Insp Report Appendix A - MAC Schedule - Part 1 \(1\).pdf](#)

Afternoon Hefin,

LATE Deadline 4 Submission (EMAIL 1 of 2 due to size limit)

Further to my previous email, please find attached the Council's late deadline submission containing a response to the Examining Authority's 2nd Written Question. In addition, I have attached the Inspector's Binding Report into the LDP and associated appendices which was referred to in the Questions.

I appreciate that this submission is late and is subject to the Inspector's discretion to allow it but I have copied the applicant in to this email so that they are aware of the situation.

Once again, I apologise to all for my oversight in this regard.

Regards,
Andrew

Andrew Ferguson

Prif Swyddog Cynllunio (Ardal 1) / Principal Planning Officer (Area 1)

Cynllunio ac Adfywio'r Ddinas / Planning and City Regeneration

Cyngor Abertawe / Swansea Council

Ffon / [REDACTED]

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From: [Ferguson, Andrew](#)
To: [Jones, Hefin](#); [Abergelli Power](#)
Subject: RE: Abergelli Power Ltd - Late Deadline 4 Submission from City and County of Swansea (2 of 2)
Date: 06 February 2019 15:08:55
Attachments: [image001.jpg](#)
[image002.jpg](#)
[Swansea LDP Insp Report Appendix A - MAC Schedule - Part 2.pdf](#)
[Swansea LDP Insp Report Appendix A - MAC Schedule - Part 3.pdf](#)
[Swansea LDP Insp Report Appendix B - IMAC Schedule.pdf](#)

Afternoon Hefin,

LATE Deadline 4 Submission (EMAIL 2 of 2 due to size limit)

Please note that the original email failed due to size limit (which was copied in to the applicant for information).

Regards,
Andrew

Andrew Ferguson

Prif Swyddog Cynllunio (Ardal 1) / Principal Planning Officer (Area 1)

Cynllunio ac Adfywio'r Ddinas / Planning and City Regeneration

Cyngor Abertawe / Swansea Council

Ffon / [REDACTED]

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Bydd yr holl ohebiaeth a anfonir at y Cyngor neu ganddo yn destun cofnodi a/neu fonitro yn unol â'r ddeddfwriaeth berthnasol

Croesewir gohebiaeth yn y Gymraeg a byddwn yn ymdrin â gohebiaeth Gymraeg a Saesneg i'r un safonau ac amserlenni.

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CITY & COUNTY OF SWANSEA

**Examining Authority's
Second Written Questions**
Abergelli Power Project

PINS REFERENCE: EN010069
CCS EXAMINATION REFERENCE: 20011204
CCS APPLICATION REFERENCE: 2018/1289/DCO

Application by Abergelli Power Limited for the Abergelli Power Project

The Examining Authority's written questions and requests for information (ExQ2)

Issued on 11th January 2019

The following table sets out the Examining Authority's (ExA's) written questions and requests for information – ExQ2.

Questions are set out using an issues-based framework derived from the Initial Assessment of Principal Issues provided as Annexe B to the Rule 6 letter of 12 September 2018. Questions have been added to the framework of issues set out there as they have arisen from representations and to address the assessment of the application against relevant policies.

Column 2 of the table indicates which Interested Parties (IPs) and other persons each question is directed to. The ExA would be grateful if all persons named could answer all questions directed to them, providing a substantive response, or indicating that the question is not relevant to them for a reason. This does not prevent an answer being provided to a question by a person to whom it is not directed, should the question be relevant to their interests.

Each question has a unique reference number which starts with 2 (indicating that it is from ExQ2) and then has an issue number and a question number. For example, the first question on air quality and emissions issues is identified as Q2.4.1. When you are answering a question, please start your answer by quoting the unique reference number.

If you are responding to a small number of questions, answers in a letter will suffice. If you are answering a larger number of questions, it will assist the ExA if you use a table based on this one to set out your responses. An editable version of this table in Microsoft Word is available on request from the case team: please contact Abergelli.Power@pins.gsi.gov.uk and include Abergelli Power in the subject line of your email.

Responses are due by Deadline 4: Friday 1 February 2019

CCS response submitted 6 February 2019 (late submission)

ExQ1	Question	CCS Response
2.0	General and Cross-topic Questions	
2.0.2	Bond for Decommissioning of Plant: CCS [RR-022][EV-011] believe that a bond should be provided to cover the full cost of decommissioning, repayable upon completion of this element, to ensure that there is funding available to dismantle/ decommission the project in the future. i. Can CCS point to any made DCOs where a bond for decommissioning of plant was included? Planning Policy Wales (Edition 10) (PPW) was introduced on 4th December 2018 and states that the ‘polluter pays’ principle is a key - 3 - ExQ2: 11 January 2019 Responses due by Deadline 4 01 February 2019 ExQ2 Question to: Question: planning principle. In addition, Paragraph 5.2.24 states that energy related developments should be decommissioned and sites restored...LPAs should use planning conditions or obligations to secure decommissioning and remediation of the site”. ii. What is the Applicants view of the latest edition of PPW commentary on decommissioning?	Question i. CCS cannot specifically point to any DCOs made where a bond for decommissioning of plant was included but CCS wishes to highlight several points that are pertinent to this question. Firstly, CCS has only reviewed a small sample of applications in this regard to try and find similar types of application. It is not straightforward to filter applications on the www.infrastructure.planninginspectorate.gov.uk website based on their type of development in (to find similar applications). For the reasons expanded on below, it is not considered necessary to look into this further given the amount of work this would entail. Secondly, these would have been considered in different policy contexts to the current proposal in terms of national planning policy and are therefore materially different to the current proposal. Planning Policy Wales was only introduced in December 2018 and CCS has not found any similar proposals granted a DCO in Wales since its introduction. Thirdly, as stated in the Issue Specific Hearings, whilst precedent can be a material/ relevant consideration, the Authority cannot comment on whether this issue was raised/ considered/ challenged as part of those Examinations as it was not party to them. It should not be afforded the same weight as case law as it would not have been interrogated as such. CCS would therefore suggest that very limited weight is placed on precedent in this instance. Fourthly, whilst these issues may not have been raised previously, it does not mean that issues won’t arise in the future and should not be planned for. This is highlighted with the example of the research into “The Restoration and Aftercare

		of Coal and Aggregates Workings” submitted at deadline 4 (Appendix F). This research notes that these issues were not considered at the outset for mining/ aggregate working in a lot of cases but have become more prominent as issues arise in terms of securing site restoration at a later date. It is therefore considered important that this issue is not overlooked from the outset and that the bond is sufficient to cover the cost of the works if required to be utilised. Finally, as CCS has already stated, the provision of a bond is both relevant and important, is now supported in National planning policy and this issue is vitally important given a) the anticipated cost of decommissioning and b) concerns over the enforceability of Requirement 28 (Decommissioning). The research into “The Restoration and Aftercare of Coal and Aggregates Workings” (Appendix F of Deadline 4 submission) indicates that conditions alone have not been sufficient to ensure restoration in all cases which is why a bond is necessary. Question ii. Planning Policy Wales Edition 10 (PPW) was published on 4th December 2018 and took effect from that date, immediately superseding Edition 9. 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. PPW 10 states “The polluter pays principle applies where pollution cannot be prevented and applying the precautionary principle ensures cost effective measures to prevent environmental damage.” CCS has raised concerns previously in terms of the long term impact of this apparatus being installed within the open countryside and slowly deteriorating/ decaying when it is no longer required. The applicant themselves has indicated
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		that the cost of decommissioning is significant (circa £2,000,000 plus). CCS does not consider that Requirement 28 (Decommissioning) is currently enforceable as it is subject to obtaining necessary consent and the addition of a subsection requiring the applicant to submit said applications would not overcome these concerns as there is nothing to say that they will be achieved. The applicant admits as such when seeking to limit their liability with the wording. Notwithstanding this, there is a possibility that APL could enter liquidation at some point in the future and it may not be economically viable to transfer ownership of the apparatus to another party. In such a case, the liability for the apparatus would essentially fall to the public purse. There is not considered to be sufficient value in the land to recoup any loss going forward. CCS has also stated that the bond would be fully repayable. The Council won't benefit from the bond other than having a safeguard / guarantee in the event of unforeseen circumstances. The risk is otherwise on the Council and could result in resources (that are already under significant pressure following 9 years of austerity) being diverted away from providing services to the residents of Swansea. The polluter pays principle, and the approach suggested by CCS, does not take all risk away from the Council as it would increase over time and if issues arise before the bond covers the entire cost of the works, the Council could be liable for any shortfall to ensure the apparatus is removed. What is important, and is noted in the research into Coal Mining referenced above is that conditions alone are not always effective and even where bonds have been included, they don't always cover the entire cost of the works. CCS considers the request to be reasonable in this regard. It is clear that the current economic climate is uncertain and it is impossible to predict what will happen during the lifetime of this project. On this basis, it is
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		considered that the provision of a (fully refundable) bond is the only way to ensure the polluter pays principle is enshrined within any DCO that the SoS is minded to grant. This is important and supports the Council's case in requesting a fully repayable bond for decommissioning.
2.0.3	Discharge, monitoring and enforcement costs: CCS [RR-022] the Local Planning Authority (LPA) will be responsible for discharging, monitoring and enforcing any requirements imposed on the development as well as any planning obligations. Currently there is no provision for charging in the draft DCO [APP-014]. Does CCS agree that these costs should form part of a Planning Performance Agreement (PPA) directly with the Applicant?	CCS originally requested that details of the fee were incorporated within the DCO itself to guarantee certainty of payment. These concerns were relayed to APL who have suggested a revised wording within a PPA which is currently being discussed between parties. At the current time, there is general agreement on the terms of the PPA and the finer details are subject to some further discussion/ clarification but it is anticipated that these will be concluded shortly. Provided a PPA is suitably robust to ensure appropriate payments for the work that will be undertaken by CCS (and it is currently considered to be), CCS are in agreement to these costs being included within a PPA.
2.0.4.	Emerging LDP: The Inspector's Binding Report is expected on 10 January 2019. Can CCS make a copy of the report available to the Examination?	The Inspector's Binding Report into the Swansea LDP 2010 - 2025 has now been published (4th February 2019). A copy is attached with this response (along with the appendices for information). The Inspectors' Report concludes that, subject to implementation of the binding changes set out within it, the Swansea LDP satisfies the requirements of the relevant legislation and meets the necessary 'tests of soundness'. The Inspectors have confirmed that the Council has provided sufficient evidence to support the Plan, and that they consider the LDP policies and proposals will

		realistically be delivered. The binding changes are broadly consistent with those set out in the schedule of Matters Arising Changes to the Deposit Plan that arose out of the Examination process, which were subject to public consultation at the end of 2018. The full extent of these changes are highlighted in the Inspectors Report. The Swansea LDP, as amended by the binding changes set out in the Inspectors Report will now move forward to formal Plan adoption stage. These matters are scheduled to be discussed at a public meeting of full Council on the 28th February 2019.
1.7.	Draft Development Consent Order (DCO) Annexe G to the Rule 6 Letter [PD-005 issued 12 September 2018] provided notice of an Issue Specific Hearing (ISH) on the draft DCO [REP1-014] which was held on Wednesday 10 October 2018 (ISH1). Annexe H to that letter set out a schedule of issues and questions for Examination at ISH1. A further ISH2 on the dDCO [REP2-005] was held on Thursday 13 December 2018. The Examination timetable provides that matters raised orally in response to ISH2 are to be submitted in writing by Deadline 3, Friday 21 December 2018. Comments on any matters set out in those submissions are to be provided by Deadline 4, Friday 1 February 2019, which is the same as the deadline for responses to these questions. IPs who participated in ISH2 and consider that their issues have already been drawn to the ExA's attention do not need to reiterate their issues in responses to the question below. Matters set out in Deadline 3 written submissions arising from ISH2 are best responded to in Deadline 4 comments rather than in responses to the following questions, which aim to capture matters that were not raised at ISH2.	
2.7.1	Operational Time Limit: CCS agrees that the Project has a design life of 25 years and that this is the basis of the assessments within the Environmental Statement [APP-042]. CCS considers that the Project has been designed for the above design life and is therefore of the opinion that there should be a requirement limiting the lifetime of the Order.	CCS cannot specifically point to any DCOs made where such an operational time limit has been proposed but CCS wishes to highlight several points that are pertinent to this. Firstly, CCS has only reviewed a small sample of applications in this regard to try and find similar types of application. It is not straightforward to filter applications based on their type of development (to find similar applications in this regard) and considerable work would be required to review the terms of each Environmental Statement to ascertain the assumptions made in the

	CCS argue that without a time limit, the consent is essentially permanent (CCS has also raised concerns about the wide-ranging definition of maintain within the DCO [REP2- 005]) and the ES has been prepared on the basis that the effects are reversible in the medium term. In addition, the LEMP [APP-036] has a lifetime of 25 years. The drainage attenuation has also been designed for a period of 25 years. CCS argues that ensuring the effects considered are accurate can only be secured with an operational time limit. Can CCS point to any made DCO where such an operational time limit has been imposed?	statement. Secondly, as stated in the Issue Specific Hearings and in response to Question 2.0.2 above, whilst precedent can be a relevant consideration, the Authority cannot comment on whether this issue was raised/ considered/ challenged as part of those Examinations. It should not be afforded the same weight as case law as it would not have been interrogated as such. CCS would again therefore suggest that very limited weight is placed on precedent in this instance. The ES is somewhat misleading as the applicant accepted in the Issue Specific Hearing on Environmental Matters. CCS maintain their concerns with regards to the wide definition of maintain and the possibility of a permanent, open ended DCO. Without a lifetime, there is no guarantee that the effects are reversible as has been considered in the ES. Finally, CCS previously raised concern specifically with the Drainage section in terms of the allowance for climate change provided within the attenuation ponds. The applicant has been in discussions with the Council's Drainage Officer who has confirmed that increased volumes for a longer climate change period can be accommodated within the current drainage design. CCS welcomes clarification on this aspect and accepts this position.
2.7.6.	Requirement 25: The Applicant stated at the DCO hearing on the 13 December 2018 that operational noise levels had been set at 5dB above background e. g. 39dB nighttime at Cefn Betingau. This would be characterised as being indicative of having an adverse impact (BS4142) [EV-011]. The Applicant went on to state that there is the potential to	CCS previously raised concerns with regards to the noise rating levels included in Requirement 25(1)Table 3. At the Issue Specific Hearing, the Examining Authority advised it would be useful for the relevant parties to consider this issue further. Further dialogue has therefore taken place. The approach taken by the applicant is considered to be acceptable now that the rationale for the ratings has been explained and as a result, CCS do not consider that the levels indicated would result in any noise issues to surrounding properties.

	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. What progress have the Applicant and CCS made on this issue?	As such, CCS do not consider that the table needs to be changed.
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