



# The Planning Inspectorate Yr Arolygiaeth Gynllunio

**The Planning Act 2008**

**Hirwaun Power Project**

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

**and**

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

---

**Martin Broderick**

**Examining Authority**

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**ExA's findings and conclusions and recommendation in respect of an application for a Development Consent Order for a new gas fired power station with a generating capacity of 299MWe (Hirwaun Power Station) that would operate as a Simple Cycle Gas Turbine (SCGT) plant, together with a new integral Electrical Connection; and a new integral Gas Connection at the Hirwaun Industrial Estate, Hirwaun, Aberdare, South Wales.**

**File Ref EN010059**

- The application, dated 21 March 2014, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 21 March 2014.
- The Applicant is Hirwaun Power Ltd.
- The application was accepted for examination on 15 April 2014.
- A single Examiner, Martin Broderick, was appointed as the Examining Authority on 30 June 2014.
- The examination of the application began on 24 July 2014 and was completed on 23 January 2015.
- The development proposed comprises a gas fired power station with a generating capacity of 299MWe (Hirwaun Power Station) that would operate as a Simple Cycle Gas Turbine (SCGT) plant, together with a new integral Electrical Connection; and a new integral Gas Connection at the Hirwaun Industrial Estate, Hirwaun, Aberdare, South Wales.

**Summary of Recommendation:**

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

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## **1 INTRODUCTION**

- 1.1 Hirwaun Power Ltd (the Applicant) proposes to develop a gas fired power station with a generating capacity of 299MWe (Hirwaun Power Station) that would operate as a Simple Cycle Gas Turbine (SCGT) plant, together with a new integral Electrical Connection; and a new integral Gas Connection at the Hirwaun Industrial Estate, Hirwaun, Aberdare, South Wales.
- 1.2 The Hirwaun Power Station will be run as a 'peaking' plant, meaning that it will be required to operate when there is a surge in demand for electricity or where there is a sudden drop in power being generated from other plants which are usually constantly operational.

### **EXAMINATION PROCESS**

- 1.3 The application, dated 21 March 2014, was made under Section 37 of the Planning Act 2008 and was received in full by the Planning Inspectorate on 21 March 2014. The application was accepted for examination on 15 April 2014 [DEC-002]. Twenty Relevant Representations were received in total [RR-01 to RR-020].
- 1.4 Hirwaun and Penderyn Community Council (HPCC) submitted a representation requesting to be registered as an Interested Party on 30 May 2014, after the closing date for registration of relevant representations for this project [AS-001]. This request was accepted by the ExA. BNP Paribas also submitted a request to become an Interested Party on behalf of Royal Mail on 15 August 2014 [REP-023]. This submission was accepted by the ExA in to the examination.
- 1.5 Western Power Distribution (WPD) was removed from the list of Interested Parties for this project as requested by them in writing on 22 August 2014 [REP-009].
- 1.6 After reviewing the relevant representations, a review of the project was made, and on 30 June 2014, Martin Broderick was appointed as the Examining Authority (ExA) to conduct the examination of this application.
- 1.7 The examination of the application began on 24 July 2014 and was completed on 23 January 2015.
- 1.8 A Preliminary Meeting (PM) was held on 23 July 2014 to which all interested parties were invited [Rule 6 letter of 30 June 2014 DEC-004]. The letter included a draft timetable for examination and **the ExA's initial assessment of the principal issues arising on the application.**
- 1.9 The ExA issued its first round of written questions on 29 July 2014 [DEC-006].

- 1.10 An Accompanied Site Visit (ASV) was held on 22 September 2014 with the Applicant and the following Interested Parties:
- Rhondda Cynon Taf County Borough Council (RCT);
  - Brecon Beacons National Parks Authority (BBNPA);
  - Natural Resources Wales (NRW);
  - Mrs Elizabeth Freeman; and
  - Tower Regeneration Ltd (TRL).
- 1.11 The ASV covered the following areas [HR-003]:
- Main Site (Hirwaun Industrial Estate);
  - Electrical Connection Route;
  - Rhigos Sub-stations;
  - Gas Connection Route;
  - Mrs Freeman's property;
  - Above Ground Installation (AGI) adjacent to A4061;
  - Enviropark Hirwaun Ltd;
  - Green Frog Energy from Waste Park;
  - Hirwaun Energy Centre proposed site;
  - Rhigos Road/A4061 junction stopping outside all sensitive receptors;
  - A465/A4059 junction;
  - Craig-y-Llyn picnic area, just off A4061, (Photomontages) [APP-006; APP-007];
  - Grass verge of A4061 heading North as bend straightens;
  - Hirwaun Common;
  - North side of A4061 and Quarry entrance junction;
  - Central inside cemetery;
  - From grass on South side of Penderyn Reservoir;
  - Footpath West of The Bunkbarn;
  - Layby just before Welsh Water site travelling North of Penderyn Reservoir;
  - Lane off A4059, park on bend, walk to location;
  - Blaen Cynon Special Area of Conservation (SAC), Cors Bryn-y-Gaer Site of Special Scientific Interest (SSSI) [APP-026; APP-027; APP-028]; and
  - Tree line South of Ty Newydd Country Hotel car park.
- 1.12 Four hearings were held during the course of the examination, all of which took place at the Ty Newydd Country Hotel, Hirwaun, Aberdare. These were:
- An open floor hearing on 22 September 2014;
  - Two Issue Specific Hearings (ISH) on the DCO and environmental issues (EIA/HRA), held on 23 September 2014 and 24 September 2014; and
  - A compulsory acquisition hearing on 24 September 2014
- 1.13 A second round of questions was issued on 22 October 2014 [DEC-009].

- 1.14 A number of specific questions were issued on 9 January 2015 [DEC-011].
- 1.15 A Rule 8(3) and 17 notification of variation to the examination timetable and request for further information was made by the ExA on 3 October 2014, announcing the following changes to the original Examination Timetable issued on 29 July 2014 [DEC-008]:
- Tuesday 21 October 2014:
    - (i) **ExA's Report on Implications for European Sites (RIES) and**
    - (ii) **ExA's second written questions to be published** - original intended date of publication: 7 October 2014
  - Thursday 13 November 2014:
    - (i) Comments on the RIES and
    - (ii) **Responses to ExA's** second written questions to be published - original intended date of publication: 30 October 2014
  - Cancellation of dates reserved for possible compulsory acquisition and issue specific hearings (Tuesday 11 – Thursday 13 November 2014).
- 1.16 All procedural decisions arrived at during the course of the examination are detailed in Appendix A [DEC001 - 0012].
- 1.17 The contents of the Examination Library are detailed in Appendix A.
- 1.18 Other consents necessary for the construction and operation of the proposed Project are provided in the application document "Details of Other Consents and Licences" [APP-044].
- 1.19 In accordance with sections 83(1)(b)(i) and (ii) of Planning Act 2008, this report sets out the ExA's findings and conclusions in respect of the application, and the recommendation to the Secretary of State (SoS) for Energy and Climate Change as to the decision to be made on the application.

## **STRUCTURE OF THE REPORT**

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

potentially important and relevant matters, identified by the ExA;

- Section 5 assesses the application against the Habitats Regulations;
- Section 6 assesses the requests for Compulsory Acquisition (CA);
- Section 7 assesses the draft Development Consent Order (DCO) and the s106 Agreement; and
- Section 8 sets out the ExA overall conclusions and recommendations to the Secretary of State (SoS).

1.21 The following appendices are included within this Report:

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

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

### **THE APPLICATION**

- 2.1 Hirwaun Power Limited (the applicant), has applied to the Secretary of State for a development consent order under section 37 of the planning act 2008 for the proposed Hirwaun Power Station. The proposal seeks to develop a new simple cycle gas fired **'peaking' power generating plant capable of providing** between 50.1 – 299 MWe, together with a new underground electrical cable connection and new underground gas pipeline connection.
- 2.2 The application site lies at Hirwaun Industrial Estate, Rhondda Cynon Taf, Wales.
- 2.3 The nearest residential settlements to the application site, are:
- Rhigos (approximately 1.3 Km to the South West);
  - Hirwaun (approximately 2 Km to the East); and
  - Aberdare (approximately 5 Km to the East).
- 2.4 The Application site is located wholly within the administrative boundary of Rhondda Cynon Taf County Borough Council (RCT).
- 2.5 The boundary of the Brecon Beacons National Park (BBNP) lies approximately 250m north of the Project at its closest point. The BBNP covers an area of approximately 1347 square Km<sup>1</sup>. It was first designated in 1957 as an area of natural beauty and one which contains unique and important flora and fauna. The two statutory purposes of the National Park Authorities, as defined in the 1995 UK Environment Act, are to:
- (i) conserve and enhance the natural beauty, wildlife and cultural heritage of the Park; and
  - (ii) to promote opportunities for the enjoyment and understanding of its special qualities.
- 2.6 The Power Generation Plant site covers approximately 6.56 ha [PD-020], and would be located on an area of land which is currently occupied by a large industrial building used for storage and distribution.
- 2.7 Other key location maps and plans are referenced in Appendix A – Examination Library references.
- 2.8 A site location plan is included at Figure 2 of the Planning Statement [APP-040] that accompanied the application.
- 2.9 The three main elements of the Project [APP-019] comprise:

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<sup>1</sup> <http://www.breconbeaconsparksociety.org/national-park/>

- (i) **A new Power Generation Plant, a SCGT gas fired 'peaking'** power generating plant capable of providing up to 299 MWe;
- (ii) A new underground electrical cable connection (referred to as **the 'Electrical Connection')** to export electricity from the Power Generation Plant into the National Grid at Rhigos Substation; and
- (iii) A new underground gas pipeline connection (referred to as **the 'Gas Connection')** to bring natural gas to the Power Generation Plant from the existing high pressure gas network National Transmission System (NTS) in the vicinity of the Project Site. This element of the Project also includes the Above Ground Installation (AGI) for the gas pipeline at the point of connection to the NTS, as well as a new permanent access to the AGI.

## **POWER GENERATION PLANT**

2.10 In addition to the main gas turbine generator units at the Power Generation Plant Site, the following would also be present [PD-018]:

- an administration building;
- a store;
- a control room/office/workshop;
- telemetry apparatus;
- black start diesel generator;
- a natural gas receiving station and gas treatment compound containing:
  - a pipeline inspection gauge (PIG) receiving facility;
  - isolation valves, metering, heating, filtering, compression, pressure regulation equipment;
  - electricity supply kiosk; and
  - control and instrumentation kiosks.
- a switchyard / banking compound containing up to eight transformers;
- switchgear building;
- other plant required to manage the transmission of electricity;
- security infrastructure, including cameras, perimeter fencing and a gatehouse;
- site lighting infrastructure, including perimeter lighting columns;
- internal roadways, car parking, pedestrian network, cycle parking, hardstanding and water treatment trailers;
- site drainage, attenuation pond and waste management infrastructure;
- electricity, water, wastewater and telecommunications and other services;
- a raw / fire water tank and demineralised water storage tank;

- landscaping including tree planting, fencing and other boundary treatments and ecological mitigation (including bat mitigation structure);
  - tree and hedge removal;
  - high voltage and low voltage cabling, equipment and controls and associated telemetry and electrical protection auxiliary cabling;
  - underground gas pipeline connection, associated telemetry and cathodic protection test / transformer rectifier unit; and
  - other ancillary equipment.
- 2.11 The power generation plant is shown in Figure 4.1 and overall plan in Figure 4.2 [APP-026].
- 2.12 **Construction Laydown Area** - Construction of the Power Generation Plant and Gas and Electrical Connection would require an area for equipment / materials laydown which would also provide an area for the assembly of large plant items within a reasonable distance of the project site. A small area to the south of the Power Generation Plant (to the south of Main Avenue) has been acquired by Hirwaun Power Limited (HPL) and would be used for this purpose. The laydown area is an existing car parking area covered in hardstanding, with miscellaneous buildings and structures. The area will be made suitable for use as a laydown area through demolition of some of these buildings and structures. The laydown area is indicated on Figure 4.2 [APP-026].
- 2.13 This laydown area would also be used periodically during operation for any maintenance activities.
- 2.14 The project is a Nationally Significant Infrastructure Project (NSIP) comprising a generating station as defined in sections 14(1)(a) and 15 of the Planning Act 2008. The various works that this application is seeking authorisation for are detailed in Schedule 1, Part 1 of the draft DCO [PD-018].
- 2.15 Ancillary matters applied for include:
- The possible and temporary diversion of one footpath;
  - The modification of public and local legislation; and
  - The compulsory acquisition of land and/or rights over land and powers of temporary occupation of land to allow the applicant to construct, maintain and operate the above development.

## **GAS CONNECTION**

- 2.16 Natural gas would be supplied to the power generation plant from the National Transmission System (NTS) network, located adjacent to the A4061.
- 2.17 The Gas Connection would run from the Power Generation Plant in a southerly / south easterly direction connecting into Feeder 2 on

the gas NTS, adjacent to the A4061. It has an approximate length of 0.9 km.

- 2.18 An Above Ground Installation (AGI) would be required to connect the gas pipeline to the NTS, including gas regulating equipment. A new permanent access track would allow access to the AGI from the A4061 for maintenance. Connection to the NTS at any high pressure pipeline location will require two adjacent above ground facilities to be installed:
- a Minimum Offtake Connection (MOC), which would be designed, constructed, owned and operated by National Grid Gas (NGG), and
  - a Pig Trap Facility (PTF) which would be designed, constructed, owned and operated by the Applicant (these two facilities together constitute the AGI).

## **ELECTRICAL CONNECTION**

- 2.19 The Electrical Connection would connect the Power Generation Plant to a new substation, approximately 686m west of the Power Generation Plant Site (Rhigos Substation). The substation is currently under construction by National Grid Company (NGC) in connection with the development of the Pen Y Cymoedd Wind Farm, which was granted Section 36 consent (under the Electricity Act 1989) and deemed planning consent.
- 2.20 The Electrical Connection would consist of a new underground cable running along existing roads (Main Avenue and Fourteenth Avenue) and into the substation.
- 2.21 Figure 4.2 [APP-026] shows the Project Site along with Electrical Connection and Gas Connection.

## **PROGRAM FOR THE DEVELOPMENT**

- 2.22 The application documents included an indicative programme [APP-019, paragraph 4.5.18] showing the chronological events that would take place, should a DCO for development be granted, including demolishing the existing structures and construction of the new development.
- 2.23 An indicative duration of 22 months is given for construction [APP-019, paragraph 13.7.4].

## PLANNING HISTORY

2.24 In the immediate vicinity of the application site there have been three other developments which are of direct relevance to this application. These three developments have the potential for cumulative effects with The Project via influences on air quality:

- Enviroparks Hirwaun Ltd

Enviroparks is located approximately 300 m north of The Project and north of the A465 carriageway on an existing industrial site. Enviroparks planning permission was granted in 2010 on its 20 acre site at Hirwaun to process 240,000 tonnes of waste every year using a sophisticated Materials Recovery Facility, Anaerobic Digestion and Gasification.

Enviroparks received planning permission from BBNPA on 21 December 2010.

The development of the first phase of the project has been designed to divert unprocessed and pre-processed commercial and industrial waste away from landfill.

Enviroparks will be proceeding on the following outline programme<sup>2</sup>:

- (i) On site construction programmed to commence January 2015. Environmental permit for Phase 1 now issued to Enviroparks;
- (ii) Phase 2 Gasifier programme construction commencement Q4 2015. Developer and technology suite confirmed; and
- (iii) On site Generation expected 2017.

The relevance of this development to this Application is discussed in Sections 4 and 5 of this report.

- Hirwaun Energy Centre

Hirwaun Energy Centre (RCTCBC planning reference 13/0416/10) comprises a proposed biofuel plant, located within Hirwaun Industrial Estate. The planning application was submitted in April 2013 but has not yet been determined. It is located within Hirwaun Industrial Estate.

The relevance of this development to this Application is discussed in Sections 4 and 5 of this report.

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<sup>2</sup> RCT in response to the ExA 2nd round question HA2-01 stated [REP-043]

- Green Frog Power Ltd

A 20MW liquid fuel power generation plant is situated south of Main Avenue, adjacent to the Hirwaun Power Project laydown area and Gas Connection. This is currently operational and it is assumed it could remain operational during both construction and operation of the Project (RCTCBC planning reference 11/1191/10).

This site comprises a series of diesel generators situated within an area of hard-standing. This site is understood to operate under the National Grid Short Term Operating Reserve (STOR) regime, under which the nationwide average for plants to operate is 100hrs a year.

The plant comprises 52 x 440kW diesel generator engines which are fired on liquid fuel. The plant only operates at times of peak demand or to balance the grid.

The relevance of this development to this Application is discussed in Sections 4 and 5 of this report.

2.25 There have been no previous similar applications for this application site. The following planning applications are of relevance to this application[REP-025]:

- National Grid 400kV Rhigos substation extension (ref. 10/0113/10) including any associated OverHead Lines (OHLs) (the application proposes two new towers, one existing removed);
- Tower Colliery open cast operation –pending application to extend it to the west, ref. 13/0859, and possibly in terms of years of operation, and pending application for extension of working hours to 1600hrs on Saturdays ref. 13/0466;
- Maerdy wind farm (eight turbines, 145m to tip, 3MW each so ~24MW)– refs 11/0198/10 and 13/0086/10;
- Enviroparks EfW power generation plant (08/1735/10);
- 130 home residential scheme on 15ha of land west of Broniestyn Terrace (08/0202/13, resubmission approved 22 October 2008 and time limit extended (11/0643, approved 18 June 2012);
- Pen Y Cymoedd Wind Farm (76 turbines up to 299MW, proposed installed capacity 3MW ea so 228MW, construction to start 2015 with commissioning in 2016, DECC reference 12.04.09.26C, RCT reference 09/1311/04);
- Mynydd Bwlfa Wind Farm (construction to start 2014, ref. 09/0393);
- Supermarket development at Ferraris Bakery, Bryngelli Estate (11/1459/10) – resolution to grant at committee on 3 October 2013;
- Supermarket application opposite the Ferraris site (part of the NSA8 strategic allocation). (12/0183/13). Applicant Kings Court. Resolution to grant at committee on 3 October 2013;

- Hirwaun Energy Centre (application reference 13/0416/10) INRG 11.6MW solar PV proposal south of Rhigos (13/0699/10); and
- Extension of Selar open cast mine near Glynneath to extract 800,000 tonnes more (Neath Port Talbot application reference P/2013/720, RCT reference for Neath Port Talbot (NPT) consultation is 13/0779/03). This includes continuation **of using an access road in RCT's area (RCT application reference 13/0734/15).**

- 2.26 RCT LDP Policy NSA 14.2 allocates 4ha of land north of Fifth Avenue at Hirwaun Industrial Estate for employment. This corresponds with the Enviroparks application.
- 2.27 RCT LDP Policy CS 9.2 identifies some land anywhere in Hirwaun Industrial Estate for waste processing (in-building processes only) although not intended to be in conflict with employment provision.

## **EUROPEAN SITES**

- 2.28 The Applicant's No Significant Effects Report (NSER) [APP-045] identified the following UK European sites for which the UK is responsible for inclusion within the assessment:

- (i) **Blaen Cynon Special Area of Conservation (SAC);**
- (ii) **Coedydd Nedd a Mellte SAC; and**
- (iii) **Cwm Cadlan SAC.**

- 2.29 These three sites are referred to collectively as the European Sites:

- (i) **Blaen Cynon SAC & Cors Bryn Y Gaer SSSI**

The Blaen Cynon SAC is located approximately 0.25 km north east from the site.

Blaen Cynon contains an extensive complex of damp pastures and heaths supporting the largest meta-population of marsh fritillary (*Euphydryas aurinia*) on the southern edge of the Brecon Beacons National Park (BBNP). The Annex II primary qualifying feature and sole reason for the sites selection as an SAC is marsh fritillary butterfly. This SAC is considered to be the one of the best areas in the UK for marsh fritillary butterfly. The population of marsh fritillary is considered to be between 501 and 1000 resident individuals<sup>3</sup>. The SAC encompasses an area of 66.81 ha and supports a variety of habitats.

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<sup>3</sup> Joint Nature Conservation Council (2011). Blaen Cynon Natura 2000 Data Form

Cors Bryn-y-Gaer SSSI is of special interest<sup>4</sup> for its lowland bog and for areas of soligenous flush, marshy grassland, dry neutral grassland and lowland acid grassland. These habitats occur in a complex with wet heath, swamp and semi-improved grassland. The site is also of special interest for the marsh fritillary butterfly *Euphydryas aurinia*. The site forms part of Blaen Cynon SAC. The lowland raised bog feature is the most sensitive to the effects of nitrogen deposition and consequently has the lowest minimum critical load of the habitats present on site which is 5kg/N/ha/yr.

(ii) **Coedydd Nedd a Mellte SAC**

The Coedydd Nedd a Mellte SAC is located approximately 1.2 km north west from the site at its closest point.

Coedydd Nedd a Mellte is an extensive area of woodland along a series of deeply incised valleys and ravines, situated to the north of Pontneddfechan in south Wales. The European (Annex I habitat) interests are the western sessile oak woodland and ash woodland. The whole site is biologically rich, with many woodland plant communities represented as well as a rich variety of ferns, lichens, mosses and liverworts. 4.3.2 This SAC encompasses an area of 378.18 ha<sup>5</sup>.

(iii) **Cwm Cadlan SAC**

The Cwm Cadlan SAC is located approximately 3 km north-north east from the site at its closest point.

This SAC encompasses an area of 83.91 ha. Cwm Cadlan is a mosaic of wet grassland fields in a small valley to the north-west of Merthyr Tydfil. Lime-rich waters flow through the reserve and sustain marshy grassland habitats, as well as a variety of specialised plants and animals. Marshy grassland and wetlands like this are now uncommon features of the wider countryside, with many areas having been drained and used for more intensive agriculture.

There are two Annex I habitats identified as primary reasons for site selection, with no further qualifying interests. The two habitats are *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinia caerulea*) and Alkaline Fens<sup>6</sup>.

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<sup>4</sup> Cors Bryn y Gaer SSSI Citation (Countryside Council for Wales, 2002)

<sup>5</sup> <http://jncc.defra.gov.uk/protectedsites/sacselection/habitat.asp>

<sup>6</sup> Joint Nature Conservation Council (2011). Cwm Cadlan Natura 2000 Data Form

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

#### **PLANNING ACT 2008, AS AMENDED**

- 3.1 The application is a Nationally Significant Infrastructure Project (NSIP), being an electricity generating station with a capacity of more than 50MWe (Planning Act 2008, s14 (1) (a) and s. 15 (2)). Accordingly, the principal policy basis against which the proposal must be decided is that set out in the relevant National Policy Statements (NPS) (Planning Act 2008, s104).
- 3.2 Whilst other policies, including those contained in the development plans for the area, may constitute matters that the SoS may regard as important and relevant to the decision, the primacy of the NPSs is clear (Planning Act 2008 s104(3) and NPS EN-1, paragraph 1.1.1). In the event of a conflict between policies contained in any other documents (including development plan documents) and those contained in an NPS, those in the NPS prevail for the purposes of decision making on nationally significant infrastructure (NPS EN-1, paragraph 4.1.5).
- 3.3 The application includes a Planning Statement which sets out the policy context for the proposed development [APP-040]. Additional information on local planning policies was provided by BBNPA [REP-024] and RCT [REP-025] as part of their Local Impact Reports (LIRs).

#### **NATIONAL POLICY STATEMENTS**

- 3.4 The ExA has had regard first and foremost to the requirements of the Planning Act 2008, as amended. In relation to s.104 the ExA has had regard to the matters in subsection (2) (a) and (b) of the Act.
- 3.5 The NPSs which are relevant to the consideration of the DCO Application are:
- NPS EN-1 The Overarching National Policy Statement for Energy;
  - NPS EN-2 National Policy Statement for Fossil Fuel Electricity Generating Infrastructure;
  - NPS EN-4 National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines; and
  - NPS EN-5 National Policy Statement for Electricity Networks.
- 3.6 These four NPSs formed the primary policy context for this examination. These were formally designated as statements of national policy and presented to Parliament in accordance with s 5(9) of the Planning Act 2008 in July 2011. **The ExA's views on** their significance for this application are set out in Section 4 of this report.

3.7 Section 1.1.2 of EN-1 states that:

*'The Planning Act 2008 also requires that the IPC<sup>7</sup> must decide an application for energy infrastructure in accordance with the relevant NPSs except to the extent it is satisfied that to do so would:*

- *lead to the UK being in breach of its international obligations;*
- *be in breach of any statutory duty that applies to the IPC;*
- *be unlawful;*
- *result in adverse impacts from the development outweighing the benefits; or*
- *be contrary to regulations about how its decisions are to be taken.'*

3.8 In relation to s.104 of Planning Act 2008 the ExA has had regard to the matters in subsection (2)(b). Two LIRs from BBNPA [REP-024] and RCT [REP-025] were submitted and are considered in Section 4.8 - 4.13 of this report.

3.9 In relation to s.104(4) of Planning Act 2008 the question whether deciding the application in accordance with the NPS would lead to the UK being in breach of its international obligations under the Habitats Directive is considered in Section 5 of this report.

3.10 There is clearly an urgent national need established in national policy as a set out in EN-1 and EN-2 to deliver new energy generation capacity of the sort proposed for Hirwaun. EN-1 goes on to state that if a development is in accordance with the NPS, the decision maker should start with a presumption in favour of that development. The ExA consider the application project against the policies of the NPS in Section 4 of this report.

### **INFRASTRUCTURE PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS**

3.11 The application is also subject to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009, as amended by the Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2012, and in particular Regulation 3<sup>8</sup>, which requires the SoS to take the environmental information into consideration before taking a decision.

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<sup>7</sup> Infrastructure Planning Commission

<sup>8</sup> **Regulation 3.- Prohibition on granting consent without consideration of environmental information**

3.—(1) This regulation applies to—

(a) every application for an order granting development consent for EIA development received by the Commission; and (b) every subsequent application for EIA development received by a relevant authority on or after 1st March 2010. (2) Where this regulation applies, the Secretary of State or relevant authority (as the case may be) must not (in the case of the Secretary of State) make an order granting development consent or (in the case of the relevant authority) grant subsequent consent unless it has first taken the environmental information into consideration, and it must state in its decision that it has done so.

- 3.12 The application is EIA development as defined by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended). It was accompanied by an Environmental Statement (ES) [APP-019 to APP-032]. Supplementary environmental information was supplied during the course of the examination. The ExA in reaching its conclusions and recommendation, has taken into consideration the environmental information as defined in Regulation 3 (1) (including the ES and all other information on the environmental effects of the development) (see Section 4 of this report).

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

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

- 3.13 The Habitats Directive (together with the Council Directive 79/409/EEC on the conservation of wild birds (Wild Birds Directive) (Birds Directive)) forms the cornerstone of Europe's nature conservation policy. It is built around two pillars:
- (i) the Natura 2000 network of protected sites and
  - (ii) the strict system of species protection.

The directive protects over 1000 animals and plant species and over 200 habitat types, which are of European importance.

### ***Conservation and Species Regulations 2010 (as amended) the Habitats Regulations***

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

- 3.14 The Conservation of Habitats and Species Regulations 2010 replaced The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) in England and Wales. The Conservation of Habitats and Species Regulations 2010 (which are the principal means by which the Habitats Directive is transposed in England and Wales) update the legislation and consolidated all the many amendments which have been made to the regulations since they were first made in 1994.
- 3.15 The Conservation of Habitats and Species Regulations 2010 apply in the terrestrial environment and in territorial waters out to 12 nautical miles. The Conservation of Habitats and Species (Amendment) Regulations 2012 came into force on 16 August 2012.
- 3.16 These Regulations amend the Habitats Regulations. They place new duties on public bodies to take measures to preserve, maintain and re-establish habitat for wild birds. They also make a

number of further amendments to the Habitats Regulations to ensure certain provisions of Directive 92/43/EEC (the Habitats Directive) and Directive 2009/147/EC (the Wild Birds Directive) are transposed clearly.

- 3.17 The relevance to this application is discussed in Section 5 of this report, and in the NRW written representation [REP-019]. The Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations) are engaged because this case involves the:
- Blaen Cynon Special Area of Conservation (SAC);
  - Coedydd Nedd a Mellte SAC; and
  - Cwm Cadlan SAC.

which, as European sites, are subject to the protection required by the Habitats Directive.

- 3.18 In determining these applications, the SoS for Energy and Climate Change will be acting as competent authority for the purposes of regulations 61, 62 and 66 of the Habitats Regulations.

## **THE WATER FRAMEWORK DIRECTIVE**

### ***Background***

- 3.19 The EU Water Framework Directive (WFD) (Directive 2000/60/EC) established a framework for Community action in the field of water policy. Some amendments have been introduced into the Directive since 2000. The purpose of the WFD is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater.
- 3.20 **The WFD requires Member States to identify 'river basin districts' – the area of land and sea made up of one or more neighbouring river basins with their associated coastal waters and groundwater. Member States must also identify a 'competent authority' to apply the WFD rules within those districts.**
- 3.21 The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 transposed the WFD into law in England and Wales (the WFD Regulations). The WFD Regulations **separate the 'competent authority' functions into two. The 'appropriate authority' has a number of strategic functions under the Regulations, including approval (or rejection) of 'river basin management plans' (RBMPs) prepared by the 'appropriate agency'.**
- 3.22 **In Wales, Welsh Government (WG) is the 'appropriate authority', and NRW the 'appropriate agency' for the production of river basin management plans.**
- 3.23 The river basin districts (RBD) in England and Wales are identified on a map deposited with the WFD Regulations. The WFD Regulations require that RBMPs were published by December

2009. They are (where appropriate) to be updated by 22 December 2015 and thereafter by each sixth anniversary of that date.

- 3.24 The RBMPs must relate to a specified period, and include information specified in relevant provisions of the WFD. Environmental objectives for the district must be proposed, together with a programme of measures to achieve them. Detailed provision is made in the regulations for public participation on the content of the RBMPs.
- 3.25 The environmental objectives to be included in RBMPs are those required to comply with Article 4 of the WFD. Broadly the WFD requires that there be no deterioration in status and that good ecological and chemical status be achieved by 2015. However, for **'artificial and heavily modified bodies of water'**, the objective is for them to reach good ecological potential and good chemical status by that date. These are bodies of water that are either created by human activity or whose character has been substantially changed by human activity.
- 3.26 Article 4.4 of the WFD sets out certain circumstances in which, exceptionally, the period for compliance may be extended to no later than 2027.

### ***Derogation***

- 3.27 Member States will be in breach of the WFD if the relevant deadline is not met, unless the very limited circumstances set out in **Article 4.7 apply ("derogation")**. These are because the failure is either:
- **"the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater", or**
  - To prevent deterioration of a surface water body from high status to good status **as a "result of new sustainable human development activities", and**
- 3.28 In either case all practicable steps are taken to mitigate the adverse impact on status and the reasons for the modifications or alterations are:
- Explained in the RBMP, and its objectives are reviewed every six years; and
  - Of overriding public interest and/or
  - The benefits to the environment and to society of achieving the environmental objectives of the WFD are outweighed by

the benefits to human health, to the maintenance of human safety or to sustainable development, and

- The beneficial objectives of the modifications or alterations cannot, due to technical feasibility or disproportionate cost, be achieved by other means which are a significantly better environmental option, and
- The modifications or alterations must not permanently exclude or compromise the achievement of the WFD objectives in other bodies of water in the same river basin district.

3.29 The WFD Regulations (Regulation 3) place a general duty on the Secretary of State, Welsh Government, EA and NRW to exercise **their 'relevant functions' so as to secure compliance with the WFD.** The Planning Act 2008 (PA2008) **is not a 'relevant function' for this purpose.**

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

3.31 The relevant RBMP in this case is the South East Valleys Management Catchment and is addressed in Section 4 of this report.

## **OTHER LEGAL AND POLICY PROVISIONS**

### **Welsh Government Policies**

3.32 There are several Welsh Government (WG) policy statements that are relevant to the application. These are:

- The Climate Change Strategy for Wales (October 2010) which seeks to reduce greenhouse gas emissions by 3 % a year. The focus is principally on improving energy efficiency and the promotion of low-carbon generation<sup>9</sup>;
- A Low Carbon Revolution - Wales' Energy Policy Statement (March 2010) which states that new fossil fuel plant should

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<sup>9</sup> The Climate Change Strategy for Wales. Welsh Assembly Government  
2010<http://wales.gov.uk/topics/environmentcountryside/climatechange/publications/strategy/?lang=en>

be carbon capture ready and should maximise energy efficiency through the use of waste heat and co-firing where appropriate<sup>10</sup>;

- The Wales Spatial Plan (2008) which sets out cross-cutting national spatial priorities. These provide the context for the application of national and regional policies for specific sectors, such as health, education, housing and the economy, reflecting the distinctive characteristics of different sub-regions (areas) of Wales and their cross-border relationships. It identifies six sub-regions in Wales without defining hard boundaries, reflecting the different linkages involved in daily activities. Hirwaun is in South East Wales - Capital Region<sup>11</sup>;
- Planning Policy Wales (PPW) (Seventh Edition, July 2014) which confirms that the planning system will play an important role in tackling climate change and reducing greenhouse gas emissions<sup>12</sup>. Sustainability should be at the heart of the decision making process. The planning system should facilitate delivery of the targets in the earlier Wales' Energy Policy Statement. The planning system should optimise low- carbon energy generation and facilitate Combined Heat and Power (CHP) systems. It recognises that in National Parks, special considerations apply to major development proposals but that exceptional circumstances may arise where there is demonstrated to be an overriding public need. Major developments should not take place in National Parks or AONBs except in exceptional circumstances. This may arise where, after rigorous Examination, there is demonstrated to be an overriding public need and refusal would be severely detrimental to the local economy and there is no potential for locating the development elsewhere or meeting the need in some other way. Any construction and restoration must be carried out to high environmental standards; and
- Technical Advice Notes (TAN) 12<sup>13</sup> and 22<sup>14</sup>. TAN 12 endorses the commitment to good design and sets out the requirement for a Design and Access Statement. TAN 22 requires design and access statements to demonstrate how

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<sup>10</sup>

*A Low Carbon Revolution –The Welsh Assembly Government Energy Policy Statement. Welsh Assembly Government, March 2010* <http://wales.gov.uk/docs/desh/policy/100331energystatementen.pdf>

<sup>11</sup> People, places, futures. The Wales Spatial Plan. Welsh Assembly Government Revise 2008 <http://wales.gov.uk/topics/planning/development-plans/wales-spatial-plan/?lang=en>

<sup>12</sup> Planning Policy Wales. Welsh Assembly Government 2014. <http://wales.gov.uk/topics/planning/policy/ppw/?lang=en>.

<sup>13</sup> Technical Advice Note (TAN) 12: Design (2009). <http://wales.gov.uk/topics/planning/policy/tans/tan12/>

<sup>14</sup> Technical Advice Note 22: Sustainable Buildings (2010).

<http://wales.gov.uk/topics/planning/policy/tans/tan22/?lang=en>

the development will meet or exceed sustainable building standards and reduce its carbon footprint. The following have also been considered:

- TAN 5: Nature Conservation and Planning (2009);
- TAN 11: Noise (1997);
- TAN 15: Development and flood risk (2004);
- TAN 18: Transport (2007) and
- TAN 23: Economic Development (2014).

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

### **Government of Wales Act 2006 (GWA 2006), Devolved Matters**

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

- Environment: matters such as environmental protection, countryside, open spaces, nature conservation, habitats, coast and marine environment;
- Local government, including areas of local authorities which includes their boundaries of jurisdiction for matters such as development control and enforcement; and
- Town and Country Planning.

### ***The National Parks and Access to the Countryside Act 1949***

3.35 The Act provides the framework for the establishment of National Parks and Areas of Outstanding Natural Beauty (AONBs). It also establishes powers for the appropriate nature conservation body to declare Nature Reserves, and for local authorities to establish Local Nature Reserves (LNRs).

3.36 The 1949 Act provided the framework for the establishment of National Parks. The Brecon Beacons was designated as a National Park in 1957.

3.37 National Parks have statutory protection. The purposes of designating a National Park are set out in Section 5 of the 1949 Act:

- conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas; and

- promoting opportunities for the understanding and enjoyment of their special qualities by the public.
- 3.38 If it appears that there is a conflict between those purposes, greater weight is to be given to conserving and enhancing the natural beauty, wildlife and cultural heritage of the National Park.
- 3.39 In relation to the application Brecon Beacons National Park (BBNP) is discussed in paras. 3.42 -3.50 and Section 4 of this report.

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

- 3.40 The Wildlife and Countryside Act 1981 (WCA) is the primary legislation which protects animals, plants, and certain habitats in the UK. The Act provides for the notification and confirmation of SSSIs. These sites are identified for their flora, fauna, geological or physiographical features by the countryside conservation bodies (in Wales this is Natural Resources Wales (NRW)). The Act also contains measures for the protection and management of SSSIs.
- 3.41 The Act is divided into four parts: Part I relating to the protection of wildlife, Part II relating to designation of SSSIs and other designations, Part III on public rights of way and Part IV on miscellaneous provisions. If a species protected under Part I is likely to be affected by development, a protected species license will be required from NRW.
- 3.42 This has relevance to consideration of impacts on SSSIs and on protected species and habitats.
- 3.43 In relation to the application it has relevance to consideration of impacts on Cors Bryn Y Gaer SSSI and on protected species and habitats, which will be assessed in Sections 4 and 5 of this report.
- 3.44 Section 28G of the WCA places legal obligations on public authorities in relation to SSSIs. These authorities are known as **Section 28G authorities**, and the definition given at **s.28G(3)** embraces all public office-holders including the SoS.
- 3.45 An authority to whom Section 28G applies has a duty in exercising its functions so far as their exercise is likely to affect the flora, fauna or geological or physiographical features by reason of which a SSSI is of special interest to:
- '...take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.'*
- 3.46 In addition, where the permission of a Section 28G authority is needed before proposed operations may be carried out, the

Section 28G authority must, in accordance with Sections 28I(2) and 28I(5) of the WCA 1981, give notice of the proposal to NRW and take any advice received from NRW into account:

- in deciding whether or not to permit the proposed operations; and
- if it does decide to do so, in deciding what (if any) conditions are to be attached to the permission.

3.47 Permission is defined so as to include any kind of consent or authorisation<sup>15</sup>. As the Applicant requires development consent from the SoS in order to proceed with its proposals, and as the SoS is a Section 28G authority, the duties under Section 28I (5) apply to the SoS. In relation to the application these matters are considered in Sections 4 and 5 of this report.

### ***Natural Environment and Rural Communities Act 2006***

3.48 The Natural Environment and Rural Communities Act 2006 (NERC) made provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, SSSIs, National Parks and the Broads. It includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with this, regard must be given to the United Nations Environment Programme Convention on Biological Diversity of 1992.

3.49 This is of relevance to biodiversity, biological environment and ecology and landscape matters in the proposed development.

3.50 In relation to the application these matters are considered in Sections 4 and 5 of this report.

### ***Transboundary Effects***

3.51 Under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (EIA Regulations as amended ), and on the basis of the information available from the Applicant, the ExA is not of the view that the proposed development is likely to have significant effects on the environment in another European Economic Area (EEA) State [PD-022].

3.52 In reaching this view the ExA has applied the precautionary approach (as explained in the Planning Inspectorate Advice Note 12 Transboundary Impacts Consultation). Transboundary issues consultation under Regulation 24 of the EIA Regulations was therefore not considered necessary.

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<sup>15</sup> Wildlife & Countryside Act 1981 s. 28I(7)

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

### **Local Impact Report[s]**

- 3.54 There is a requirement under s.60(2) of Planning Act 2008 to give notice in writing to each local authority falling under s.56A inviting them to submit Local Impact Reports (LIRs). This notice was given on 30 June 2014 [DEC-004].
- 3.55 Two LIRs from BBNPA [REP-024] and RCT [REP-025] were submitted and are considered in Section 4.8 - 4.13 of this report.

### **The Development Plans**

- 3.56 Paragraph 4.1.5 of EN-1 states:

*'Other matters that the IPC may consider both important and relevant to its decision-making may include Development Plan Documents or other documents in the Local Development Framework. In the event of a conflict between these or any other documents and an NPS, the NPS prevails for purposes of IPC decision making given the national significance of the infrastructure. The energy NPSs have taken account of relevant Planning Policy Statements (PPSs) and older-style Planning Policy Guidance Notes (PPGs) in England and Technical Advice Notes (TANs) in Wales where appropriate.'*

### **Brecon Beacons National Park**

- 3.57 The guidance set out in legislation and Planning Policy Wales (PPW) (para. 3.32 of this report) underpins the guidance set out in the Brecon Beacons National Park Management Plan 2010 – 2015 and the Brecon Beacons National Park Local Development Plan (Approved December 2013) (the LDP). Whilst the ExA does not necessarily have to have regard to the LDP as would be the case under the Town and Country Planning Act 1990 (as amended), it is considered that these documents are important and relevant that warrant significant weight to be attached to their content.
- 3.58 The Brecon Beacons National Park Management Plan 2010 – 2015<sup>16</sup> was published in July 2010 and is the single most important policy document of the National Park area. The plan

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<sup>16</sup> <http://www.beacons-npa.gov.uk/the-authority/who-we-are/npmp/>

coordinates and integrates other plans, strategies and actions in the National Park that affect the Park purposes and its duty.

3.59 The document sets out in paragraph 1.1 that:

*'no major decision should be taken affecting the future of the Park without reference to the Management Plan'.*

3.60 Of particular importance, the Management Plan identifies the special qualities of the Brecon Beacons National Park, which are summarised as follows:

- Peace and tranquillity - opportunities for quiet enjoyment, inspiration, relaxation and spiritual renewal;
- Vitality and healthfulness - **enjoying the Park's fresh air**, clean water, rural setting, open land and locally produced foods;
- Sense of place and cultural identity – **"Welshness"**;
- Sense of discovery;
- Sweeping grandeur and outstanding natural beauty;
- Contrasting patterns, colours, and textures;
- Diversity of wildlife and richness of semi-natural habitats;
- Rugged, remote and challenging landscapes;
- Enjoyable and accessible countryside; and
- Intimate sense of community.

3.61 These special qualities comprise the very reason why the area is designated as a National Park and thus any impact on any of these special qualities either individually or collectively has the potential to negatively impact upon the whole purpose of designating the area as a National Park. In determining the DCO the ExA has given due consideration, as set out in Sections 61 and 62(2) of the Environment Act 1995, to the impact of the proposal on the special qualities of the National Park<sup>17</sup>.

3.62 The Brecon Beacons National Park Local Development Plan (LDP) was adopted in December 2013 and sets out the policy basis for all planning applications within the National Park.

3.63 In addition, the National Park was designated as an International Dark Sky Reserve in 2013 by the International Dark Sky Association (IDA)<sup>18</sup>. Its mission is:

*'...to preserve and protect the night-time environment and our heritage of dark skies through quality outdoor lighting.'*

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<sup>17</sup> <http://www.beacons-npa.gov.uk/the-authority/who-we-are/npmp/>

<sup>18</sup> <http://darksky.org/>

- 3.64 As a consequence BBNPA is encouraging all residents and developers both within and on the outskirts of the National Park to have due regard to their lighting implications. BBNPA has produced a Lighting Management Plan which sets out the considerations that need to be taken into account and gives guidance on the types of lighting that may be considered appropriate. Whilst this has not been formally adopted as Supplementary Planning Guidance (SPG), BBNPA is currently working towards an Obtrusive Light SPG which was due to be published for consultation in autumn 2014. The "Dark Sky Status" is discussed further in Section 4 of this report.
- 3.65 The ExA has had due regard to the impact of the proposal on the National Park irrespective of the fact that the development is not included within the Park itself.

### **Rhondda Cynon Taf County Borough Council**

- 3.66 The Rhondda Cynon Taf (RCT) Local Development Plan(LDP) up to 2021 was adopted by the Council in March 2011<sup>19</sup> and sets out:

*'.....the framework for decisions to be made up until 2021 on how land is used in the County Borough, for example what type of development is appropriate or desirable and how best to protect our environment'.*

- 3.67 The LDP provides part of the Development Plan against which applications under the Town & Country Planning Act regime are to be determined, and parts may be relevant and important under the Planning Act 2008 regime.
- 3.68 Section 4 of the LDP sets out the Core Strategy for RCT and outlines the spatial strategy for guiding all future development and land use in the Borough. Section 5 sets out detailed area wide policies, and Section 6 outlines specific policies for the northern and southern areas of the Borough.
- 3.69 The area of Hirwaun Industrial Estate proposed for the development of the Power Generation Plant is designated in the Proposals Map as Policy CS 9 - Waste Management.
- 3.70 The Hirwaun Industrial Estate is identified as a regional site that is able to accommodate a range of waste management options to meet the capacity requirements set out in the South East Wales Regional Waste Plan. The LDP notes that:

*'...in identifying Hirwaun Industrial Estate as a suitable site for waste management, it is not the intention that the employment uses at the site should cease.'*

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<sup>19</sup> <http://www.cartogold.co.uk/rhondda/index.html>

- 3.71 The LDP identifies that the DCO application site is:
- Outside the settlement boundary of the key settlement of Hirwaun, and
  - Forms part of an area allocated under policy CS 9 for regional waste management facilities.
- 3.72 Policies of the LDP of relevance to the proposed scheme are:
- CS1 – Development in the North, this emphasises building strong sustainable communities, partly by re-use of underused land and buildings, and partly by encouraging a strong, diverse economy;
  - CS9 – Waste Management Hirwaun Industrial Estate is identified as a regional site for waste management, capable of accommodating a range of waste management options (in-building processes only) (see paragraph 4.228 of this report);
  - AW2 – Sustainable Locations Promotes development in sustainable locations (see paragraph 4.56 of this report), which include:
    - sites within settlement boundaries;
    - sites where there would be no unacceptable conflict with surrounding uses;
    - sites with good accessibility by a range of transport modes;
    - sites where development would support the roles and functions of key settlements;
    - sites where development would support the development of strategic sites; and
    - sites well-related to infrastructure, including gas and electrical services.
  - AW4 – Community Infrastructure & Planning Obligations. Provides for planning obligations to be sought where necessary to make proposals acceptable in land use planning terms (see paragraphs. 7.157 - 7.159 of this report).
  - AW5 – New Development provides amenity and accessibility criteria for new development;
  - AW6 – Design and Place making. Promotes good design in new development (see paragraph 4.59 of this report), including:
    - A high standard of design;
    - Appropriate to the local context;
    - Landscaping;
    - High level of connectivity and accessibility;
    - Energy efficiency; and
    - Good water management.
  - AW8 – Protection and Enhancement of the Natural Environment. Aims to preserve and enhance natural heritage, partly by ensuring no unacceptable impact on natural resources such as air, water and soil. Ecological surveys and appraisal are required where protected and priority special would be affected (see paragraph 4.224 of this report);

- AW10 – Environmental Protection and Public Health. Requires no unacceptable harm from a range of environmental risks, including air pollution, noise pollution, light pollution and water pollution (see paragraphs 4.201, 4.215 and 4.238 of this report);
- AW12 – Renewable and Non-Renewable Energy. Gives criteria for energy schemes, including energy from gas;
- NSA3 – Development in the Key. Settlement of Hirwaun gives criteria for development in Hirwaun, including high standard of design, accessibility and nature conservation; and
- NSA16 – Re-development of Vacant / Redundant Industrial Sites. Gives criteria for conversion or redevelopment of redundant and/or vacant industrial sites.

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

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

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

- 4.1 In accordance with s.88 of the Planning Act 2008, the ExA made an initial assessment of the principal issues arising from the ExA's consideration of the application documents [APP-001 to APP-049] and relevant representations [RR-001 to RR-020] received concerning the Hirwaun Power Project. This was sent to all Interested Parties and Affected Persons on 30 June 2014 [DEC-004] and was part of the agenda for the Preliminary Meeting (PM) held on 23 July 2014. The ExA has had regard to all important and relevant matters in putting forward this recommendation to the SoS.
- 4.2 The ExA received no requests during the PM for any additions to be made to the list of principal issues [HR-001].
- 4.3 The ExA confirmed that the principal issues have broad headings, and that all the issues would be covered by the relevant heading in the principal issues [DEC-005]. The ExA confirmed that these issues would be examined in accordance with national policy and under the procedure established in the Planning Act 2008, as amended, and relevant secondary legislation.
- 4.4 The selection of these issues informed the ExA's first round of written questions [DEC-006] and decisions as to which topics might require Issue Specific Hearings. The principal issues identified by the ExA were as follows:
- Compulsory Acquisition;
  - Design, Layout and Visibility;
  - Development Consent Order;
  - Economic and Social;
  - Environmental Impact Assessment;
  - Habitats, Ecology and Nature Conservation;
  - Historic and Archaeological;
  - Operational and
  - Traffic and Transport.
- 4.5 The following Sections (4.6 onwards of this report) deal with the matters that have emerged as the key issues in the Examination, which are of relevance to the SoS's **final decision**.

#### **Issues arising from written submissions**

- 4.6 Twenty Relevant Representations were received in the pre-examination period [RR-001 to RR-020]. The issues raised informed the initial identification of the principal issues [DEC-004].

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

### **Issues arising in Local Impact Reports (LIRs)**

- 4.8 Two LIRs have been submitted:
- (i) Rhondda Cynon Taf County Borough Council (RCT) [REP-025]; and
  - (ii) Brecon Beacons National Park Authority (BBNPA) [REP-024].
- 4.9 The issues arising from the RCT LIR were as follows:
- (i) Compliance with national and local planning policy;
  - (ii) The visual and landscape impact of the project, especially with regard to the setting of the Brecon Beacons National Park, and associated mitigation proposed;
  - (iii) **Consideration of the above in relation to both the "Rochdale envelope" and the likely design and scale of the final project;**
  - (iv) The impact on protected species, biodiversity and habitats;
  - (v) The effect of the project with regard to traffic, noise, air & water quality and other environmental effects;
  - (vi) The impact of the development during the construction phase;
  - (vii) Socio-economic impacts including any employment and regeneration impacts and
  - (viii) An assessment of the content of the DCO and relevant conditions ("**requirements**") that could be applied in the DCO.
- 4.10 The Applicant was the only commentator [REP-040] on RCT's LIR [REP-025]. The Applicant and RCT reached agreement on issues raised in the LIR via agreed requirements in the draft DCO [PD-018] and Statement of Common Ground (SoCG) [REP-031].
- 4.11 It is considered that the BBNPA is a Relevant Authority in accordance with Section 56(2) and Section 60 (2) (a) of the Planning Act 2008 as the boundary of the National Park adjoins the administrative boundary of Rhondda Cynon Taf County Borough Council within which the development is located.
- 4.12 The issues arising from the BBNPA LIR were as follows:
- (i) Landscape and Visual Impact Assessment;
  - (ii) Cultural Heritage;
  - (iii) Ecological;
  - (iv) Traffic and Transport;
  - (v) Noise and Vibration and
  - (vi) Socio Economic.
- 4.13 The Applicant was the only commentator [REP-039] on BBNPA's LIR [REP-024]. The Applicant and BBNPA reached agreement on

issues raised in the LIR via agreed requirements in the draft DCO [PD-018] and SoCG [REP-035].

### **Conformity with local plan policies**

4.14 RCT's LIR [REP-025] states on pages 15 and 20 respectively:

*'The Rhondda Cynon Taf Local Development Plan up to 2021 was adopted by the Council in March 2011 and sets out the framework for decisions to be made up until 2021 on how land is used in the County Borough, for example what type of development is appropriate or desirable and how best to protect our environment.'*

*In terms of the scheme's overall performance in respect of compliance with policies in the LDP it is considered that, subject to appropriate safeguards being included within the DCO, it would have a minor / positive impact.'*

4.15 The ExA has had no reason to disagree with the above statement.

### **Statements of Common Ground (SoCG)**

4.16 SoCGs were agreed between the Applicant and:

- Brecon Beacons National Park Authority [REP-035];
- Natural Resources Wales [REP-036] and
- Rhondda Cynon Taf County Borough Council [REP-031].

### **Conformity with NPSs and other key policy statements**

4.17 The project is a Nationally Significant Infrastructure Project comprising a generating station as defined in Sections 14(1)(a) and 15 (2) (a) of the 2008 Act.

4.18 National Planning Statement (NPS) EN-1 paragraph 3.1 states:

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

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

*The IPC should therefore assess all applications for development consent for the types of infrastructure covered by the energy NPSs*

*on the basis that the Government has demonstrated that there is a need for those types of infrastructure and that the scale and urgency of that need is as described for each of them in this Part.*

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

4.19 Paragraph 3.6.1 of NPS EN-1 states:

*'Fossil fuel power stations play a vital role in providing reliable electricity supplies: they can be operated flexibly in response to changes in supply and demand, and provide diversity in our energy mix. They will continue to play an important role in our energy mix as the UK makes the transition to a low carbon economy, and Government policy is that they must be constructed, and operate, in line with increasingly demanding climate change goals.'*

4.20 The Applicant states in paragraphs 1.1.3 to 1.1.6 of the ES [APP-0019] that:

*'The Power Generation Plant would operate as a Simple Cycle Gas Turbine (SCGT) peaking plant and would be designed to provide an electrical output of up to 299 Megawatts electrical (MWe). The plant would be fuelled by natural gas, supplied to the Power Generation Plant Site by a new gas pipeline connecting the Power Generation Plant to the existing National Gas Transmission system (NTS).*

*Peaking plants are required to operate when there is a surge in demand for electricity associated with a particular event (e.g. where many people across the country boil kettles following the end of a popular television programme) or where there is a sudden drop in power being generated from plants which are constantly operational (e.g. a sudden outage).*

*Operating as a peaking plant, the Power Generation Plant would also help to 'balance out' the grid at times of peak electricity demand and will help to support the grid at times when other technologies (e.g. wind and solar farms) cannot generate electricity due to their intermittent operation and reliance on weather conditions. Peaking plants are therefore vital in 'evening out' the power in the grid. The Power Generation Plant would operate for up to 1500 hours per year.*

*There is a considerable national need for this type of project, acknowledged at all levels of government policy.'*

- 4.21 The question of need was not raised elsewhere by any party during the course of the examination.
- 4.22 The impacts of the project and general conformity with the NPS EN-1 and EN-2 are discussed in the Sections 4 and 5 of this report.
- 4.23 The financial viability of the scheme, taking into account paragraph 4.1.9 of EN-1 4.1, is considered in Section 6 of this report.

#### **ADEQUACY OF ENVIRONMENTAL STATEMENT (ES) /ENVIRONMENTAL IMPACT ASSESSMENT (EIA)**

- 4.24 The adequacy of the EIA/ES [APP-019] and the NSER [APP-045] and their assessment of potential impacts were highlighted in the initial identification of principal issues [DEC-004].
- 4.25 BBNPA, NRW and RCT raised concerns regarding the adequacy of the EIA/ES in their respective Relevant Representations [RR-010, RR-017 and RR-08].
- 4.26 During the course of the examination the adequacy of the information provided in the ES [APP-019], NSER [APP-045] and Report to Inform Habitats Regulations Assessment [HR-015] has been resolved to the satisfaction of BBNPA [REP-033], RCT [REP-031] and NRW [REP-032].
- 4.27 The Habitats Regulations Assessment information is considered separately in Section 5.
- 4.28 The Applicant provided information on the environment and its assessment of these issues consisting of the following:
- ES [APP-019];
  - Six supporting volumes of appendices [APP-020 to APP-025];
  - Figures [APP-026 to APP-028] and
  - A standalone Non-Technical Summary [APP-029].
- 4.29 NPS EN-1 Paragraph 4.2.4 states:
- 'The IPC should request further information where necessary to ensure compliance with the EIA Directive.'*
- 4.30 The ExA investigated the adequacy of the information provided in the ES and the Report to Inform Habitats Regulations Assessment, in the first [DEC-005], second [DEC-009] and third [DEC-011] round of written questions and in their questions to the Applicant at the EIA and other Environmental Matters issue specific hearing [HR-017].

- 4.31 The Applicant's responses to the ExA written questions can be found at [first round of questions, REP-030; second, REP-045 and third REP-048].

### **Conclusion on Adequacy of Environmental Statement (ES)/Environmental Impact Assessment (EIA)**

- 4.32 It is the view of the ExA that the overall environmental information supplied, is sufficient for the SoS to take into consideration before making a decision in compliance with the Infrastructure Planning (Environmental Impact Assessment) Regulation 3(2)<sup>20</sup>.

### **CONSIDERATION OF ALTERNATIVES**

- 4.33 The EIA Regulations<sup>21</sup> require that an ES should include an outline of the main alternatives that have been studied by the Applicant and an indication of the main reasons for its choices, taking into account the likely significant environmental impacts of each alternative.

- 4.34 NPS EN-1 (Para. 4.4.1-4.4.2) states:

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

*However:*

*'Applicants are obliged to include in their ES, as a matter of fact, information about the main alternatives they have studied. This should include an indication of the main reasons for the Applicant's choice, taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility.'*

- 4.35 In the case of the Project, the alternatives that have been considered are detailed in Section 5 of the ES [APP-019]:

- Alternative development sites;

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<sup>20</sup> **3.- Prohibition on granting consent without consideration of environmental information**

3.—(1) This regulation applies to—

(a) every application for an order granting development consent for EIA development received by the Commission; and (b) every subsequent application for EIA development received by a relevant authority on or after 1st March 2010.

(2) Where this regulation applies, the Secretary of State or relevant authority (as the case may be) must not (in the case of the Secretary of State) make an order granting development consent or (in the case of the relevant authority) grant subsequent consent unless it has first taken the environmental information into consideration, and it must state in its decision that it has done so.

<sup>21</sup> Infrastructure Planning (Environmental Impact Assessment) Regulations (Amended) 2012.

- Alternative layouts;
  - Alternative technologies for electricity generation;
  - Alternative options for Gas Connections; and
  - Alternative options for Electrical Connections.
- 4.36 The ExA addressed the adequacy of the information provided on alternatives, in the first round of written questions [DEC-006] (Question to Applicant, EIA03) and in their questions to the Applicant at the EIA issue specific hearing [HR-017].
- 4.37 The Applicant's responses can be found at [REP-030 and HR-015]. The Applicant argued that siting options that have been considered for the Project are discussed in Section 5.2 of the ES [APP-019], which summarises the criteria for the siting of the generating station. These options were consulted on during the EIA Scoping process [PD-005].

### **Conclusion on the consideration of alternatives**

- 4.38 The ExA considers that the Applicant has addressed the case in relation to:
- Alternative sites;
  - Alternative layouts;
  - Alternative technologies; and
  - Alternative options for gas and electrical connections.
- 4.39 The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended), state at Schedule 4, Part 1 (18) that the ES [APP-019] needs to provide:
- 'An outline of the main alternatives studied by the Applicant and an indication of the main reasons for the Applicant's choice, taking into account the environmental effects.'*
- 4.40 Under the EIA Regulations<sup>22</sup> there is no requirement to assess all potential alternatives, only a requirement to provide a review of those alternatives that have actually been considered.
- 4.41 The ExA consider that the examination of alternatives has been addressed adequately and that the requirements of NPS EN-1 and the EIA Regulations are met.

### **MITIGATION MEASURES**

- 4.42 A series of mitigation measures have been proposed within the ES Sections [APP-019], Construction Environmental Management Plan (CEMP) [APP-020] and the Environmental Mitigation Roadmap [APP-060]. They have been secured through the draft DCO requirements [PD-018].

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<sup>22</sup> Schedule 4, Part 1 (18) and Part 2 (27)

- 4.43 All works on-site will be undertaken in compliance with the final CEMP as secured by Requirement 12 which is contained in Part 3 of Schedule 1 to the draft DCO [PD-018].
- 4.44 Section 7 of this report, contains a description of key draft DCO Requirements, and explanation of modifications either agreed by the Applicant or proposed by the ExA together with the identification of who has responsibility for discharge of specific requirements.

### **SITING AND LAYOUT, DESIGN AND VISIBILITY**

- 4.45 The siting and layout, design and visibility and the assessment of potential impacts was highlighted in the initial identification of principal issues [DEC-004].
- 4.46 The Applicant has carried out a Landscape and Visual Impact Assessment (LVIA) and reported it in the ES [APP-019] at Section 11, as required by paragraph 5.9.5 of EN-1. Twenty two viewpoints for photomontages were agreed in concert with RCT and BBNPA [HR-017] [APP-005 to APP-008].
- 4.47 Both BBNPA and RCT raised concerns regarding the adequacy of the LVIA in their respective Relevant Representations [RR-010 and RR-08] and LIRs [REP-024 and REP-025].
- 4.48 During the course of the examination the adequacy of the information provided in Section 11 of the ES [APP-019] has been resolved in SoCGs to the satisfaction of BBNPA [REP-033] and RCT [REP-031].
- 4.49 An unaccompanied (22 July 2014) and accompanied (22 September 2014) site visit [HR-003 and HR-004] have been undertaken by the ExA.
- 4.50 The ExA asked nine written questions in its first round of written questions [DLV01- DLV09 of DEC-006] in relation to the design layout and visibility of the proposed development. The Applicants responses can be viewed at [REP-030].

### **Siting and Layout**

- 4.51 NPS EN-1 notes, at paragraphs 4.4.1 and 4.4.2, that there is no general requirement to consider alternatives or to establish whether the proposed project represents the best option. However, Applicants are obliged to include in the ES, as a matter of fact, information about the main alternatives they have studied, including an indication of the main reasons for the Applicant's choice.

- 4.52 The Applicant notes in the ES [APP-019], at Section 5.2, that the site is suited to the Project for various reasons:
- Acceptable proximity to national gas and electricity transmission networks;
  - Located within an area incentivised by NGC for new electricity generation; and
  - Compatible land use designations.
- 4.53 EN-1 requires, at paragraph 4.5.4, that Applicants should be able to demonstrate how the design process was conducted and how the proposed design evolved. Section 5 of the ES [APP-019] and the Design and Access Statement (DAS) [APP-049] which formed part of the application, carry out this function.
- 4.54 EN-1 notes, at paragraph 4.5.1, that applying good design to energy projects should produce sustainable infrastructure sensitive to place, efficient in the use of natural resources and energy used in their construction and operation, matched by an appearance that demonstrates good aesthetics. It continues, at paragraph 4.5.3, by noting that the Applicant should take into account both functionality (including fitness for purpose and sustainability) and aesthetics (including its contribution to the quality of the area in which it would be located) as far as possible. It also notes, at paragraph 5.9.22, that materials and designs of buildings should always be given careful consideration.
- 4.55 The layout within the application site is largely driven by the requirements of the process, site access, gas delivery and grid connections. The ExA recognises these constraints.

### ***Conclusion on Siting and Layout***

- 4.56 Given the evidence presented, the ExA is satisfied that the application, as submitted, meets the policy requirements of EN-1 with regard to siting, efficiency and sustainability. The ExA is also satisfied that the application, as submitted, meets the policy requirements of the RCT LDP Policy AW2 – Sustainable Locations, which promotes development in sustainable locations.

### **Good design**

- 4.57 The Design and Access Statement (DAS) [APP-049] contains an explanation of the design concept and its development. As EN-1 advises, at paragraph 4.5.5, the design was the subject of a Design Commission for Wales (DCfW) review, dated 12 February 2014 [Appendix 01 of APP-049]. DCfW's review states:

*'This scheme demonstrates best practice in minimising the impact of an infrastructure on the environment.'*

*Appointing architects at an early stage in the project has potential to add value through design.*

*The coloured cladding scheme needs further refinement to create the desired effect of blending with the landscape.*

*Environmental aspects have been important drivers in the planning and design of this scheme. The siting and arrangement of the different elements of the power station have been well planned, and demonstrate that the site has been carefully analysed. The arrangement minimises impact on views into and through the site by removing the existing white shed and creating visual permeability between structures. **It improves the current condition**<sup>23</sup>.*

*The power station function is consistent with the allocation of the site for industry in the Local Development Plan, and the development aims to optimise the impact on the surrounding environment. The site is located for good connection to the electrical and gas networks.*

*The designers have proposed a 'worst case scenario' which considers the greatest impact the project will have; and they are also taking into account cumulative visual and noise impact of other developments in the vicinity. It is good that they have been open about the need for flexibility, and it gives confidence that there will not be any unexpected results if/when the scheme is realised.'*

4.58 The ExA endorses these points.

### **Conclusion on Design**

4.59 The ExA is encouraged by the design approach to the Project. This has been secured as far as possible in the draft DCO Requirements 4 and 5 (Detailed design and Landscaping) [PD-018] and by the limits set on opportunities for subsequent change in Requirement 18 [PD-018]. The design approach accords with the aims of NPS EN-1 and RCT LDP Policy AW6 – Design and Placemaking, by promoting good design in new development. Given the evidence presented, the ExA is content that a satisfactory design is likely to emerge.

### **Visibility**

#### **Landscape Character**

4.60 The Applicant has carried out a Landscape and Visual Impact Assessment (LVIA) and reported it in the ES [APP-019] at Section 11. In the SoCG [REP-033], at Section 2.7, BBNPA states that the

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<sup>23</sup> ExA emphasis

assessment can be relied upon as a reasoned explanation of the potential impacts of the proposed development.

- 4.61 The ExA agrees with BBNPA that the LVIA parameters, including the extent of the study area of 10 kilometre (km) radius, are appropriate given the topography and landscape designations.
- 4.62 National and local landscape character assessments are described in the ES, from paragraph 11.6.26 -11.6.40. There is one national landscape designations within the study area, the Brecon Beacons National Park, which is located approximately 250m north of the Project Site at its nearest point and continues beyond the LVIA Study Area boundary. Table 11.8 of the ES [APP-019] describes it as follows:

*'The Park contains some of the most spectacular and distinctive upland landforms in southern Britain. The bulk of the area is underlain by Old Red Sandstone, rocks of Devonian age and these form the characteristic north and north east facing escarpments, including the Black Mountain in the western area. The older Ordovician and Silurian rocks of Mid Wales cross into the north western corner of the Park, giving a landscape of southwest-northeast trending ridges and valleys. Coal Measures outcrop along the Park's southern boundary.*

*Two landscape character types within the National Park lie within the LVIA study area:*

- *Landscape Character Area 3(LCA3): FForest Fawr (LCA3)*
- *Broad Landscape Type :Uplands*
- *LCA prescribed value: High*

*The overall management strategy for LCA3 is to protect and enhance special qualities of the landscape including tranquillity, remoteness and relative wildness, and its historic features, long views and open skylines.*

- *Landscape Character Area 4: Waterfall Country and Southern Valleys (LCA4)*
- *Broad Landscape Type: Upland Valleys*
- *LCA prescribed value: High*

*The overall management strategy for LCA4 is to maintain and enhance the special qualities of the landscape, in particular its historic features and magnificent waterfalls, resisting development which would impact on views from the area.'*

- 4.63 In terms of local designations, the ES [APP-019] notes that the Hirwaun Common Special Landscape Area lies approximately 1 km to the south of the site at its nearest point. In Table 11.8 of the ES it describes the Area as follows:

*'Primary landscape qualities and features include:*

- *High scarp along northern edge of coalfield;*
- *Series of well-defined steep glacial cirques cut into scarp;*
- *Very dramatic scenery overlooking Heads of Valleys and dwarfing the small settlement of Cwmaman in the valley bottom to south;*
- *Spectacular views from the Rhigos Road to north and Graig Road over from Aberdare;*
- *Important for intervisibility with peaks of Brecon Beacons National Park;*
- *Edge of Craig-y-Llyn geological SSSI showing Westphalian stratigraphy;*
- *Llyn Fawr is typical glacial lake;*
- *Forestry on slopes below Llyn Fawr are being opened up and more in keeping with special scenery, and backdrop to Tower Colliery remains;*
- *Steep slopes and tops are mainly open common land, with grassland and heather habitats;*
- *Cairns and other ancient monuments on tops are widespread evidence of early settlement;*
- *Coed Morgannwg Way passes through area, from Dare Country Park; and*
- *Areas of broadleaf woodland on lower slopes around Dare valley, blends with Country Park.*
- *SLA prescribed value: High'*

4.64 BBNPA in its LIR [REP-024] acknowledges that the scheme had progressed in a favourable direction in terms of the proposed 35m maximum height of the stacks and possible treatment of the external appearance to lessen its visual impact and that controls are being proposed via relevant requirements. Despite this, at paragraph 5.21 of the LIR it states:

*' However, it remains the case that the proposal will introduce new vertical features that break the existing built height line thus interrupting views out of and into the National Park, it can only therefore be concluded that this will have a negative impact on the National Park.'*

4.65 BBNPA in its SoCG [REP-035] subsequently agreed at paragraphs 2.7.11-2.7.13:

*'...that due to the principal concern being the stacks, and the topography and existing vegetation in the vicinity of the site acting to screen lower structures, the landscaping scheme (Figure 11.5 ES, Document Ref 6.1.0) secured by Requirement 5 focuses on ecological benefit and the amenity of users of the industrial estate and does not provide screening to the stacks. Accordingly the Parties AGREE that Requirement 5 should remain for the approval of the relevant planning authority, RCTCBC, whereas the mitigation in respect of the stacks is set in the Design Principles and is secured by Requirement 4, which shall be for the approval of the relevant planning authority in consultation with the BBNPA.'*

*... that in respect of potential visible emissions (e.g. smoke or steam), no emissions of combustion-related products is expected other than those issuing from the stack.*

***... that the residual landscape and visual impact associated with the Power Generation Plant is negative but of minor magnitude.***<sup>24</sup> '

- 4.66 In the RCT SoCG [REP-031], at paragraph 3.6, RCT agrees that the assessment can be relied upon as a reasonable explanation of the potential impacts of the proposed development. It notes, at paragraphs 3.6.6 and 3.6.7, that it minimises to an acceptable level any landscape impacts arising from the proposal upon landscape character.
- 4.67 The ExA agrees with RCT and BBNPA that the LVIA parameters, including the extent of the study area of 10 kilometre (km) radius, are appropriate (paragraph 11.4.22 of [APP-019]).
- 4.68 Mitigation of the project's impact through proposed landscaping is largely confined to perimeter planting. Control is available through Requirement 5 of the draft DCO which specifies approval of a detailed landscaping scheme [PD-018].

### **Conclusion on Landscape Character**

- 4.69 Given the evidence presented, the ExA believes that taking these effects as a whole, the effects on the fabric, character and quality of the landscape would be minor. Subject to control of the lighting strategies, both during construction and operation, by the relevant planning authority through DCO Requirement 16 [PD-018], the Project would assume its place without harm in this setting at night.
- 4.70 The site has being previously used as industrial land, and the ExA believes the loss of landscape resource would be negligible.

### **Visual Impact**

- 4.71 The Power Generation Plant Site, which is currently made up of large manufacturing buildings in a poor state, is predominantly located within an industrial environment. There are no sensitive visual receptors within adjoining commercial premises [HR-003]. The Project buildings would appear within the context of existing industrial development.
- 4.72 The closest residential properties to the Power Generation Plant Site are those in Halt Close, located off the Rhigos Road approximately 750m west of the plant site. The housing development includes a range of medium sized detached

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<sup>24</sup> ExA emphasis

dwellings. The A465 passes to the north of the Power Generation Plant Site on an elevated embankment dividing the Hirwaun Industrial Estate. Much of the site is screened from road users by vegetation alongside the highway and within the industrial estate. Views are partial and in many cases, only the occasional glimpse of the area is available [HR-004].

- 4.73 Road users driving north along the A4061 towards Hirwaun have extensive views out across the Hirwaun Valley and beyond to Mynydd-y-glog in the mid distance (other side of the valley) and then beyond to the Brecon Beacons. Those using the A4059 will have much more restricted views of the Project Site due to vegetation and the natural topography screening. Local B Roads and trackways will have a variety of views of the Project Site. Many of the views from these roads are curtailed by local vegetation or buildings.
- 4.74 Important visual amenity considerations include public footpaths in the area and any Open Access Land (such as Hirwaun Common and Mynydd-y-glog).
- 4.75 In the RCT SoCG [REP-031], at paragraph 3.6, RCT agrees that the assessment can be relied upon as a reasonable explanation of the potential impacts of the proposed development. It notes, at paragraphs 3.6.6 and 3.6.7, that it minimises to an acceptable level any impacts arising from the proposal upon visual receptors.
- 4.76 BBNPA in its SoCG [REP-035] agrees at paragraph 2.7.10:

*'...that the scheme has evolved in a manner that seeks to reduce its landscape and visual impact by virtue of the proposed stack heights being a maximum of 35m rather than the 90m stack option as in early phases of public consultation, and confirmation that the Electrical Connection comprises an underground cable rather than the use of overhead lines. Therefore, given the site's location within an existing industrial area, the principal concern is the visual impact of the proposed stack(s).'*

- 4.77 BBNPA in its SoCG [REP-035] notes, at paragraphs 2.7.13 to 2.7.16, that impacts arising from the proposal upon visual amenity:

*'...Will be negative but of minor magnitude'.*

### **Conclusion on Visual Impact**

- 4.78 Overall, the Project would have a minor visual impact seen from close to the site. However, the effect would be within an existing and developing industrialised setting. In the ExA's view harm would be avoided appropriate mitigation proposals.
- 4.79 Control of these aspects would be the responsibility of RCT and BBNPA through the draft DCO [PD-018]:

- Requirement 4 (Detailed design);
- Requirement 5 (Provision of landscaping);
- Requirement 7 (Fencing and other means of site perimeter enclosure); and
- Requirement 16 (Control of Artificial Lighting).

### **Landscape and Visual Conclusions**

- 4.80 Following the ExA's amendment of Requirements 4 and 5 (Appendix D) related to the control of design and appropriate mitigation, and given the evidence presented, the Project generally accords with policy in EN-1, and with the RCT LDP with respect to design (Policy AW6 – Design and Placemaking), layout and visibility.

### **Combined Heat and Power**

- 4.81 Paragraph 4.6.6 of NPS EN-1 states:

*'Under guidelines issued by DECC (then DTI) in 2006<sup>25</sup>, any application to develop a thermal generating station under Section 36 of the Electricity Act 1989 must either include CHP or contain evidence that the possibilities for CHP have been fully explored to inform the IPC's consideration of the application. This should be through an audit trail of dialogue between the Applicant and prospective customers. The same principle applies to any thermal power station which is the subject of an application for development consent under the Planning Act 2008. The IPC should have regard to DECC's guidance, or any successor to it, when considering the CHP aspects of applications for thermal generating stations.'*

- 4.82 Combined Heat and Power (CHP) opportunities and their assessment are described in the ES [APP-019] in Paragraphs 5.3.21- 5.3.28 and in a separate CHP Assessment [APP-020] that accompanied the application. It was concluded that at this time, there were no identified feasible CHP opportunities.

- 4.83 Based on the information provided in the CHP Assessment [APP-020], the Applicant concluded at paragraph 7.1.1 that there are three prohibitive barriers to the application of CHP at the site:

- (i) *'There is no existing regional heat market. From local searches, there are no suitable heat users of applicable scale to the unpredictable heat available.'*

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<sup>25</sup> Guidance on background information to accompany notifications under Section 14(1) of the Energy Act 1976 and applications under Section 36 of the Electricity Act 1989.

- (ii) *No potential future heat requirements in the area have been identified and none that would match the operational pattern of a Peaking power station are anticipated.*
- (iii) *The intermittent and peaking modes of operation of SCGT are incompatible with the likely continuous demands of heat users.'*

4.84 The ExA agrees that because of the lack of applicable heat demands, provisions in the Applicants scheme for exploiting any potential heat demand in the future can be excluded.

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

4.85 The ExA believes the Applicants Design Note on CHP [APP-020] demonstrates that Hirwaun Power Project does not need to undertake further investigation of CHP for the proposed thermal generating station, and provides the necessary evidence as to why the proposed thermal generating station should be excluded from being CHP- Ready.

4.86 The ExA considers that CHP issues have been addressed adequately by the Applicant and meet the requirements of NPS EN-1.

### **Operational mechanisms to not exceed 299MWe and Carbon Capture Readiness (CCR)**

4.87 NPS EN-1 paragraphs 4.7.5 states:

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

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

*'To ensure that no foreseeable barriers exist to retrofitting carbon capture and storage (CCS) equipment on combustion generating stations, all applications for new combustion plant which are of generating capacity at or over 300MW<sup>87</sup> and of a type covered by the EU's Large Combustion Plant Directive (LCPD)<sup>88</sup> should demonstrate that the plant is "Carbon Capture Ready" (CCR) before consent may be given. The IPC must not grant consent unless this is the case. In order to assure the IPC that a proposed development is CCR, Applicants will need to demonstrate that their proposal complies with guidance issued by the Secretary of State in November 2009<sup>89</sup> or any successor to it.....'*

4.89 It is noted that the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 (the "CCR Regulations")

provide that the SoS must not make a DCO for the construction of a combustion plant<sup>26</sup> with a "rated electrical output" of 300 megawatts or more unless he has determined whether the "CCR conditions" are met in relation to that combustion plant. Determining whether the CCR conditions are met requires an assessment prescribed in regulation 2(2) of the CCR Regulations:

*'For the purposes of these Regulations, the CCR conditions are met in relation to a combustion plant, if, in respect of all of its expected emissions of CO<sub>2</sub>—*

*(a) suitable storage sites are available;*

*(b) it is technically and economically feasible to retrofit the plant with the equipment necessary to capture that CO<sub>2</sub>; and*

*(c) it is technically and economically feasible to transport such captured CO<sub>2</sub> to the storage sites referred to in sub-paragraph (a).'*

4.90 The Power Generation Plant would be designed as a simple cycle gas turbine (SCGT) to provide a total output of up to 299 MWe at rated site conditions, and would be fired on natural gas.

4.91 The applicant has not done a CCR assessment that would have been required if the plant had a rated electrical output of 300MW or above. The SoS would then be precluded from making the DCO if it appeared that the rated electrical output exceeded 300 MWe. The operational mechanisms, to not exceed 300MWe, were therefore highlighted in the initial identification of principal issues [DEC-004].

4.92 The Applicant in their response [REP-030] to the ExA first round question OM01 [DEC-006] states:

*'The Applicant proposes to procure a generating station with a rated electrical output of no more than 299MW according to BS ISO 2314:2009. **At times when the actual site conditions are better' than the reference conditions in BS ISO 2314:2009, a plant with a "rated electrical output" of 299MWe could have an "actual" output of more than 299MWe<sup>27</sup>**, however, the "rated" output will always remain 299MWe so Schedule 1 of the DCO will always be complied with.'*

4.93 The Applicant goes on to argue in response to OM01 [REP-030]that:

*'The Applicant considers that the term "rated electrical output" in the CCR Regulations (which is undefined) must mean the electrical*

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<sup>26</sup> Regulation 3 (1)

<sup>27</sup> ExA emphasis

*output rated by using the UK industry standard approach (i.e. BS ISO 2314:2009). The terminology in the draft DCO matches that in the CCR Regulations to avoid any doubt that the DCO does not engage the provisions of the CCR Regulations requiring such assessments.*

*It would be technically possible to place an artificial limit on the plant so that the "actual" output (as opposed to the "rated" output) could never exceed 299MWe, however, it is not considered this is necessary to comply with the draft DCO, nor the CCR Regulations. To do so would be to stifle the efficiency of the plant in favourable conditions (which also tend to be when it cold and the need for power is greatest). No such artificial limit is currently proposed in the draft DCO.*

*It is also noted that the output can be measured at different points within a generating station. British Standard BS ISO 2314 sets out definitions for electrical power measurement and provides for the calculation of both "gross electrical power" (the gross output of the gas turbine generators measured at the generator terminals) and "net electrical power" (the net output of the generating station taking account of step-up transformer losses measured at the point of connection to the National Electricity Transmission System (which is also the point of sale)). The Applicant considers that the reference to the rated electrical output of a "combustion plant" in the CCR Regulations means the rated electrical output of the generating station as a whole (i.e. the "net electrical power") and not the gross output of just the gas turbine generators themselves. This is reflected in revision 1 of the draft DCO.'*

4.94 In the summary of the Applicants oral representations at the DCO issue specific hearing on the 23 September 2014 [HR-009] the Applicant volunteered in response to Agenda Item 6.4 a:

- Position Paper: mechanism to ensure that plant output of 299MWe will not be exceeded [HR-009].

4.95 In the Applicants summary of the Position Paper they state:

*'For these reasons, the Applicant considers that revision 2.0 of the draft DCO which is drafted to impose a limit of 299MWe based on the net "rated electrical output" of the generating station as a whole is appropriate. This will require the Applicant to procure gas turbine generators with a net electrical output, rated using ISO 2314, of less than 299MWe and so secure compliance with the CCR Regulations.'*

4.96 The ExA remained to be persuaded that the use of the term "declared net capacity"<sup>28</sup> or "rated electrical output" in Schedule 1

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<sup>28</sup> The "declared net capacity", in relation to a generating station, means the maximum capacity at which the station could be operated for a sustained period without causing damage to it (assuming

Revision 3.0 of the draft DCO [PD-010] would be sufficient to ensure that the SoS was not precluded from making a DCO by Regulation 3(1) of the CCR Regulations. To this end the ExA asked a question (OM2 01) in its second round questions [DEC-009] on this issue. The Applicant responded [REP-045] in their summary of their answer as follows:

*'However, regardless of the foregoing, the Applicant considers that whatever the precise definition of "rated electrical output", by using this exact language in the DCO, the Secretary of State will guarantee that the DCO will not be granted in breach of the CCR Regulations. Even if the ExA were not persuaded by the Applicant's position on the definition of "rated electrical output" the use of term itself is still the appropriate form of words in the DCO to ensure any breach of the CCR Regulations is avoided.'*

- 4.97 The Applicant provided a definition of rated electrical output in response to an ExA third round of questions ([DEC-011] question DCO3-04).
- 4.98 The Applicant's starting point was that the phrase "rated electrical output" should not be defined. The Applicant argued that if one looked at paragraph 4.7.5 of NPS EN-1 the references are made to 300MW net. The CCS requirement referred to in the NPS in this context has the same EU Directive as its root. On that basis the Applicant considered that if a definition is to be inserted into the draft DCO, one should be inserted that referred to net output and not gross.
- 4.99 The ExA believes that the use of the term "gross" rather than "net" in the definition of rated electrical output would more accurately reflect the actual electrical output from the plant.
- 4.100 The Applicant suggested the following definitions for consideration by the Examining Authority[REP-048]:

**'net rated electrical output'** means the net electrical power as calculated by subtracting the energy used to operate the plant from the gross electrical power, and determined in accordance with standards agreed with the regulating authority under the Environmental Permitting (England and Wales) Regulations 2010 (as amended) or subsequent legislation.'

**'gross rated electrical output'** means the gross electrical power as measured at the generator terminals in accordance with standards agreed with the regulating authority under the Environmental Permitting (England and Wales) Regulations 2010 (as amended) or subsequent legislation.'

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the source of power used by it to generate electricity was available to it without interruption) less the amount of electricity that is consumed by the plant: The Renewable Order 2009 (SO 2009/785)

- 4.101 The Applicant noted that Article 5 of the draft DCO would only allow the Applicant to carry out (Article 3) the "authorised development" (defined in Schedule 1). Given that Schedule 1 makes it clear **that the 'authorised development' is a generating station with a rated electrical output of between 50.1 – 299MWe**, the Applicant would be in breach of Article 5(1) if the generating station it constructed had a rated electrical output that exceeded 299MW. Accordingly, the capacity of the generating station is controlled by the description of the development that may be carried out (i.e. constructed) and there is no need to have a **restriction controlling its 'use' to no more than 299MW.**
- 4.102 The ExA accepts that it is not necessary to have a cap on the rated electrical output as this would hinder the achievement of maximum efficiency in the operation of the generating station.
- 4.103 An application for an Environmental Permit (EP) has yet to be submitted to NRW. An EP will need to be issued by NRW prior to first operation of the plant. In the NRW SoCG[REP-036] it states:

*'Both Parties AGREE that upon the information currently available, it appears that it would be possible in principle to grant consent for the Project. However NRW is unable to provide any binding commitments at this stage as to the subsequent determination of the application and it should be noted that consent may be granted or refused.'*

**Conclusion on Operational mechanisms to not exceed 299MWe and Carbon Capture Readiness (CCR)**

- 4.104 The ExA concludes that there is no evidence presented to indicate that the granting of any necessary licence under other regulatory regimes will be withheld, and that therefore based on NPS EN-1 paragraph 4.10.8, the SoS as decision-maker should have no reason to withhold development consent on these grounds.
- 4.105 In the ExA's recommended draft DCO (Appendix D), the ExA has inserted the definition in Article 2 of:

**' ..."gross rated electrical output" means the aggregate of the gross electric power as measured at the terminals of each generator comprised in the generating station, ascertained in accordance with standards agreed with the regulating authority under the Environmental Permitting (England and Wales) Regulations 2010 (as amended) or subsequent legislation.'**

and also inserted into Schedule 1 Authorised Development the word "gross" before "rated electrical output". The ExA believes that this would clarify intentions and powers and the recommended draft DCO shows this alteration (Appendix D).

- 4.106 The ExA would not recommend a cap on the rated electrical output as this would hinder the achievement of maximum efficiency in the operation of the generating station.

## **GRID CONNECTION**

- 4.107 NPS - EN-1 states at paragraph 4.9.1:

*'The connection of a proposed electricity generation plant to the electricity network is an important consideration for Applicant's wanting to construct or extend generation plant. In the market system, it is for the Applicant to ensure that there will be necessary infrastructure and capacity within an existing or planned transmission or distribution network to accommodate the electricity generated. The Applicant will liaise with National Grid who own and manage the transmission network in England and Wales or the relevant regional Distribution Network Operator (DNO) to secure a grid connection. It may be the case that the Applicant has not received or accepted a formal offer of a grid connection from the relevant network operator at the time of the application, although it is likely to have applied for one and discussed it with them. This is a commercial risk the Applicant may wish to take for a variety of reasons, although the IPC will want to be satisfied that there is no obvious reason why a grid connection would not be possible.'*

- 4.108 The grid connection element of the Project comprises of an underground electrical **cable connection (referred to as the 'Grid Connection')** to export electricity from the Power Generation Plant into the National Electricity Transmission System (NETS) operated by National Grid at Rhigos Substation. As stated in paragraph 5.1.19 of the Statement of Reasons, [APP-051], the Grid Connection is approximately 686m in length. The Grid Connection is identified in numbered work 5 in Schedule 1 to the draft DCO [PD-012]. It consists of a 400kV underground cable. The cable would run from the Power Generation Plant, alongside Main Avenue, to the south of a disused industrial warehouse, before heading north, alongside Fourteenth Avenue in between disused industrial warehouse buildings and extending into the site of the Rhigos Substation.
- 4.109 Indicative Site Layout Plans shows the Grid Connection route corridor, the location of the Rhigos Substation, an indicative location for the Link Works and the location of the existing 400kV overhead line [APP-012].
- 4.110 The Applicant has provided a Grid Connection Statement [APP-056], which has been prepared to comply with Regulation 6(1)(a)(i) of the Applications: Prescribed Forms and Procedures (APFP) Regulations 2009, which requires the Applicant to provide

a statement of who will be responsible for designing and building the connection to the electricity grid.

- 4.111 National Grid will be responsible for the detailed design and construction of the National Grid Works and the Applicant will be responsible for design and construction of the Electrical Connection and the Link Works. This has been agreed in the terms of the Transmission Entry Capacity (TEC) agreement dated 4 July 2014 [Section 3 of APP-056].
- 4.112 Under section 115(1) of the Planning Act 2008, development consent may be granted for development which is:
- (a) *'development for which development consent is required, or*
  - (b) *associated development.'*
- 4.113 Whereas in England there are no statutory limitations on the types of development that could be "associated development", in Wales the categories for associated development are very narrow and none apply in the current circumstances (subsections 115(2) and 115(4) of the Planning Act 2008).
- 4.114 The Grid Connection is an essential part of the Power Generation Plant, as without the ability to export electricity to the National Grid there is no purpose in the Power Generation Plant generating electricity, and indeed it would not generate electricity without the Grid Connection (see paras. 7.88 to 7.92 of this report).
- 4.115 The ExA believes that Grid Connection is considered to form an integral part of the NSIP development applied for.
- 4.116 The ExA considers that Grid Connection issues have been addressed adequately by the Applicant and meet the requirements of NPS EN-1 and EN-5.

## **GAS CONNECTION**

- 4.117 The Gas Connection is below the relevant size threshold to be categorised as a NSIP of itself. In line with recent determinations of NSIPs, it is considered that policies within NPS EN-4 are still likely to be important and relevant in the determination of the application.
- 4.118 A new gas pipeline would be required to connect the Power Generation Plant to the National Transmission System (NTS) in order to provide a reliable supply of fuel. The UK National Grid Gas system is split into two parts, the NTS and the LTS (Local Transmission System). The NTS represents the infrastructure designed to transmit gas large distances around the country, these are generally large diameter **pipelines (> 24"/600mm) operating** at high pressure (~70barg).

- 4.119 Previous feasibility studies, carried out by the Applicant, discovered that feeder 2 on the NTS is the most appropriate connection option [APP-039]. No suitable connection points on the LTS were identified [APP-019].
- 4.120 The Gas Connection route corridor is approximately 0.9 km in length including one major road crossing, two minor road crossings, no major water crossings, four minor water crossings (e.g. field drains) and 0.19 km of in-road mainlaying [HR-004].
- 4.121 The pipeline begins at the Power Generation Plant Site heading south, past industrial buildings in the Hirwaun Industrial Estate, across Main Avenue and then under Rhigos Road; a single carriageway that runs along the entire south side of Hirwaun Industrial Estate. The route continues south of Rhigos Road into fields where it crosses under a set of overhead lines and continues heading south east where it then crosses two field drains. The route then turns east where it crosses under an unnamed minor road and another two field drains. It then turns south east again, and heads towards the A4061. The route runs alongside the A4061 for approximately 0.2km before crossing under the A4061 in an easterly direction. The route reaches the NTS east of the A4061 at Grid Ref SN938055 [APP-019].
- 4.122 The actual diameter of the gas pipeline would be approximately 10 inches/254mm. The permanent right required for the Gas Connection would be approximately 10m in width, whereas the construction footprint required would be of the order of 30m in width on agricultural land but wider at crossing points. The location of the Gas Connection route corridor, Feeder 2 and the connection point / AGI are shown in Figure 4.2 of the ES [APP-026].
- 4.123 The gas pipeline would be designed, constructed and tested to comply **with the Institute of Gas Engineers' (IGE)** recommendations on Transmission and Distribution Practice – IGE/TD/1: Edition 5, 2009 - Steel Pipelines and Associated Installations for High Pressure Gas Transmission (IGE/TD/1) [HR-017].
- 4.124 Connection to the NTS at any high pressure pipeline location will require two adjacent above ground facilities to be installed:
- a Minimum Offtake Connection (MOC), which would be designed, constructed, owned and operated by National Grid Gas, and
  - a Pig Trap Facility (PTF) which would be designed, constructed, owned and operated by the Applicant (these two facilities together constitute the AGI).
- 4.125 The Applicant has provided a Gas Connection Statement [APP-039], which has been prepared to comply with Regulation

6(1)(a)(ii) of the APFP Regulations 2009, which requires the Applicant to provide a statement of who will be responsible for designing and building the gas connection.

4.126 The Applicant will be responsible for:

- Detailed design, construction and operation of the gas pipeline; and
- Detailed design, construction and operation of the PTF;

4.127 National Grid Gas (NGG) will be responsible for the

- Detailed design, construction and operation of the MOC facility.

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

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

4.129 Whereas in England there are no statutory limitations on the types of development that could be "associated development", in Wales the categories are very narrow and none apply in the current circumstances (subsections 115(2) and 115(4) of the Planning Act 2008).

4.130 The Gas Connection is essential to bring fuel to the Power Generation Plant so that the Power Generation Plant can physically generate electricity.

4.131 The ExA believes that Gas Connection is considered to form an integral part of the NSIP applied for (see paras. 7.88 to 7.92 of this report).

4.132 The ExA considers that Gas Connection issues have been addressed adequately by the Applicant and meet the requirements of NPS EN-1 and EN-4.

## **ENVIRONMENTAL MATTERS**

### ***Air quality and emissions***

4.133 NPS EN-2 states in paragraph 2.5.6:

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

- 4.134 In the case of the Project, air quality and emissions that have been considered are detailed in Section 6 of the ES [APP-019]. The AQS Regulations 2010 specify a series of standards and objectives for air quality in the UK. The objectives are summarised in Table 6.1 [APP-019] and consider pollutants that are the principal products of industrial combustion processes. These are the basis for the assessment of emissions for the operation phase.
- 4.135 The assessment of potential air quality impacts was highlighted in the identification of principal issues [DEC-004].
- 4.136 Hirwaun and Penderyn Community Council (HPCC) raised specific concerns [REP-015 and HR-017] regarding the use of:
- (i) Sennybridge (approximately 20km from the project site) air quality baseline information used in the assessment and
  - (ii) Projects included in the EIA cumulative assessment.
- 4.137 The ExA addressed the adequacy of the information and the assessment provided in the ES [APP-019] in the first round of written questions (questions EIA10 and EIA11; OE06, OE07, OE08 and OE09) [DEC-006] and in their questions to the Applicant at the EIA issue specific hearing on the 24 September 2014 [HR-017].
- 4.138 The Applicant's responses can be found at [REP-030 and HR-015]. The Applicant specifically responded to HPCC concerns via:
- Dr Bethan Tuckett-Jones (Applicant's air quality expert witness) responded directly to HPCC at the EIA hearing on baseline data [HR-015] and
  - A bespoke note on:
- 'List of Projects Considered in the Cumulative Assessment within the EIA. Explain Why Any Were Scoped Out [HR-015]'***
- 4.139 HPCC did not provide any comment on the Applicants responses during the examination.
- 4.140 RCTs LIR [REP-025] concluded on page 33 that:
- 'In respect of human health, the application has been assessed by the Council's Public Health and Protection Section and no objections have been raised. The Applicant also submitted a "Health Impact Assessment" which has been consulted upon (by the Applicant). It is understood that Public Health England have responded (while this may seem strange, Committee is reminded that this is a UK national proposal rather than a Welsh national proposal) has concluded that there is no harm to human life as a result of the scheme.'***
- 4.141 The Applicant's assessment [APP-019] shows that overall, the project will have a negligible likely impact on air quality in relation

to human receptors<sup>29</sup> during construction, operation and decommissioning. This applies both for the Project alone and cumulatively with other proposed facilities in the vicinity of the Project site.

4.142 NRW have stated that [REP-019]:

*'Based on the information currently available, it appears that it would be possible in principle to grant a permit for the Project. However NRW is unable to provide any binding commitments at this stage as to the subsequent determination of the application and it should be noted that a permit may be granted or refused.'*

4.143 NRW have not raised any concerns with the Applicant's assessment of the impacts of air emissions as being negligible. In paragraph 2.4.13 of the NRW SoCG [REP-036] it states:

*'Both Parties AGREE that the process contribution identified in the Assessments is not categorised as significant and it is unlikely that an emission at this level would make a significant contribution to air quality (according to EA H1 Annex F Guidance). '*

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

4.144 NRW has not disagreed with the Applicant's assessment of the impact of air emissions as being insignificant. The ExA considers that the examination of air quality and emissions has been addressed adequately (including the baseline and cumulative issues raised by HPCC) and that the requirements of NPS EN-1 and EN-2 are met together with the objectives of AQS Regulations 2010.

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

### **Biodiversity and geological conservation**

4.146 Issues relating to Habitats Regulations Assessment (HRA) (NPS EN-1 Para. 4.3) are covered in Section 5, Conclusions Relating to Habitats Assessment, of this report.

4.147 NPS EN-1 5.3.7 and 5.3.8 state:

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<sup>29</sup> Impacts to ecological receptors are dealt with in paragraphs 4.146 to 4.171 and Section 5 of this report

*'As a general principle, and subject to the specific policies below, development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives (as set out in Section 4.4 above); where significant harm cannot be avoided, then appropriate compensation measures should be sought.*

*In taking decisions, the IPC should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment.'*

- 4.148 No geological conservation interests were identified in the course of the examination.
- 4.149 The Applicant provided information on the baseline ecology and biodiversity and its assessment of these issues in Section 8 of the ES [APP-019] and in Volumes A and B of the ES appendices 8.1 - 8.3 [APP-020 and APP-021].
- 4.150 The assessment of potential ecological and biodiversity impacts was highlighted in the identification of principal issues [DEC-004].
- 4.151 The ExA investigated the adequacy of the information and the assessment provided in the ES in the first [DEC-006] and second [DEC-009] round of written questions and in its questions to the Applicant at the EIA issue specific hearing [HR-014] [HR-017]. The Applicant's responses can be found at [REP-030; REP-045].
- 4.152 NRW raised points on ecology and biodiversity in their relevant representations [RR-017] and in their written representation with regards to Cors Bryn Y Gaer SSSI [REP-019].
- 4.153 BBNPA at paragraph 5.26 of their LIR [REP-024] state:
- 'The principal ecological impacts relate to the deposition of emissions emanating from the proposed stacks on ecological receptors within the National Park, especially having regard to the prevailing south westerly winds and the site's juxtaposition with the National Park.'*
- 4.154 The Applicant's air quality assessment has predicted a process contribution of 0.056kgN/ha/yr to Cors Bryn-y-Gaer SSSI, which is equivalent to 1.1% of critical load for the designated feature of lowland raised bog, for a 30m stack. NRW considered this contribution from the Project would be considered to be insignificant and NRW would not advise that mitigation was required for this as part of the DCO application [REP-019].
- 4.155 NRW concerns regarding the European designated habitats issues are dealt with in Section 5 of this report.

4.156 RCT addressed ecology and biodiversity issues in their LIR [REP-025]. RCT raised concerns with regards to the implications of development on the Hirwaun Industrial Estate Site of Importance for Nature Conservation (SINC). It should be noted that the SINC is not within the Order Limits or Order Land. RCT had a concern that the basis for establishing the hydrological impacts on the SINC had not been sufficiently well explored in the ES and there was a remaining concern that mitigation measures identified may not be sufficiently specific with regards to impacts on the hydrology of the bog.

4.157 RCT concluded on page 32 of their LIR [REP-025]:

*'In light of the comments raised by the Council's Ecologist, these issues may be capable of being addressed through a "requirement" (condition) proposed as part of the DCO (such an amendment to the proposed Ecological Management Plan requirement) of the S106 agreement. It is considered that, while there is no fundamental objection to the scheme, there are a number of outstanding issues that need further clarification such that it is recommended that PINS consider the ecological impacts set out above in the issue specific hearings on environmental matters reserved for 24th & 25th September.'*

4.158 In the ExA's view RCT concerns on the Power Station Habitat Management will be addressed via Requirement 10 of the draft Development Consent Order, which requires the production of a written Ecological Management Plan (Appendix D). The measures to be included in the written Ecological Management Plan must include the measures identified in the ecological mitigation plan Figure 11.5 [APP-028] and section 8.7 of the environmental statement [AP-019]. Requirement 10 states that the Ecological Management Plan must be approved by the relevant planning authority (Rhondda Cynon Taff County Borough Council ("RCT") in consultation with BBNPA prior to commencement. General Power Station Habitat Management does not form part of the Section 106 Agreement, as it will instead be delivered via Requirement 10.

4.159 In addition a Section 106 Agreement has been agreed between RCT and the Applicant [REP-048]. The Section 106 Agreement does include specific provisions relating to various reinstatement activities in respect of a bog that is within the Hirwaun Industrial Estate Site of Importance for Nature Conservation (SINC), but not within the Order Limits or the Order Land.

4.160 The "Bog Reinstatement Activities Area" (as it is termed in the Section 106 Agreement) is to the north of the main power station site and is within the land ownership of the Applicant (the area is hatched blue on the plan contained in Appendix 1 to the Section 106 Agreement).

- 4.161 It is agreed between the Applicant and RCT that RCT will carry out the "Bog Reinstatement Activities" (as defined in the Section 106 Agreement). Under paragraph 9, Schedule 1 of the Section 106 Agreement, the Applicant provides RCT access to the Bog Reinstatement Activities Area in order to carry out the Bog Reinstatement Activities. The activities include the possible implementation of hydrological monitoring, drain blocking and associated habitat management to help restore the bog.
- 4.162 The Applicant and RCT have agreed that these activities should improve the hydrological balance of the Hirwaun Industrial Estate SINC, by reducing the problem of excess drainage. Raising the water table would encourage the re-establishment of more ecologically diverse habitats and reduce the dominance of species such as purple moor-grass [REP-048]. This is in accordance with RCT policies in the adopted Local Development Plan (2011 – 2021).
- 4.163 RCT confirmed in the SoCG [REP-031] at paragraph 3.5.6 that there are no issues outstanding on this topic.
- 4.164 NRW confirmed in the SoCG [REP-036] at paragraph 2.5.12 that:

*'Both Parties AGREE that the delivery of an agreed Construction Environmental Management Plan ("CEMP") and Ecological Management Plan ("EMP") (to be secured by requirements 12 and 10 respectively in Schedule 2 of the draft DCO) is appropriate and should ensure the protection of habitats during and post-construction. '*

### **Impacts on Bats**

- 4.165 RCT raised concerns regarding impacts on bats in their LIR at page 27 [REP-025]. They accepted that on the evidence of the bat survey reports, that the impacts on bat roosts will be able to be mitigated, it is also clear that specific mitigation will be required, and that this should extend beyond the direct impacts on those bat roosts to include details of site lighting (the principles of ecologically sensitive lighting are set out in sections 6.2.6 to 6.2.9 of the applicant's "Outline Lighting Strategy" [APP-025]) and subsequent habitat management. RCT accepted that this is capable of being governed by Requirement 10, but aftercare and monitoring must also be secured in the Section 106 agreement.
- 4.166 NRW confirmed in the SoCG [REP-036] at paragraphs 4.2.2 and 4.2.3 that:

*'Both Parties AGREE that surveys to reassess the use of buildings within the Project redline boundary by roosting bats will be required in the year prior to/during which demolition/construction commences. It is agreed that these surveys will need to be*

*undertaken in accordance with the guidance presented in Bat Surveys: Good Practice Guidelines (Bat Conservation Trust, 2012).*

*Based on the current status of the bat roost and delivery of the commitments set out within the method statement and currently available information, both Parties AGREE that the proposed Project is unlikely to cause detriment to the maintenance of the favourable conservation status of the bat species present and therefore it appears that it would be possible in principle to grant the licence for the Project. However, NRW is unable to provide a binding commitment at this stage as to the subsequent determination of the application and it should be noted that a licence may or may not be issued. Both Parties AGREE that any changes in the bat roost status of buildings following the resurvey will require a review of the mitigation. At this stage, NRW is unable to provide any binding commitments to the subsequent determination of an application.'*

- 4.167 Bat Mitigation measures are secured via Requirement 10 of the draft Development Consent Order and via the CEMP which is secured via Requirement 12 of the draft Development Consent Order [PD-018]. This is consistent with the Mitigation Commitments Register (MCR), document reference MCR [HR-009], which is secured via Requirement 4(6) [PD-018].
- 4.168 Replacement bat roost provision will be in accordance with the draft ecological mitigation plan referred to in Requirement 10.
- 4.169 Exact details of bat mitigation will be further secured via the requirement to obtain a European Protected Species (EPS) derogation licence from NRW under the Conservation of Habitats and Species Regulations (2010, as amended). A draft EPS derogation licence was submitted with the Application [APP-020]. NRW confirmed agreement in principle to this in Areas of Agreement Between Hirwaun Power Limited and the Natural Resources Body SoCG [REP-036] at paragraph 4.2.3.

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

- 4.170 Given the evidence presented, the ExA considers that ecology and biodiversity issues have been adequately assessed, and that the requirements of NPS EN-1 are met.
- 4.171 The ExA is satisfied that NRW, RCT and BBNPA concerns regarding effects on biodiversity have been dealt with adequately by the Applicant via DCO requirements and a Section 106 Agreement [REP-048].

### **Civil and Military aviation and Defence interests**

- 4.172 NPS EN-1 paragraph 5.4.16 states:

*'There are statutory requirements concerning lighting to tall structures<sup>30</sup>. Where lighting is requested on structures that goes beyond statutory requirements by any of the relevant aviation and defence consultees, the IPC should satisfy itself of the necessity of such lighting taking into account the case put forward by the consultees. The effect of such lighting on the landscape and ecology may be a relevant consideration.'*

4.173 The CAA stated in their Relevant Representation [RR-001]:

*'Aviation Warning Lighting. Given the assumed maximum height of associated structures (35m) I do not believe there to be a need for aviation warning lighting.'*

4.174 At a maximum of 35m Above Ordnance Datum (AOD) high [APP-019], there will be a requirement for the flue emission stacks, numbered works 2A, to be promulgated and charted for civil aviation purposes. This is achieved through the developer providing, when construction time frames are known, related information to the Defence Geographic Centre, which manages the UK data-base of tall structures [RR-001]. This is addressed in the draft DCO [PD-018] by Requirement 20.

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

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

### **Climate change mitigation and adaptation**

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

*'Part 2 of this NPS covers the Government's energy and climate change strategy, including policies for mitigating climate change. This part of the NPS sets out how Applicants and the IPC should take the effects of climate change into account when developing and consenting infrastructure. While climate change mitigation is essential to minimise the most dangerous impacts of climate change, previous global greenhouse gas emissions have already committed us to some degree of continued climate change for at least the next 30 years. If new energy infrastructure is not sufficiently resilient against the possible impacts of climate change, it will not be able to satisfy the energy needs as outlined in Part 3 of this NPS.'*

*Climate change is likely to mean that the UK will experience hotter, drier summers and warmer, wetter winters. There is a*

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<sup>30</sup> Articles 219 and 220 Air Navigation Order 2009

*likelihood of increased flooding, drought, heatwaves and intense rainfall events, as well as rising sea levels. Adaptation is therefore necessary to deal with the potential impacts of these changes that are already happening.'*

4.177 NPS EN-2 in paragraph 2.3.13 states:

*'Part 2 of EN-1 covers the Government's energy and climate change strategy, including policies for mitigating climate change. Section 4.8 of EN-1 sets out generic considerations that Applicants and the IPC should take into account, to help ensure that fossil fuel generating infrastructure is resilient to climate change.'*

4.178 Climate change was identified as an issue in the initial assessment of Principal Issues [DEC-004].

4.179 The ExA addressed the adequacy of the information and the assessment provided in the ES [APP-019] in the first round of written questions [DEC-006 Question EIA12].

4.180 The Applicant's response can be found at [REP-030]. EN-1 is considered in Section 2.4 of the ES [APP-019]. In particular information on how climate change should be assessed for Nationally Significant Infrastructure Projects is detailed in Paragraph 2.4.8.

4.181 Flood risk, including the implications of climate change has been explored in more detail within a standalone Flood Risk Assessment (FRA) [APP-041]. Climate change projections were incorporated into the FRA within calculations of runoff generated by future rainfall events to ensure that a suitable drainage solution could be developed for the site, now and for 25 years following construction. The FRA concludes at para.5.3.1 that the Project will result in no increased flood risk to the site or people and properties outside of the site.

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

4.182 Given the evidence presented, the ExA consider that climate change mitigation and adaptation issues have been adequately assessed by the Applicant and meet the requirements of NPS EN-1 and EN-2.

### **Dust and other potential nuisance**

4.183 Paragraph 4.14.2 of EN-1 states:

*'It is very important that, at the application stage of an energy NSIP, possible sources of nuisance under Section 79(1) of the 1990 Act and how they may be mitigated or limited are considered*

*by the IPC so that appropriate requirements can be included in any subsequent order granting development consent. (See Section 5.6 on Dust, odour, artificial light etc. and Section 5.11 on Noise and vibration.)'*

4.184 EN-1 5.6.7 states:

*'The IPC should satisfy itself that:*

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

4.185 Odour, smoke, steam and insect infestation were not raised by any party in the course of the examination as potential impacts.

4.186 RCT in their LIR [REP-025] raised dust and noise as potential nuisance issues. BBNPA in their LIR [REP-024] raised artificial lighting as an issue because of potential effects on BBNP's International Dark Sky Status.

### **Dust**

4.187 RCT addressed dust impacts in its LIR [REP-025] at pages 23, 30 and 31 in relation to human and ecological receptors.

4.188 Dust is dealt with in Section 6 of the ES [APP-019] and in the Outline CEMP Appendix 4.1 [APP-020].

4.189 The RCT SoCG [REP-031] at Sections 3.5 and 3.9.1 concludes that the mitigation measures proposed will reduce impacts on sensitive receptors.

### **Conclusion on Dust**

4.190 The ExA believes that only negligible dust effects are expected with respect to any phase of the operations and in respect of any receptor, because widely used and effective mitigation measures will be deployed through mitigation measures in the draft DCO via Requirement 12 (1)(c) [PD-018].

### **Noise and Vibration**

4.191 Noise and vibration is addressed in paragraphs 4.236 to 4.242 of this report.

## **Artificial Light**

- 4.192 The National Park was designated as an International Dark Sky Reserve in 2013 by the International Dark Sky Association (IDA). Its mission is:

*'...to preserve and protect the night-time environment and our heritage of dark skies through quality outdoor lighting.'*

- 4.193 The "dark sky status" of BBNP was highlighted in the identification of principal issues [DEC-004].

- 4.194 BBNPA raised the question of artificial light in its Relevant Representation [RR-010] and in its LIR [REP-024] at paragraphs 5.16 - 5.17:

*'5.16...Whilst the content of the current Lighting Strategy is noted, the Authority is concerned over the impact of the development on its Dark Sky status. To this end, the Authority is aware that the Applicant is seeking to undertake such an assessment to include a review of the baseline lighting situation and the proposed development and additional information has very recently been submitted to the Authority for consideration (19 August 2014) and is being reviewed.'*

*5.17 It is recognised that the application site is located within an established industrial area with lighting emanating from nearby towns and villages and the local highway network, however until such time an assessment has been undertaken and a revised lighting strategy produced, the BBNPA is unable to accept that the development would not have a night-time visual impact. Nevertheless, it is accepted that the Applicant has now acceded to requests to formally include the BBNPA as a consultee for DCO Requirement 16 by agreeing to include the words "in consultation with the Brecon Beacons National Park Authority" after the words "approved by the relevant planning authority'.*

- 4.195 Artificial light is dealt with in Sections 8 (effects on bats) and 11 of the ES [APP-019] and in the CEMP [APP-020].
- 4.196 The ExA addressed the issue of artificial light in its first round of written questions [DEC-006 Question DLV04]. The Applicant's response can be found at [REP-030].
- 4.197 The draft DCO [PD-018] contains Requirement 16 which addresses the control of artificial light emissions during construction and operation.

## **Conclusion on Dust and other potential nuisance**

- 4.198 The ExA is satisfied that the potential dust and other nuisance have been considered adequately and appropriately by the

Applicant, and that the draft DCO [PD-018] contains the necessary Requirements to mitigate nuisance:

- Requirements 12, 15 - noise nuisance;
- Requirement 12 - dust and
- Requirement 16 - lighting.

- 4.199 Under these Requirements RCT will approve all mitigation and control plans before construction commences<sup>31</sup>.
- 4.200 The defence of statutory authority for nuisance under s.158 of PA2008 will be available to the Applicant, subject to Article 34 in the draft DCO [PD-018], which provides a defence for noise nuisance as a consequence of construction or maintenance of the development.
- 4.201 The ExA believes nuisance issues have been assessed adequately and that the mechanisms for the management of potential impacts are robust and sufficient and meet the requirements of NPS EN-1 and EN-2 and RCT LDP Policy AW10 Environmental Protection and Public Health.

### **Flood risk**

- 4.202 Section 5.7.9 of NPS EN-1 states:

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

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

- 4.203 The assessment of potential flooding was highlighted in the identification of principal issues [DEC-004].

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<sup>31</sup> BBNPA to be explicitly consulted on Requirement 16

- 4.204 In the case of the Project, flood risks that have been considered are detailed in Sections 3, 5 and 9 of the ES [APP-019] and also a separate FRA [APP-041] has been performed.
- 4.205 The Applicant has reviewed indicative flood maps and the Strategic Flood Consequence Assessment (SFCA). It was identified that the site is located within the low risk EA Flood Zone 1 / TAN15 Zone A with an annual probability of tidal and fluvial flooding of less than 0.1% (1 in 1000)[APP-041].
- 4.206 The EA indicative surface water flood map shows a raised risk of surface water flooding at the site. However, this mapping does not fully take into account surface water drainage or the culverted Nant yr Ochain which flows around the eastern boundary of the Project Site.
- 4.207 There are no known significant flood risks to the site from groundwater or overland flow and no known records of historical flooding within the site [APP-041].
- 4.208 The Applicant has assessed the project site to be at low risk of flooding.
- 4.209 The NRW have not raised any concerns with the Applicant's assessment of flood risk in the SoCG [REP-036].

### **Conclusion on flood risk**

- 4.210 The Project Site is situated in TAN15 Development Advice Zone A which defines Zone A as an area at little or no risk of fluvial flooding. The ExA considers that the examination of flood risks has been addressed adequately, takes full account of the additional risk from climate change (see paragraphs 4.176-4.182 of this report) and meets the requirements of NPS EN-1.

### **Health**

- 4.211 EN-1 paragraph 4.13.2 states:

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

- 4.212 The assessment of potential health impacts was highlighted in the identification of principal issues [DEC-004].

- 4.213 The Applicant has produced a standalone Health Impact Assessment (HIA) report to ensure that the health effects of the Project are clearly articulated in a concise way [APP-046]. The HIA draws on the methods as set out in the Health Impact Assessment: A Practical Guide<sup>32</sup>.
- 4.214 The HIA report draws on other technical assessments prepared as part of the DCO application as necessary, such as the Environmental Statement [APP-0019]. The HIA report summarises the findings of these studies to provide a standalone document.
- 4.215 RCT's LIR [REP-025] states on page 19 and 34:

*'Policy AW10 refers to environmental protection and public health. The proposal is considered to be broadly compliant with the criteria areas set out. No objection has been received from the Council's Public Health and Protection section.'*

*In terms of noise, odour, dust, etc., during the construction phase, the Council's Public Health and Protection Section are satisfied that any effects can be minimised through the imposition of a condition.'*

### **Conclusion on Health**

- 4.216 The ExA considers that the examination of health risks [APP-046] has been addressed adequately and that the requirements of NPS EN-1 are met. Based on the implementation of the proposed mitigation [PD-018], for the construction, operation and decommissioning of the Project, the ExA considers there is no evidence that suggests that the proposed development will result in adverse public health impacts.

### **Historic environment**

- 4.217 The effects of the project on historic and archaeological environment, including issues related to:
- The effects of the project on the settings of heritage assets ;
  - The effects of the project on archaeological remains.

were highlighted in the initial assessment of Principal Issues [DEC 004]. In accordance with paragraph 5.8.8 of EN-1, the Applicant has provided a description of the significance of the heritage assets affected by the proposed development and the contribution of their setting to that significance [Section 14 of APP-019].

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<sup>32</sup> Wales HIA Support Unit, 2012

- 4.218 No listed buildings or scheduled monuments would be affected physically by the Project, although off site works carried out to install the gas and electricity connectors could potentially disturb undesignated historic assets [APP-019].
- 4.219 A total of 16 heritage assets were identified within the 1 km Inner Study Area, which includes one Grade II Listed Building. One heritage asset lies within the Power Generation Plant Site and this comprises a WWII Royal Ordnance Factory (HA06). Some buildings relating to this factory are still extant within Hirwaun Industrial Estate and may be affected by the development of the Power Generation Plant [APP-019].
- 4.220 In the wider 5km Outer Study Area, 18 Listed Buildings have been identified, all of which are Grade II Listed. A total of 55 Scheduled Monuments have been recorded within the 5 km Study Area, although many of these are part of the same scheduling groups [APP-019].
- 4.221 The ExA asked four questions, ARC01-04 [DEC-006] relating to the historic environment, and the Applicant's responses can be viewed at [REP-030].
- 4.222 BBNPA state in their LIR [REP-024] at paragraph 5.25:

*'Whilst it is considered that clarification from the Applicant in relation to the above mentioned inaccuracies would be welcomed, it is considered similar to the BBNPA's assessment of the Landscape and Visual Impact of the development that by virtue of the introduction of the development, in particular the stacks and their visibility from heritage assets within the National Park, that the proposal would have a negative impact on the setting of heritage assets, but in terms of the magnitude of that impact given the distances and possible mitigation measures as referred to in the landscape and visual impact section above, **that the magnitude in relation to the setting of heritage assets would be minor and possibly could be reduced to a negligible magnitude subject to mitigation measures and the finer design details.***<sup>33</sup>

- 4.223 The BBNPA SoCG [REP-035] states at paragraphs 2.9.5-2.9.6 that:

*'The Parties AGREE that the response provided in the Applicant's response to the BBNPA LIR satisfactorily address the concerns raised in the LIR and demonstrates the assessment was robust.*

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<sup>33</sup> ExA emphasis

*The Parties AGREE that the residual effects are likely to be of minor magnitude and since the ES represents a worst case assessment and all reasonable mitigation is committed to within the Design Principles and secured by requirement 4(4) and 16(1) which BBNPA would be consulted on, with which the residual effect is likely to reduce to slight or negligible.'*

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

- 4.224 Policy on the historic environment within EN-1 has been followed by the Applicant. This policy is broadly consistent with relevant saved policies in the Brecon Beacons National Park Management Plan 2010 – 2015, the Brecon Beacons National Park Local Development Plan (Approved December 2013) (the LDP) and the RCT LDP (2011) Policy AW8 Protection and Enhancement of the Natural Environment.
- 4.225 In the ExA's view there is the potential for residual effects on the setting of historic assets within the Study Areas. A programme of archaeological mitigation prior to construction, secured via Requirements 11 and 4(3) [PD-018], combined with the distance to sensitive receptors and local topography will mean that these residual effects are unlikely to be significant.

### **Land use**

- 4.226 Section 5.10 of EN-1 is relevant here.
- 4.227 RCT's LIR [REP-025] states on page 3:

*'The proposed use is industrial in nature and sits within an established industrial estate and, therefore, raises little issue in respect of land-use compatibility. The application will occupy a large area of land that the LDP primarily identifies as suitable for employment in B1 (Light Industry), B2 (General Industry) and B8 (Storage & Distribution) Use Classes. The proportion of likely jobs to land-take is low. If the development proceeds, this land would no longer be available (although the Council has a plentiful supply of industrial land within the County Borough). Nevertheless, if constructed, the scheme represents a significant inward investment within the northern part of the County Borough and, while the number of jobs that will be created through the operational phase of the development is low, there are significant opportunities during the construction phase to help support and enhance local suppliers.'*

- 4.228 The LIR prepared by RCT [REP-025] shows that the site of the works applied for is allocated for the development of the Power Generation Plant is designated in the Proposals Map as Policy CS 9 - Waste Management. The Hirwaun Industrial Estate is identified as a regional site that is able to accommodate a range of waste

management options to meet the capacity requirements set out in the South East Wales Regional Waste Plan.

4.229 The RCT 2011 Local Development Plan (LDP) notes that:

*'...in identifying Hirwaun Industrial Estate as a suitable site for waste management, it is not the intention that the employment uses at the site should cease.'*

4.230 The scheme, if built, would effectively remove approximately 5 hectares from the land allocated within the Industrial Estate to **develop "waste" uses. While** the proposed use would represent a loss, Policy CS 9 states that land at the respective sites is available for this type of use, in the case of Hirwaun it would not prevent other B1, B2 or B8 uses from using or developing the land for non-waste related industrial uses. In addition, the policy does not preclude any other site within the County Borough from being **considered for "waste" uses.**

4.231 The loss of this site is not considered by RCT to be out of accordance with the aims and objectives of this policy and is considered to have a negligible / negative impact. The development, being within the boundaries of the Hirwaun Industrial Estate and close to the main settlements of Hirwaun, Rhigos and Aberdare is considered by RCT **to be a "sustainable location" and is broadly compliant with the** criteria set out in Policy AW2. In terms of sustainability, the RCT believe the proposal is considered to have a moderate / positive impact [REP-025].

4.232 Having considered the application against the LDP policies, the ExA has had no reason to disagree with the RCT conclusion that the application complies with the LDP Policies.

4.233 The proposed development has no implications for green infrastructure, other than its temporary implications for footpaths.

4.234 Several public footpaths link the west of the Hirwaun industrial estate with Rhigos, Bryn and Cefn Rhigos. To the south, the land is reclaimed colliery land and a public right of way runs east west between Bryn in the west and Hirwaun in the east. To the north west the industrial estate is connected by a public footpath to Pwll-y-Crochan Waterfall and the waterfalls north of Pontneddfechan. Another footpath runs north from the industrial estate between Penderyn Reservoir and Pantcefnffordd onto the village of Penderyn (see Insert 13.5 of ES [APP-019]).

### **Conclusion on Land Use**

4.235 The ExA concludes that the land use issues have been addressed adequately and meet the requirements of NPS EN-1. The ExA has had no reason to disagree with the RCT conclusion that the application complies with the LDP Policies. The ExA concludes that

the implications for all footpaths are temporary and of minor adverse significance.

### **Noise and vibration**

4.236 NPS EN-1 states at paragraph 5.11.9:

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

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

4.237 Noise and vibration issues were considered by the Applicant in Section 7 of the ES [APP-019].

4.238 RCT addressed noise and vibration issues in its LIR [REP-025]. RCT LDP Policy AW10 – Environmental Protection and Public Health requires:

- *'No unacceptable harm from a range of environmental risks, including air pollution (1), noise pollution (2), light pollution (3) and water pollution (7).'*

4.239 RCT's Public Health and Protection Section concluded that the scheme is unlikely to have any noise implications through the operational phase but had concerns over the proposed hours of construction proposed as a **"requirement" (condition) as part of** the DCO [REP-025]. RCT requested that no works would commence before 7.00 on any morning nor would any works be carried out on Sundays or Bank Holidays [REP-025]. In terms of odour, dust, etc., during the construction phase, the **Council's** Public Health and Protection Section are satisfied that any effects can be minimised through the imposition of a condition.

4.240 Changes were made to noise limits (Requirement 15) and construction hours (Requirement 14) in the draft DCO [PD-018] in the course of the examination, arising from concerns raised initially by RCT in the LIR [REP-025] and in response to the ExA's first round of questions [DEC-006].

4.241 RCT in its SoCG [REP-031] has agreed that construction (Section 3.7.3) and operation (Section 3.7.4) will have negligible noise and vibration impact through the embedded mitigation in project design and the measures secured in the draft DCO Requirements 14 and 15 [PD-018].

## **Conclusion on Noise and Vibration**

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

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

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

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

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

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

- 4.244 A list of consents required under other regulatory regimes, including environmental regulatory regimes, is provided [APP-044].
- 4.245 An Environmental Permit application to NRW has not yet been made. Section 5.3.1 of the NRW SoCG [REP-036] states:

*'Both Parties AGREE that upon the information currently available, it appears that it would be possible in principle to grant consent for the Project. However NRW is unable to provide any binding commitments at this stage as to the subsequent determination of the application and it should be noted that consent may be granted or refused.'*

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

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

### **Safety**

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

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

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

- 4.248 Ashtenne Industrial Fund (AIF) in their written representation [REP-010] raised safety concerns around the storage of hazardous substances i.e. natural gas on site.

- 4.249 The Applicant responded [REP-030] that under:

*'Notification of Installations Handling Hazardous Substances 1982 (NIHHS)" "(Planning) Hazardous Substance Regulations 1993"*

*Both regulations refer to a minimum notifiable quantity of 15T of natural gas stored, we don't get close to this amount either with the MOC or PTF (i.e. where the pipeline connects to the National Grid) (less than 0.5T of flowing gas in each site at any one time at worst case). Therefore the quantities of gas in the pipeline are well below the threshold and we consider that hazardous substances issues will not arise for the pipeline.*

*For the site itself, again a threshold of 15T storage of natural gas would apply. We have calculated the likely 'storage' capacity of on-site pipelines and it is well below this figure. There are no storage needs for any other materials in quantities likely to exceed*

*the thresholds set out in the above regulations. For these reasons we consider we do not require HSC for the project.'*

- 4.250 Mrs Freeman in her written representation [REP-018] raised safety concerns regarding the operation of the gas pipeline.
- 4.251 The Applicant responded [REP-038] noting that the gas pipeline was approximately 106m from Mrs Freeman's property. A number of consents are required from the HSE [APP-044] (items 7 and 13 in Table 1), before the gas pipeline can become operational. HSE will not give these consents unless the gas pipeline can be operated safely.

### **Conclusion on Safety**

- 4.252 The ExA believes that safety issues have been addressed appropriately and meets the requirements specified in 4.11 and 4.12 of NPS EN-1.

### **Security considerations**

- 4.253 NPS EN-1 4.15 identifies possible issues of national security relating to energy infrastructure. No representations were made in regard to national security considerations. The ExA does not believe there to be any national security issues associated with this Application.

### **Socio-economic impacts**

- 4.254 EN-1 5.12 states that:

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

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

- *the creation of jobs and training opportunities;*
- *the provision of additional local services and improvements to local infrastructure, including the provision of educational and visitor facilities;*
- *effects on tourism;*
- *the impact of a changing influx of workers during the different construction, operation and decommissioning phases of the energy infrastructure. This could change the local population dynamics and could alter the demand for services and facilities in the settlements nearest to the construction*

*work (including community facilities and physical infrastructure such as energy, water, transport and waste). There could also be effects on social cohesion depending on how populations and service provision change as a result of the development; and*

- *cumulative effects – if development consent were to be granted to for a number of projects within a region and these were developed in a similar timeframe, there could be some short-term negative effects, for example a potential shortage of construction workers to meet the needs of other industries and major projects within the region.*

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

- 4.255 The Applicant addressed socio-economic issues in Section 15 of the ES [APP-019].
- 4.256 The ExA identified economic and social impacts as one of the principal issues to be examined in relation to this application. The Rule 6 letter [DEC-004] stated that these included issues related to:
- The impact on the local economy; and
  - The impact on local services and facilities.
- 4.257 The ExA examined this through:
- Consideration of the application documents and, in particular, Section 15 on '**Socio-Economics**' in the ES [APP-019]; and
  - Consideration of the LIRs [REP-024; REP-025].
- 4.258 It should be noted in giving the summary of aspects covered, that there were no representations or evidence presented challenging the Applicant's **analysis and conclusions on the socio-economic impacts** of this proposal.
- 4.259 Following consideration of the LIRs, the ExA concluded that there was no requirement for an Issue Specific Hearing (ISH) devoted to Economic and Social Impacts.
- 4.260 The ExA had particular regard to Section 5.12 (Socio-Economic) of EN-1 and, in particular, whether:
- the Applicant has undertaken and included in its application an assessment of the impacts as part of the ES;
  - whether that assessment has considered all relevant socio-economic impacts; and
  - whether mitigation measures are necessary to mitigate any adverse socio-economic impacts of the development.

- 4.261 The Applicant has concluded [APP-019] that the project:
- would provide a minor beneficial construction and operational employment impact;
  - **would have as a worst case scenario a 'slight' adverse impact on tourism;** and
  - would have as a worst case scenario a **'slight' adverse impact on community infrastructure facilities.**

4.262 BBNPA's LIR [REP-024] states:

*'In terms of Socio-Economic Impacts, it is considered that the proposal has the potential to impact upon tourism and the enjoyment of the National Park by virtue of the visual impact of the proposal on the local landscape and the effect that would have on the enjoyment of recreational users. The social-economic assessment concludes that in relation to tourism in general, the project would have a slight adverse impact. It is considered that it is reasonable to conclude that by virtue of the visual impact of the proposal on views from within the Park, that the development would have a negative impact on recreational users of areas of open access land and public rights of way with views to the site. It is considered therefore in combination with the Authority's consideration of the landscape and visual effects that the effect of the development on tourism, particularly recreational users would be negative and of a moderate impact. However the magnitude of this impact could be reduced subject to the mitigation measures, including design principle proposals.'*

4.263 The BBNPA SoCG [REP-035] states at paragraph 2.10.4 that:

*'...following the clarifications and additional assessment made of landscape and night time lighting issues as documented elsewhere in this SoCG, the design mitigation secured in the Design Principles and Requirement 4 in the draft DCO constitutes reasonable mitigation and are likely to reduce the magnitude of this impact from moderate to slight or negligible'*

4.264 RCT's LIR [REP-025] states on pages 34-35:

*'The LDP has specifically allocated the Hirwaun Industrial Estate for employment uses including B1 (Light Industry), B2 (General Industry) and B8 (Storage and Distribution) as well as part of it being specifically allocated for "waste" uses.*

*While the visual appearance of the area would be improved through the redevelopment of this large building, the construction of the power plant would mean that between 5 and 7.5 hectares of land would no longer be available for development. Given the low number of employees required to operate the plant, the ratio of direct permanent jobs to land-take is very low. Given that the site (and the wider Estate) is excellently located in such close proximity to the A465 it would mean that, potentially, one of the*

*most attractive development sites would be lost. It is considered that the loss of this land would have a moderate negative impact.*

*While it is not part of the "normal" material planning considerations, a number of the larger schemes have included details of how they intend to include these local businesses within the construction and maintenance phases of the development and **it is considered important that in reaching a decision, the SoS should include a requirement for the developer to demonstrate how local suppliers and services will be used in order to mitigate the loss of a significant area of employment land***<sup>34</sup>. *If it was possible to secure such a commitment the likely impact is considered to improve to moderate / positive.*

*While the loss of this amount of land is of a concern, the County Borough currently has an oversupply of industrial land such that the loss would not have a strategic implication for this type of land. In light of the potential benefits from the construction process and subject to the Applicant demonstrating that its development would optimise the opportunities for employment uses, it is considered that on a County Borough wide basis, the likely impact of this loss would be neutral.'*

4.265 It has been agreed in the RCT SoCG [REP-031] at 1.2.1 that:

*'RCTCBC offers its support in principle for the Project, having been developed in consultation with RCTCBC's communities and representing a suitable location, being of a sufficient size, accessible, comprising previously-developed land away from environmentally sensitive areas.'*

4.266 It is also recognised within the RCT SoCG at paragraph 2.2.2 that:

*'...the proposal is broadly in compliance with the aims and objectives of the LDP and in particular is compliant with relevant LDP Policies, being CS 1, NSA 16, AW 2, AW 10 and AW 11" [AW 11 being "Existing Employment and Retail Uses'].*

4.267 The Applicant agrees that their substantial inward investment should use local suppliers and services where permissible, as this would maximise the opportunities for direct and indirect (construction phase and operational phase) job creation and spend within the local area whilst also supporting other planning considerations such as traffic demand reduction [REP-040].

4.268 The Applicant has agreed in the RCT SoCG [REP-031] at paragraph 3.16 (d) that the section 106 shall include a local services/procurement scheme. This directly addresses the request in the LIR [REP-025] on page 35 for the same, albeit via section

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<sup>34</sup> ExA emphasis

106 rather than a DCO Requirement. The ExA believes that the provision of a section 106 agreement is consistent with RCT LDP Policy AW4 – Community Infrastructure & Planning Obligations, which provides for planning obligations to be sought where necessary to make proposals acceptable in land use planning terms.

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

- 4.269 The ExA concludes that the Applicant has had adequate regard to the socio-economic impacts of the proposal and has provided sufficient evidence to support its assertions on the impacts.
- 4.270 The ExA conclude that the proposal will create a range of jobs both in the construction phase and, to a lesser extent, in the operational phase and that these jobs will be created in an area which is currently affected by above national average unemployment.
- 4.271 The final agreed section 106 agreement between the Applicant and RCT describes, in Schedule 4, the measures to assist businesses based in the vicinity of the Development to benefit directly from the opportunities arising from the Development [REP-048].
- 4.272 Given the evidence presented, the ExA conclude that the proposal has adequately addressed the requirements of EN-1 and EN-2 and would not have significant deleterious effects socially or economically. It also has the potential to support economic development in the area in line with the policies of the local authority.

### **Traffic and Transport**

- 4.273 EN-1 states at paragraphs 5.13.7 and 5.13.8:

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

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

4.274 The Applicant in its assessment of construction traffic impacts (section 13 of ES [APP-019]) concluded that the assessment reveals that the magnitude of traffic flow change as a result of the Project is considered to be very low, with moderate / minor effects for two junctions:

- (i) A465, A4509, Rhigos Rd;
- (ii) A465, Hirwaun Rd, Brecon Rd.

and negligible effects for another two junctions:

- (i) Fifth Avenue, Main Avenue;
- (ii) A4061, Rhigos Rd.

4.275 The ExA asked five questions (TT01-TT05) in its first round of written questions [DEC-006] and the Applicants responses can be viewed at [REP-030].

4.276 Traffic and transport issues were raised by a number of Interested Parties in their Relevant Representations. RCT [RR-008], Network Rail [RR-016] and the Welsh Government [RR-007] all had particular concerns regarding construction traffic impacts. The Welsh Government (WG) proposed text for a requirement (Requirement 13 [PD-018]) to address Construction Traffic [RR-007].

4.277 Requirement 13 secures the submission of a Construction Traffic Management Plan for approval by the relevant planning authority (in consultation with the Welsh Government). The provision specifies particular measures that the plan needs to contain. The approved plan must be implemented. The Welsh Government agreed the wording of this Requirement with the Applicant [RR-07].

4.278 RCT in their LIR [REP-025] accepted that given the low number of employees, that there is unlikely to be any noticeable impact on the highway network during the operational phase.

4.279 However, they argued there is likely to be a considerable impact on the existing highway network during the construction phase although it is acknowledged that the proximity to the A465 will mean that any impacts will be localised in and around the Hirwaun Industrial Estate and its environs.

4.280 Cumulatively a number of consented developments (Enviroparks, Pen Y Cymoedd Wind Farm) could potentially begin / complete construction activities at the same time as the Project (see para. 2.25 of this report). There may be considerable impacts on and around the Industrial Estate and Rhigos. However, the likely start of construction for the project is in 2018 while the erection of the turbines for Pen Y Cymoedd will begin in 2015 and are proposed to be completed by 2017.

- 4.281 RCT in response to the ExA 2nd round question HA2-01 stated [REP-043]:

*'The (RCT's) reference for the Enviroparks application is 08/1735.*

*Committee considered the application in Spring of 2010 resolving to approve the application subject to the imposition of conditions and the Applicant entering into a S106 agreement. The S106 agreement was subsequently completed and consent was issued by the Council on 21st December 2010.*

*To avoid any misinterpretation of the latest current position, the Applicant (Enviroparks) were asked to give a brief statement of their position. They responded accordingly*

*"You can advise that Enviroparks will be definitely be proceeding on the following outline programme:*

*1. On site construction programmed to commence January 2015. NRW permit for Phase 1 now issued to Enviroparks.*

*2. Phase 2 Gasifier programme construction commencement Q4 2015. CfD applied for. EPCC and technology suite confirmed.*

*3. On site Generation expected 2017'*

- 4.282 Following consideration of the Relevant Representations and LIRs, the ExA concluded that there was no requirement for an ISH devoted to Traffic and Transport Impacts.

- 4.283 RCT in its SoCG [REP-031] agreed at Section 3.13.5, that the Applicant would produce a Construction Transport Management Plan (CTMP) to be approved by RCT in consultation with the WG. This would be secured by Requirement 13 in the draft DCO [PD-018]. They also agreed (section 3.15.6 of [REP-031]) that Articles 8-14 and Requirements 5-7 and 12 of the draft DCO supply sufficient control to RCT to manage all transport and highways matters.

- 4.284 In mitigation for the highway impacts of the development, the Applicant has agreed to fund bus stop improvements close to the site to enable access to the site by means other than a car. The Applicant has also agreed to provide a financial contribution to provide improved vehicular crossovers at the Industrial Estate. This has been secured through a section 106 agreement (Schedule 1 of [REP-048]).

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

- 4.285 EN-1 at paragraph 5.13.7 states that provided the Applicant is willing to enter into planning obligations or requirements that can be imposed to mitigate transport impacts, development consent should not be withheld, and appropriately limited weight should be

applied to residual effects on the surrounding transport infrastructure. It continues at Paragraph 5.13.8 by advising that where mitigation is needed, possible demand management measures must be considered and if feasible and operationally reasonable, required, before considering requirements for the provision of new inland transport infrastructure.

- 4.286 This policy has been followed, including the agreement on a section 106 Agreement, whose obligations are detailed in Appendices D and E of [REP-048]. Subject to requirements set out within the draft DCO (Requirement 13 of [PD-018]), the Project meets EN-1 policy regarding traffic and transport in all other respects.

### **Waste management**

- 4.287 Section 5.14 of NPS EN-1 and Section 2.9 of EN-2 is applicable.
- 4.288 In the case of the Project, waste management issues have been considered and are detailed in Section 12 of the ES [APP-019] and the outline CEMP Appendix 4.1 of [APP-020].
- 4.289 The Applicant states in the ES Appendix 4.1 [APP-020] that the outline CEMP will be transferred to the appointed contractor(s) for refinement and discharge. The CEMP will include a Site Waste Management Plan (SWMP). A SWMP will be prepared for use during the demolition and construction phase. This will ensure waste management provisions complement the demolition and construction activities on site and that wastes from the Project are dealt with in an appropriate manner and follow the waste hierarchy (placing waste prevention at the top and waste disposal at the foot of the hierarchy). The SWMP will outline all waste types arising from the project, estimate quantities of each waste type and identify treatment.
- 4.290 A Materials Management Plan (MMP) will form part of the CEMP and will be prepared for use during the demolition and construction phase, which will set out the requirements for storage of site-won materials on site to ensure that the environment is protected. Typically this will involve creating an impermeable liner to place the material on and controls to ensure no losses of material from the stockpile except where reused. The MMP will also set out the acceptability criteria pertaining to reuse of site-won materials. This will function to ensure that any materials designated for re-use are both chemically and geo-technically suitable and will not pose a risk to identified receptors [APP-019].
- 4.291 Asbestos present in the existing buildings at the Power Generation Plant Site which are to be demolished will be removed and disposed of by a suitably licensed asbestos contractor. All works would be subject to a detailed working method statement and

work **would adhere to the "Control of Asbestos Regulations 2012"** and associated guidance [APP-044].

- 4.292 All wastes generated as part of the operational phase will be handled and stored under appropriate waste management legislation, and substances handled during operational period would be managed under an appropriate spill response and site-specific environmental management plan [APP-019].
- 4.293 There were no representations or evidence presented challenging the Applicant's **analysis and conclusions on the** waste management impacts of this proposal.
- 4.294 RCT and the Applicant agreed in the SoCG at Section 3.15 [REP-031] that waste issues have been dealt with appropriately in the ES [APP-019].
- 4.295 Requirement 12 (1)(d) of the draft DCO [PD-018] requires a Site Waste Management Plan to be approved by RCT prior to the commencement of operation.

### **Conclusion on Waste Management**

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

### **Water quality and resources**

- 4.297 Section 5.15.5 of NPS EN-1 states:
- 'The IPC will generally need to give impacts on the water environment more weight where a project would have an adverse effect on the achievement of the environmental objectives established under the Water Framework Directive.'*
- 4.298 Following consideration of the Relevant and Written Representations and LIRs, the ExA concluded that there was no requirement for an ISH devoted to Water Quality and Resource Impacts.
- 4.299 In the case of the Project, water quality and resources issues have been detailed in Section 9 of the ES [APP-019] and the CEMP Appendix 4.1 [APP-020].
- 4.300 The Water Framework Directive (WFD) requires that all inland and coastal waters within defined river basin districts must reach at **least 'Good' Status by 2015, and further** defines how this should be achieved through the establishment of Environmental Objectives and Ecological Targets for surface waters. As such it is essential that no works are carried out that could result in a

reduction of the WFD Status of affected watercourses / waterbodies and, if possible, any works along the watercourses / waterbodies should aim to improve the WFD Status where possible.

- 4.301 As described in Section 9.5 of the ES [APP-019], the River Camnant / Sychryd is currently assessed to be at Moderate Ecological Status. A section of this watercourse may be culverted beneath the Power Generation Plant Site, providing a potential pathway for contamination of the watercourse and a risk of structural damage to the culvert from construction of the Power Generation Plant. However, the combined effect of the embedded mitigation measures as outlined in paragraphs 9.4.15 – 9.4.20 of the ES [APP-019] and the specific mitigation measures outlined in section 9.8 should ensure that the potential impact is minimised.
- 4.302 Under the Land Drainage Act 1991, as amended by the Flood and Water Management Act 2010, an Ordinary Water Consent (OWC) may be required from RCT [APP-044]. This may be required in relation to Work No. 2G in the Draft DCO (works likely to cause an obstruction to flow or restrict storage in connection with the existing culvert that underlies the Project Site.) Due to survey limitations it has not been possible to establish sufficient information about those parts of the culvert lying within the site which is currently in use, to enable the draft DCO to take powers for OWC.
- 4.303 For the above reasons, further details of the exact nature of the works is required before an application for OWC (including any necessary WFD assessment) can be made so this is not included in the DCO Application.
- 4.304 RCT confirmed that the OWC requirements have been considered in the design of the Project to date [REP-031] and the Applicant will continue to engage with RCT to ensure the final design of any such works is compatible with OWC requirements. RCT confirmed that OWC consent will not be unreasonably withheld [REP-031].
- 4.305 Requirements 4, 8, 9 and 12 of the draft DCO [PD-018] put in place mechanisms to manage water quality and resources during design, construction and operation.

### **Conclusion on water quality and resources**

- 4.306 The ExA considers that the water quality and resource issues have been addressed adequately and meets the requirements of NPS EN-1.

## **OVERALL CONCLUSION ON THE NEED FOR THE PROJECT**

4.307 The ExA concludes that whilst there are impacts of the scheme in terms of ecology and landscape and visual impact, the recommended draft DCO (Appendix D) contains sufficient measures to mitigate those impacts. It is concluded, therefore, that the benefits of this proposal would outweigh its impacts.

## 5 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS

### INTRODUCTION

- 5.1 This Section of the report sets out analysis and findings relevant to Habitats Regulations Assessment (HRA).
- 5.2 The application proposal engages the Habitats Directive, and the HRA process on the basis of its potential to adversely affect a number of European Sites and their features.
- 5.3 The European Sites relevant to this process are of the following type:
- Special Areas of Conservation (SACs) designated pursuant to the Habitats Directive;
- 5.4 There are four broad stages for HRA (see advice provided in the **Planning Inspectorate’s Advice Note 10: “Habitat Regulations Assessment relevant to nationally significant infrastructure projects”**, where the process is set out in Figure 1<sup>35</sup>).
- (i) **Screening:**  
Deciding whether a project or proposal either alone or in combination with other plans or projects gives rise to a likely significant effect (LSE) on a European Site (or sites). In determining whether there is an LSE, a precautionary test arising from the *Waddenzee* judgement should be applied<sup>36</sup>.
  - (ii) **Appropriate Assessment (AA):**  
**Assessing whether, in view of the European Site’s** conservation objectives, a project or proposal either alone or in combination with other plans or projects would risk an adverse effect on the integrity of the site. If it is found that it does not, the project or proposal may proceed<sup>37</sup>.
  - (iii) **Consideration of Additional Requirements and Alternatives:**  
Steps that are only taken if a risk of adverse effect on integrity is found, under which mitigation of impacts and alternative solutions are reviewed.
  - (iv) If these steps do not have the effect of removing the risk of adverse effect, then it becomes necessary to establish that the proposal and its acknowledged harm should proceed due to **Imperative Reasons of Overriding Public Interest (IROPI)** (including the provision of compensatory

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<sup>35</sup> <http://infrastructure.planningportal.gov.uk/wp-content/uploads/2013/09/Advice-note-10-HRA.pdf>

<sup>36</sup> European Court of Justice Case C-127/02 (the *Waddenzee* Judgment) which found “any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the site’s conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects”.

<sup>37</sup> The approach set out in the *Waddenzee* Judgment also applies to appropriate assessment.

measures). If IROPI and compensatory measures cannot be established the proposal should not proceed.

- 5.5 When assessing a project, it is appropriate to take embedded mitigation that is provided for (see paras. 4.42- 4.44 of this report) in the application proposal and (where necessary) secured in the recommended DCO into account<sup>38</sup>. It is an important part of the HRA process to identify LSEs which arise in combination with other projects or proposals<sup>39</sup>.
- 5.6 The Examining Authority does not carry out an AA or any subsequent stage of assessment or decision making under HRA. This role is reserved to the SoS as the competent authority. However, the ExA have been mindful throughout the examination process of the need to ensure that the SoS has an adequate basis of information from which to carry out his duties as competent authority, informed by and compliant with the policy set out in NPS EN-1 paragraph 5.3.9 and NPS EN-3 paragraphs 2.6.58 to 2.6.71.
- 5.7 In accordance with the advice provided by PINS Advice Note 10, the ExA have adopted a standardised Planning Inspectorate procedure of drawing together all submitted evidence in respect of the HRA process into a Report on the Implications for European Sites (RIES) ([DEC-010]). The RIES compiles, documents and signposts information provided within the DCO application, and the information submitted throughout the examination by both the Applicant and interested parties, up to the date of its release. The RIES was prepared and released on 22 October 2014.
- 5.8 The Applicant accepts that project is not connected with or necessary to the management for nature conservation of any of the UK European sites considered within the assessment (see paragraph 5.2.2 of the Applicants No Significant Effects Report (NSER) [APP-045]). As such it is clear that further consideration of the Project by way of a HRA screening is required<sup>40</sup>.

## **PROJECT LOCATION**

- 5.9 The proposed development by Hirwaun Power Limited (the Applicant) is a new thermal generating station (hereafter referred to as the Power Generation Plant) on land at the Hirwaun Industrial Estate, in Aberdare, South Wales (approximate grid reference SN 938 061). The site location and project red line

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<sup>38</sup> See The Conservation of Habitats and Species Regulations 2010, reg 61 (6)

<sup>39</sup> [Advice note nine: Rochdale Envelope](#) (PDF 450 KB) Republished April 2012 (version 2).

<sup>40</sup> Habitats & Species Regulations 2010 No. 490, Regulation 61(1)(b)

boundary is shown on the ES Figure 8. 1 [APP-027]. The site within which the Project is located is entirely within the administrative boundary of Rhondda Cynon Taf County Borough Council (RCT).

- 5.10 The Applicant's NSER [APP-045] identified the following UK European sites for which the UK is responsible for inclusion within the assessment:

<b>European Site</b>	<b>Designated Features</b>
<b>Blaen Cynon Special Area of Conservation</b>	Marsh fritillary butterfly <i>Euphadryas</i> ( <i>Eurodryas</i> , <i>Hypodryas</i> ) <i>aurinia</i>
<b>Coedydd Nedd a Mellte Special Area of Conservation</b>	Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles  Tilio-Acerion forests of slopes, screes and ravines (priority feature)
<b>Cwm Cadlan Special Area of Conservation</b>	Molinia meadows on calcareous, peaty or clayey-silt laden soils ( <i>Molinion caeruleae</i> )  Alkaline fens

- 5.11 NRW agree that the Applicant has considered all relevant European sites and features in their NSER [APP-045] report, in line with the guidance provided in **the Environment Agency's Horizontal Guidance (H1) Annex F (see NRW's answer to the ExA first round question HA02 [REP-019])**.

- 5.12 These three sites are referred to collectively as the European Sites:

(i) **Blaen Cynon SAC & Cors Bryn Y Gaer SSSI**

The Blaen Cynon SAC is located approximately 0.25 km north east from the site.

Blaen Cynon contains an extensive complex of damp pastures and heaths supporting the largest meta-population of marsh fritillary (*Euphydryas aurinia*) on the southern edge of the Brecon Beacons National Park (BNNP). The Annex II primary qualifying feature and sole reason for the sites selection as an SAC is marsh fritillary butterfly. This SAC is considered to be the one of the best areas in the UK for marsh fritillary butterfly. The population of marsh

fritillary is considered to be between 501 and 1000 resident individuals<sup>41</sup>.

The SAC encompasses an area of 66.81 ha and supports a variety of habitats. There are no Annex I habitats selected as the primary reason for selection or as a qualifying interest. The general site character of the SAC is made up of:

- humid grassland and mesophile grassland;
- bogs, marshes, water fringed vegetation and fens;
- dry grassland steppes;
- heath, scrub, maquis and garrigue, phygrana;
- improved grassland; and
- broad-leaved deciduous woodland.

The Blaen Cynon SAC consists of two SSSIs (Cors Bryn-y-Gaer SSSI and the Woodland Park and Pontpren SSSI).

Cors Bryn-y-Gaer SSSI is of special interest<sup>42</sup> for its lowland bog and for areas of soligenous flush, marshy grassland, dry neutral grassland and lowland acid grassland. These habitats occur in a complex with wet heath, swamp and semi-improved grassland. The site is also of special interest for the marsh fritillary butterfly *Euphydryas aurinia*. The site forms part of Blaen Cynon Special Area of Conservation. The lowland raised bog feature is the most sensitive to the effects of nitrogen deposition and consequently has the lowest minimum critical load of the habitats present on site which is 5kg/N/ha/yr.

#### (ii) **Coedydd Nedd a Mellte SAC**

The Coedydd Nedd a Mellte SAC is located approximately 1.2 km north west from the site at its nearest point.

Coedydd Nedd a Mellte is an extensive area of woodland along a series of deeply incised valleys and ravines, situated to the north of Pontneddfechan in south Wales. The European (Annex I habitat) interests are the western sessile oak woodland and ash woodland. The whole site is biologically rich, with many woodland plant communities represented as well as a rich variety of ferns, lichens, mosses and liverworts. This SAC encompasses an area of 378.18 ha<sup>43</sup>.

#### (iii) **Cwm Cadlan SAC**

The Cwm Cadlan SAC is located approximately 3 km north-north east from the site at its nearest point.

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<sup>41</sup> Joint Nature Conservation Council (2011). Blaen Cynon Natura 2000 Data Form

<sup>42</sup> Cors Bryn y Gaer SSSI Citation (Countryside Council for Wales, 2002)

<sup>43</sup> <http://jncc.defra.gov.uk/protectedsites/sacselection/habitat.asp>

This SAC encompasses an area of 83.91 ha. Cwm Cadlan is a mosaic of wet grassland fields in a small valley to the north-west of Merthyr Tydfil. Lime-rich waters flow through the reserve and sustain marshy grassland habitats, as well as a variety of specialised plants and animals. Marshy grassland and wetlands like this are now uncommon features of the wider countryside, with many areas having been drained and used for more intensive agriculture.

There are two Annex I habitats identified as primary reasons for site selection, with no further qualifying interests. The two habitats are *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*) and Alkaline Fens<sup>44</sup>.

## **HRA IMPLICATIONS OF PROJECT**

- 5.13 No direct disturbance or habitat loss will occur within the identified European sites as part of this proposed development. However, the proposed development could have indirect impacts. Based on the information provided in Section 2 of this report, and within Appendix 2 of the Applicants NSER [APP-045] and the ExA RIES [DEC-010], it is possible to identify the potential indirect impacts that could result from the Project.
- 5.14 NRW agrees there are no direct impacts on any of the three European sites considered within the Applicant's screening assessment given the distance between the SAC sites and the development footprint [REP-019] [REP-036] [HR-017].
- 5.15 The Applicant's assessment identifies varying potential for indirect impacts on the three SACs. [APP-045]. These are summarised below:
- Blaen Cynon SAC: changes in air quality (construction and operation), loss or disturbance of habitats outside the SAC potentially suitable to support marsh fritillary qualifying interest (temporary and permanent) and hydrological effects (all stages of project);
  - Coedydd Nedd a Mellte SAC - changes in air quality (construction and operation), hydrological effects (all stages of project); and
  - Cwm Cadlan SAC – changes in air quality (construction and operation), hydrological effects (all stages of project).

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<sup>44</sup> Joint Nature Conservation Council (2011) Cwm Cadlan Natura 2000 Data Form

- 5.16 A Likely Significant Effect (LSE), has been explained by the European Court of Justice in the Waddenzee judgement<sup>45</sup> (C-127/02) as follows in paragraphs 47 and 45 respectively:
- 'a) Significant: "Where a plan or project has an effect on that site but is not likely to undermine its conservation objectives, it cannot be considered likely to have a significant effect on that site"; and*
- b) Likely: "if it cannot be excluded, on the basis of objective information, that it will have a significant effect on the site...".*
- 5.17 In response to questions from the ExA at the ISH of 24 September 2014 the Applicant stated **that they agree with the ExA's Waddenzee definitions of 'significant' and 'likely'** [HR-015, paragraph 5.6.1]. NRW also agreed with these definitions [HR-016].

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

- 5.18 There is agreement between NRW and the Applicant on the sites (and the features of those sites) that are likely to be significantly affected by the project (paragraphs 2.5.3 and 3.2 of the SoCG [REP-036]).
- 5.19 There were no dissenting views from other interested parties.
- 5.20 There was agreement between the Applicant and NRW on the baseline evidence (paragraphs 2.5 and 3.2 of the SoCG [REP-036]).
- 5.21 There were no dissenting views from other interested parties.
- 5.22 There was agreement between the Applicant and NRW on the methodology used for assessing air quality effects (paragraph 3.2 of the SoCG [REP-036]).
- 5.23 There were no dissenting views from other interested parties.
- 5.24 There are a range of environmental mitigation and monitoring measures included within the proposed design and development to ensure adverse impacts upon the environment are avoided (in the first instance) or minimised [APP-019][PD-018].

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<sup>45</sup> Judgment of the Court (Grand Chamber) of 7 September 2004. Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij. Reference for a preliminary ruling: Raad van State - Netherlands. Directive 92/43/EEC -Conservation of natural habitats and of wild flora and fauna - Concept of "plan" or "project" - Assessment of the implications of certain plans or projects for the protected site. Case C-127/02. European Court Reports 2004 page I-07405

- 5.25 Mitigation and monitoring measures proposed by the Applicant [APP-045] and directly relevant to the scope of potential effects described above include:
- The design has been significantly altered during the detailed design process, with the site red-line boundary being altered to avoid direct effects on wetland habitats within Hirwaun Industrial Estate SINC;
  - Implementation of a CEMP secured via Requirement 12 in the draft DCO [PD-018];
  - Adherence to all relevant Environmental Permits, Best Practice Guidance / Regulations, British Standards, and monitoring in respect of air quality, noise and vibration, and water resources;
  - Implementation of industry standard methods and procedures to ensure air quality impacts are minimised throughout all phases of the project [REP-019];
  - The 1.7 ha of the Hirwaun Common SINC affected by gas pipeline installation will be reinstated following installation of the pipeline; and
  - A detailed Method Statement will be produced setting out how construction phase impacts on the SINC sites will be avoided or minimised and will be secured via Requirement 10 - Ecological Management Plan in the draft DCO [PD-018].
- 5.26 These measures were accepted by NRW [REP-036], BBNPA [REP-035] and RCT [REP-031] and there were no dissenting views from other interested parties.
- 5.27 As a result of the screening assessment [APP-045], the Applicant concluded that the project is not likely to give rise to significant effects either alone or in combination, on the European sites listed below:
- (i) Blaen Cynon SAC;
  - (ii) Coedydd Nedd a Mellte SAC; and
  - (iii) Cwm Cadlan SAC.
- 5.28 The Applicant's **conclusions in relation to the** effects on the designated features of Coedydd Nedd a Mellte SAC and Cwm Cadlan SAC were not disputed by any interested parties during the examination.

### ***Effects from the Project alone***

- 5.29 NRW stated in their written representations [REP-019] and SoCG [REP-036] that the effects of aerial emissions, habitat loss/fragmentation and potential hydrological changes on the Blaen Cynon SAC, Coedydd Nedd a Mellte SAC and Cwm Cadlan SAC would be negligible. NRW came to this conclusion on the basis of the guidance in the Environment Agency Horizontal Guidance (H1) Annex F and the mitigation measures detailed in

paragraph 5.25 of this report, that there is no potential for likely significant effects from Hirwaun Power Station [REP-019]. No specific issues have been raised by interested parties in relation to other effects on these SACs.

- 5.30 The ExA in its first round of questions [DEC-006] addressed the adequacy of the Applicant's Stage 1 Screening assessment and conclusions [APP-045]. The ExA has no reasons to disagree with the Applicant's and NRW's conclusions regarding LSE on the Coedydd Nedd a Mellte SAC and Cwm Cadlan SAC.
- 5.31 The Applicant's **NSER** [APP-045] states that the operation of the Hirwaun Power Plant has the potential to increase levels of nitrogen and acid deposition on the Blaen Cynon SAC, which could affect the broad habitat types used by marsh fritillary. These changes could affect the various scabious species which are the larval food plant. The air quality modelling undertaken by the Applicant demonstrated that, for a 30m stack, deposition onto suitable marsh fritillary habitats, alone would be less than 1% of the relevant critical load. The modelling undertaken is stated by the Applicant to be precautionary in nature because it is based on the maximum annual operating hours for the project (1500 hours) rather than the 500 hours which is more likely. Use of a 70% conversion factor of nitrogen oxides to nitrogen dioxide, while in line with EA guidance, is also argued to be precautionary. The Applicant states that if recent trends in air quality continue this will also reduce the levels of atmospheric nitrogen oxides (see Hirwaun Power written representations [REP-030], Appendix 1, footnotes to Matrix 1, NSER Appendices 1 and 3 [APP-045]).
- 5.32 **NRW advise that, on the basis of the Environment Agency's H1** Annex F guidance, V2.2 December, 2011, the emissions from the project **alone** will lead to increases in nitrogen deposition and acid deposition on the SAC which are insignificant. Using the EPUK (2010) update guidance a process contribution of <1% is classed as imperceptible (see NRW's answer to question HA03 as part of their written representations, Annex A [REP-019]).
- 5.33 NRW initially raised concerns that the effect of the project would be to affect the opportunity for the Blaen Cynon SAC to return to favourable conservation status (see NRW Relevant Representations [RR-017]) but confirmed at the hearing [HR-016] that they felt that the contribution from the project alone would be so minute that it would not have any appreciable effect on the SAC.
- 5.34 NRW have highlighted the need for baseline monitoring of local air quality around the project site (NRW written representations, Annex A, Background Air Quality [REP-019]) and the Applicant has agreed to provide an air quality monitoring scheme secured through a Section 106 Agreement [REP-048]. Paragraphs 3 to 5 (inclusive), Schedule 1 of the Section 106 Agreement and

paragraphs 1.4 to 1.5 (inclusive), Schedule 2 of the Section 106 Agreement make provision for air quality monitoring in order to provide information on background concentrations of nitrogen oxides (NO<sub>x</sub>) (including nitrogen dioxide (NO<sub>2</sub>) and nitric oxide (NO)) over sensitive habitats in the Cors Bryn-y-Gaer SSSI, to establish current and pre-operational baseline concentrations of these pollutants and determine temporal trends in their concentrations. The Applicant and NRW agree however that this is not intended as mitigation for effects on the Blaen Cynon SAC (NRW written summary of oral cases put at the specific issue hearing on environmental matters, 24 September 2014, responses to ExA questions OE06 and OE11[HR-016]).

- 5.35 Given the evidence presented, the ExA agrees with NRW and the Applicant that the project alone is not likely to give rise to any significant effects on the European sites.

### ***In combination effects***

- 5.36 The Applicant has considered effects that are not significant alone, but could become significant when considered in combination with other plans or projects. Agreement was reached between the NRW [REP-036], BBNPA [REP-035] and RCT [REP-031] and the Applicant on which plans or projects which should be considered for the in combination assessment with the project.
- 5.37 There were no dissenting views from any other interested parties on which projects to be included in the in combination assessment.
- 5.38 The following projects have been included in the in-combination assessment carried out by the Applicant [APP-045]:
- Rhigos Sub-station (RCTCBC planning reference 10/0113/10). This comprises the construction of a sub-station and one to two new towers with associated Overhead Lines (OHL);
  - Green Frog 20MW liquid fuel power generation (RCTCBC planning reference 11/1191/10) This site comprises a series of diesel generators situated in an area of hardstanding south of Main Avenue, adjacent to the proposed Hirwaun gas connection;
  - Enviroparks Energy from Waste Scheme (RCTCBC planning reference 08/1735/10);
  - Pen Y Cymoedd Wind Farm (RCTCBC planning reference 09/1311/04);
  - Supermarket opposite Ferraris site (RCTCBC planning reference 12/0183/13);
  - Dualling of A465 between Hirwaun and Abergavenny;

- Extension of Selar open cast mine near Glynneath to extract 800,000 tonnes more material (Neath Port Talbot application reference P/2013/720);
  - Hirwaun Energy Centre (RCTCBC planning reference 13/0416/10); and
  - Tower Open Cast Operation.
- 5.39 As a result of the screening assessment [APP-045], the Applicant concluded that the project is NOT likely to give rise to significant effects in combination, on the European sites listed below:
- (i) Blaen Cynon SAC;
  - (ii) Coedydd Nedd a Mellte SAC; and
  - (iii) Cwm Cadlan SAC.
- 5.40 The Applicant's **conclusions in relation to** in-combination effects on the designated features of Coedydd Nedd a Mellte SAC and Cwm Cadlan SAC were not disputed by any interested parties during the examination.
- 5.41 NRW stated in their written representations [REP-019] and SoCG [REP-036] that the in combination effects of aerial emissions, on the Blaen Cynon SAC, Coedydd Nedd a Mellte SAC and Cwm Cadlan SAC would be negligible. NRW came to this conclusion on the basis of the guidance in the Environment Agency Horizontal Guidance (H1) Annex F and the mitigation measures detailed in paragraph 5.25 of this report, that there is no potential for likely in combination significant effects from Hirwaun Power Station [REP-019]. No specific issues have been raised by other interested parties in relation to other effects on these SACs.
- 5.42 The ExA in its first round of questions [DEC-006] addressed the adequacy of Applicants Stage 1 Screening assessment and conclusions [APP-045]. The ExA has no reasons to disagree with NRW's conclusions regarding LSE on the Coedydd Nedd a Mellte SAC and Cwm Cadlan SAC.
- 5.43 Given the evidence presented, the ExA agrees with NRW and the Applicant that the project in combination will not give rise to any significant effects on the following European sites:
- (i) Coedydd Nedd a Mellte SAC; and
  - (ii) Cwm Cadlan SAC.
- 5.44 Table 5.2 of the NSER [APP-045] claims on page 71:
- '...the air quality effects of the project are deemed to be imperceptible...as such it is considered that the project cannot contribute to a significant in-combination effect and no likely significant effects are predicted'.*
- 5.45 However, the ExA was not able to exclude likely significant effects from other projects in combination with the Project's nitrogen

emissions and acid deposition, on the Blaen Cynon SAC, because of the emissions levels detailed in Tables 6.24 and 6.25 of the ES [APP-019].

5.46 The ExA noted (Question HA19 [DEC-006]) that the Applicant's assessment for Blaen Cynon Special Area of Conservation shows that the in combination process contribution expressed as % critical load is substantially above 1% of critical load for both nitrogen deposition and acidification (see Tables 6.24 and 6.25 of the ES, [APP-019]). Applying the criteria in Table 6.7 of the ES [APP-019] **this would be classified as a "Substantial Adverse" effect.**

5.47 The Applicant in its response [REP-030] to the ExA first round Question HA19 [DEC-006] stated:

*'In short, the Applicant's view is that the current situation is simply a case of other projects in the area giving rise to a likely significant in-combination effect but this Project, which does not make a perceptible contribution, is not part of that in combination effect. A common sense approach which recognises a de minimis threshold is supported by the Guidance and the AG's opinion in the Sweetman Case. To take a different view would involve holding parties responsible for impacts to which they make no material contribution which, to quote the AG in Sweetman, would be "legislative overkill.'*

5.48 NRW confirmed it agrees with the conclusions of the NSER (SoCG paragraph 3.3 [REP-036]) regarding the in-combination LSE on the Blaen Cynon SAC.

5.49 The ExA queried NRW's<sup>46</sup> advice to the AA for Enviropark Hirwaun Ltd 2009 submitted by Brecon Beacons National Park Authority (BBNPA) at Appendix I of [REP-026]. Enviropark Hirwaun Ltd (which is part of this Project's in combination assessment, see paragraph 5.38 of this report) was assessed to have had LSE alone, thereby triggering an AA. NRW stated in its summary of its oral case put at the HRA hearing of the 24 September 2014 [HR-016]:

*'NRW pointed out that the model output in section 3.1.1 of the Enviroparks Appropriate Assessment predicted output contributions in excess of 1% from Enviroparks which appeared to have led BBNPA to conclude that there were likely significant effects arising from that project alone [HR-016]. **In 2009 the Environment Agency could not exclude the possibility of likely significant effects arising from the Enviroparks project, and that is why an appropriate assessment was***

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<sup>46</sup> NRW was formed in April 2013, largely taking over the functions of the Countryside Council for Wales, Forestry Commission Wales and the Environment Agency in Wales, as well as certain Welsh Government functions.

**undertaken**<sup>47</sup>. However, the advice from EA was that there were technical solutions which could be imposed that would reduce emissions to an acceptable level (in the latter part of paragraph 3.1.1. of the appropriate assessment).'

5.50 It remained the view of the Applicant, supported by NRW consultation and examination responses, that the Project will result in no LSE, either alone or in combination with other plans or projects.

5.51 The ExA explained in the Issue Specific Hearing of 24 September 2014 [HR-017] that the evidential bar to identify a Likely Significant Effect, and so trigger the need for an AA, is very low<sup>48</sup>. At paragraph 49 of "Sweetman"<sup>49</sup> it states:

*'The threshold at the first stage of Article 6(3) is thus a very low one. **It operates merely as a trigger**<sup>50</sup>, in order to determine whether an appropriate assessment must be undertaken of the implications of the plan or project for the conservation objectives of the site. The purpose of that assessment is that the plan or project in question should be considered thoroughly, on the basis of what the Court has termed 'the best scientific knowledge in the field'.*

5.52 The Applicant responded that in light of the discussion at the Hearing, the Applicant would be willing, if directed, to prepare a report to inform an AA [HR-015]. The Applicant however maintained the position that the Project would not give rise to any Likely Significant Effects that requires the Applicant to consider the need to provide information to support an AA of the Conservation of Habitats and Species Regulations 2010.

## **OVERALL CONCLUSIONS ON THE ASSESSMENT OF EFFECTS RESULTING FROM THE PROJECT, ALONE AND IN COMBINATION**

5.53 It is for the competent authority, in this case the SoS, to determine whether or not an AA should be carried out before a decision is made on the Project. The ExA therefore requested at the ISH on EIA/HRA that the Applicant provide a HRA Report which included information to support an AA. This was to assist the ExA in making their recommendations and the SoS to undertake an Appropriate Assessment should that be deemed necessary [HR-017].

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<sup>47</sup> ExA emphasis

<sup>48</sup> Judgment of the Court (Third Chamber) of 11 April 2013. Peter Sweetman and Others v An Bord Pleanála. Case C-258/11

<sup>49</sup> *ibid*

<sup>50</sup> ExA emphasis

5.54 In the ExA's view the evidence presented in the examination does not allow the conclusion that there would be no likely significant effects on Blaen Cynon SAC as a result of the combined aerial emissions from the Project and other developments in the vicinity. Therefore the site and feature detailed in paragraph 5.12(i) of this report (Blaen Cynon SAC), has been taken forward to Stage 2 of the HRA process (as summarised in the RIES integrity matrices [DEC-010]).

5.55 The ExA has reached this view because:

- (i) A project with a potential effect, which is insignificant on its own, is not free from the provisions of the Habitats Regulations until it has been checked in combination with the effects of other projects. Some projects may be unlikely to have significant effects on their own but effects in combination with other projects may be significant. The protective measures of the Directive could be seriously undermined if these combinations of projects escaped assessment [HR-017];
- (ii) The Applicants assessment for Blaen Cynon Special Area of Conservation shows that the in-combination process contribution expressed as % critical load is substantially above 1% of critical load for both nitrogen deposition and acid deposition (see Tables 6.24 and 6.25 of the ES, [APP-019]). Applying the criteria in Table 6.7 of the ES [APP-019] **this would be classified as a "Substantial Adverse" effect i.e.** a likely significant effect; and
- (iii) The AA for Enviropark Hirwaun Ltd 2009 submitted by Brecon Beacons National Park Authority (BBNPA) at Appendix I of [REP-026], was assessed to have had LSE alone, thereby triggering an AA. Enviropark Hirwaun Ltd is part of this project's in combination assessment (see paragraph 5.38 of this report). The ExA adopting a "precautionary" approach", believes if it triggered an AA alone in 2009, it should be assumed that in combination with this project it triggers an AA now.

## **CONSERVATION OBJECTIVES**

5.56 European Site Conservation Objectives are those referred to in the Conservation of Habitats and Species Regulations 2010 (the "**Habitats Regulations**") and **Article 6(3) of the Habitats Directive** 1992. They are relevant for use when either the appropriate nature conservation body or competent authority is required to make an AA under the relevant parts of the legislation.

5.57 These conservation objectives are set for each designated habitat/species/ bird feature for a SAC and a SPA. Where the objectives are met, the site can be said to demonstrate a high

degree of integrity and the site itself makes a full contribution to achieving the aims of the Habitats and Birds Directive for those features.

- 5.58 Paragraph 5.12(i) of this report, identifies the qualifying features of the Blaen Cynon SAC which are relevant to the assessment of effects on integrity of the site.
- 5.59 The Conservation Objectives<sup>51</sup> for Blaen Cynon SAC, Site Code: UK0030092, for Feature 1: Marsh fritillary butterfly *Euphydryas* (*Eurodryas*, *Hypodryas*) *aurinia* (EU Species Code: 1065) are:

*"The vision for this feature is for it to be in a favourable conservation status, where all of the following conditions are satisfied:*

- *The site will contribute towards supporting a sustainable metapopulation of the marsh fritillary in the Penderyn/Hirwaun area. **This will require a minimum of 50ha of suitable habitat, of which at least 10ha must be in good condition, although not all is expected to be found within the SAC. Some will be on nearby land within a radius of about 2km.***<sup>52</sup>
- *The population will be viable in the long term, acknowledging the extreme population fluctuations of the species.*
- *A minimum of 30% of the total site area will be grassland suitable for supporting marsh fritillary. (As the total area of the SAC is 66.62 ha, 30% represents approximately 20 ha.) At least 40% of the suitable habitat (approximately 8 ha) must be in optimal condition for breeding marsh fritillary.*
- *Suitable marsh fritillary habitat is defined as stands of grassland where *Succisa pratensis* is present and where scrub more than 1 metre tall covers no more than 10% of the stands.*
- *Optimal marsh fritillary breeding habitat will be characterised by grassland where the vegetation height is 10-20 cm, with abundant purple moor-grass *Molinia caerulea*, frequent "large-leaved" devil's-bit scabious *Succisa pratensis* suitable for marsh fritillaries to lay their eggs and only occasional scrub. In peak years, a density of 200 larval webs per hectare of optimal habitat will be found across the site."*

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<sup>51</sup> <http://www.ccg.gov.uk/landscape--wildlife/protecting-our-landscape/special-sites-project/aber-to--brecon-sac-list/blaen-cynon-sac.aspx>  
[http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CCEQFjAA&url=http%3A%2F%2Fwww.ccg.gov.uk%2Flandscape--wildlife%2Fprotecting-our-landscape%2Fspecial-sites-project%2Faber-to--brecon-sac-list%2Fidoc.ashx%3Fdocid%3Dd02dce21-0763-4fb8-9eba-b484c28ec1b0%26version%3D-1&ei=oKk3VNn8ApTZat7ngaAB&usq=AFOjCNHu3CEwXnsIrdlka8\\_bgguydHMX8w&bvm=bv.77161500,bs,1,d,ZWU](http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CCEQFjAA&url=http%3A%2F%2Fwww.ccg.gov.uk%2Flandscape--wildlife%2Fprotecting-our-landscape%2Fspecial-sites-project%2Faber-to--brecon-sac-list%2Fidoc.ashx%3Fdocid%3Dd02dce21-0763-4fb8-9eba-b484c28ec1b0%26version%3D-1&ei=oKk3VNn8ApTZat7ngaAB&usq=AFOjCNHu3CEwXnsIrdlka8_bgguydHMX8w&bvm=bv.77161500,bs,1,d,ZWU)

<sup>52</sup> ExA emphasis

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

- 5.60 The ExA has identified the potential for an LSE on the feature of Blaen Cynon SAC i.e. Marsh fritillary butterfly *Euphadryas* (*Eurodryas*, *Hypodryas*) *aurinia*. This Section summarises the anticipated effects on the integrity of the Blaen Cynon SAC, in the context of their conservation objectives (see paragraphs 5.56-5.59 of this report).
- 5.61 The matrices in Section 5 of the RIES [DEC-010] and the comments made on them by the Applicant are discussed in paragraphs 5.7, 5.13, 5.54 and 5.69 of this report. The Applicant considers that generally the RIES represents a fair summary of the implications of the Project on European sites [REP-047].
- 5.62 There is agreement between NRW and the Applicant on the sites (and the feature of the European site) that are likely to be significantly affected by the project (paragraphs 2.5 and 3.2 of the SoCG) [REP-036].
- 5.63 There were no dissenting views from other interested parties.
- 5.64 There was agreement between the Applicant and NRW on the baseline evidence (paragraphs 2.5 and 3.2 of the SoCG) [REP-036].
- 5.65 There were no dissenting views from other interested parties.
- 5.66 There was agreement between the Applicant and NRW on the assessment methodology (paragraph 3.2 of the SoCG) [REP-036].
- 5.67 There were no dissenting views from other interested parties.
- 5.68 There are a range of environmental mitigation and monitoring measures included within the proposed design and development (see paragraph 5.25 of this report) to ensure adverse impacts upon the environment are avoided (in the first instance) or minimised [APP-019][PD-012].
- 5.69 Following the ISH on 24 September 2014, in response to questions from the ExA, the Applicant offered to provide an assessment of the effects on the integrity of Blaen Cynon SAC [HR-015]. The Applicant concluded that the project will NOT adversely affect the integrity of the Blaen Cynon Special Area of Conservation i.e. Marsh fritillary butterfly *Euphadryas* (*Eurodryas*, *Hypodryas*) *aurinia*, either alone or in combination with other plans/projects [HR-015] and in the revised integrity matrices submitted on 10 October 2014 [DEC-010] concluded no likely adverse effects on any European sites.
- 5.70 The evidence to support this conclusion was the subject of the ExA's second round of questions on HRA matters issued on the 22

October 2014 [DEC-009]. The Applicants responses can be found at [REP-045].

5.71 The Applicant's updated air quality assessment for the in-combination effects on Blaen Cynon SAC has been revised in light of information that has become available in the course of the examination regarding two projects which are part of the in combination assessment [HR-015]:

- (i) Enviroparks and
- (ii) Hirwaun Energy Centre.

5.72 NRW stated in its summary of its oral case put at the HRA hearing of the 24 September 2014 [HR-016]:

*'NRW pointed out that the model output in section 3.1.1 of the Enviroparks Appropriate Assessment predicted output contributions in excess of 1% from Enviroparks which appeared to have led BBNPA to conclude that there were likely significant effects arising from that project alone [HR-016]... However, the advice from EA was that there were technical solutions which could be imposed that would reduce emissions to an acceptable level (in the latter part of paragraph 3.1.1. of the appropriate assessment).'*

5.73 In the Applicant's view, the contribution of the Enviroparks development is likely to be limited so that contributions to nitrogen and acid deposition are likely to be less than 1% over any European site [HR-015].

5.74 The original planning application for Hirwaun Energy Centre has been amended to reduce its emissions and this has been reflected in an environmental statement addendum which was submitted to Rhondda Cynon Taff County Borough Council in July 2014<sup>53</sup>. The Applicant has updated their air quality modelling to reflect this [HR-015]. The new modelling shows significant reductions in, in combination air quality **effects compared with the Applicant's** original assessment. In addition, the Applicant re-stated the position that the contribution from the project to nitrogen and acid deposition will be imperceptible.

5.75 The updated modelling carried out by the Applicant [HR-015] predicts that the operation of the in combination assessment projects will contribute a minimum critical load for acid deposition as follows:

- 5.5% from Green Frog;
- 0.75% from Hirwaun Energy Centre;

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<sup>53</sup> Boyer Planning, Environmental Statement for Hirwaun Energy Centre, July 2014. <http://documents.rctbc.gov.uk/AnitePublicDocs/00188159.pdf>

- 0.75% from Enviroparks; and
- 0.3% from the Hirwaun Power Project.

Combined this leads to a maximum deposition of up to 7.3% of the minimum critical load, although the Applicant expects that average annual deposition would be less than this. Acid deposition from the project varies between 0.1% and 0.3% of minimum critical load for acid deposition.

5.76 For nitrogen the updated modelling predicts an in combination deposition of up to 1.6% of minimum critical load for the worst of the 5 years modelled (2008-2012). **In the Applicant's view, the conservative approach used in the project air quality modelling will mean that actual deposition from the project is very likely to be lower** (see NRW and Applicant's response to ExA second round questions HA2-08 and HA2-09 [REP-044] and [REP-045]). The Green Frog plant also generates infrequently with expected operating hours up to 100 hours per year and its short-term **inputs into annual levels of sulphur are, in the Applicant's view,** likely to be overstated by the air quality model. The HRA Report [HR-015] concluded (as summarised in 5.3.4 - 5.3.10) that there will be no in-combination adverse effect on the integrity of any European site.

5.77 NRW agreed with the report's conclusions in their SoCG [REP-036]. Paragraph 3.2.6 of the SoCG states:

*'[b]oth Parties AGREE as stated in the report to support an Appropriate Assessment that the Project will not lead to an adverse effect on the integrity of any European sites, either alone or in-combination with other developments.'*

5.78 Table 4.2 of the Applicant's HRA Report [HR-015] predicts:

- *'a maximum deposition of 7.3% of minimum critical load for the in-combination acid deposition; and*
- *'a maximum in-combination of up to 1.6% of minimum critical load" for the in-combination nitrogen deposition.'*

5.79 Table 6.7 of the Environmental Statement [APP-019] would classify these as a moderate/slight adverse in combination effects on the integrity of the Blaen Cynon SAC.

5.80 The Applicant agrees in its response to ExA question HA2-08, that inputting the figures from Table 4.2 of the HRA Report into Table 6.7 of the Environmental Statement [APP-019] would appear to identify a moderate/slight likely adverse effect for the purposes of the ES. However, the Applicant does not agree that:

- (i) this is an appropriate application of the Environmental Protection UK (EPUK) guidance; or
- (ii) as set out in the HRA Report, that this means there is an adverse in combination effect on the integrity of the Blaen

Cynon SAC.

- 5.81 NRW agrees, with reference to Table 6.7 of the Environmental Statement [APP-019], with the classification of the maximum deposition figures as moderate / slight adverse in combination effects on Blaen Cynon SAC (response to ExA question HA2-09 [REP-044]).
- 5.82 NRW do not consider that the nitrogen or acid deposition from the Hirwaun Power Station would hinder the return of Blaen Cynon SAC to favourable conservation status because the predicted contribution is so minute that it would not have any appreciable effect on the SAC or its return to favourable conservation status (response to ExA question HA2-09 [REP-044]).
- 5.83 In addition the Applicant is of the opinion that land management mitigation secured by Requirement 10 of the draft DCO will result in sufficient positive benefits to the marsh fritillary population associated with the Blaen Cynon SAC, to confirm that the Project will result in a slight net benefit [PD-018] [HR-015]. The **Applicant considers that, taking account of the Project's potential worst case contribution to nitrogen/acid deposition, the proposed land management measures associated with the Project will have a net positive impact on the SAC.**
- 5.84 The ExA believes that the land management measures focus on the habitat for the designated feature (not the designated feature itself). These measures are considered to be effective mitigation of any impacts on the marsh fritillary butterfly itself because the net suitable habitat available to the designated feature would increase (see paragraph 5.59 of this report). This position was supported by RCT Ecologist Richard Wistow at the EIA/HRA ISH [HR-017].

### **CONSIDERATION OF ALTERNATIVE SOLUTIONS AND IROPI**

- 5.85 The ExA provided the Applicant with the opportunity to detail its consideration of alternatives and IROPI in its second round of questions (Question HA2-12 [DEC-009]). The Applicant provided their response in [REP-045] for concluding:
- (i) there are no alternative solutions;
  - (ii) IROPI applies; and
  - (iii) that satisfactory compensatory measures are available.
- 5.86 The Applicant has prepared a NSER [APP-045] which concludes that the Project will not result in a likely significant effect on any European sites alone or in combination and this conclusion is supported by NRW (see paragraph 3.3.1 of the NRW SoCG) [REP-036]. Following the environmental matters ISH [HR-017], the

Applicant has also prepared a HRA Report [HR-015] in the event the SoS considers there was potential for a likely significant effect. The HRA Report concludes there will not be an adverse effect on the Blaen Cynon SAC alone or in combination and this conclusion is, again, supported by NRW (see paragraph 3.2.6 of the NRW SoCG [REP-036]).

5.87 The Applicant's position, supported by NRW, is that Regulation 62 of the Conservation of Habitats and Species Regulations 2010 (the "Habitats Regulations") is not engaged. As such, it is not necessary or appropriate to conclude on the three tests identified in paragraph 5.85. Given that the Project has an imperceptible effect on the Blaen Cynon SAC – and taking account of the secured ecological enhancement measures which will have a net positive impact on the designated feature, the marsh fritillary butterfly – these tests are not applicable in the context of the Project.

5.88 However, to assist the ExA and to answer the question asked as far as possible, the Applicants response [REP-045] summarised below some of the key points which could be made in relation to each of the three tests (Question HA2-12 [DEC-009]) if the Project were to have a significant adverse effect on a European site as follows:

(i) Alternative Solutions

The Applicant's parent company Watt Power Limited carried out a wide search throughout England and Wales to identify sites which are suitable for the development of gas-fired peaking plants such as the Project and the Project site was one of a small number identified as the most suitable. Proximity to sensitive ecological habitats was a key consideration in the site selection process. Alternative generation technologies were also fully and robustly considered and all appropriate mitigation measures are secured in the draft DCO [PD-018].

A more detailed description of the alternatives considered for the Project is set out in section 5 of the Environmental Statement [APP-019] and the mitigation secured for the project in the draft DCO [PD-018].

(ii) IROPI Applies

A secure, economical, efficient and low-carbon energy source is an imperative of overriding public importance for reasons including maintaining human health, public safety and environmental protection as well as because such an energy source is fundamental to the sustainable development of our economy.

The vital role of gas-fired generating stations in the UK energy mix is widely acknowledged in Government policy. Particular emphasis

is placed in Government policy on the increasing need for gas-fired peaking plants, like the Project. Gas-fired peaking plants meet peak demand and balance out intermittent low-carbon sources of generation (much of which is found in Wales and in RCT) thus playing a vital role in our transition to a low-carbon economy. EN-1 states at paragraph 3.6.1 that:

*'Fossil fuel power stations play a vital role in providing reliable electricity supplies: they can be operated flexibly in response to changes in supply and demand, and provide diversity in our energy mix. They will continue to play an important role in our energy mix as the UK makes the transition to a low carbon economy...'*

A more detailed description of the need for, and policy support for, the Project is set out in section 4 of the Planning Statement [APP-040].

(iii) Compensatory Measures

As identified in the Applicant's response to the ExA second round question HA2-07 [REP-045], the Applicant's proposals already secure ecological enhancement measures which the Applicant considers will result in a minor net beneficial effect on the designated feature associated with the Blaen Cynon SAC. Therefore no compensatory measures would be necessary, appropriate or proportionate<sup>54</sup>.

## CONCLUSIONS

5.89 The Applicant has undertaken an extensive, precautionary and rigorous HRA evaluation in its application documentation and has supported this by undertaking the additional work requested of it during the examination. The Applicant has also engaged effectively and taken careful account of extensive advice from the Statutory Nature Conservation Body i.e. NRW, which has substantially assisted the examination process.

5.90 The potential for adverse effects on site integrity arising from the application proposal on three European Sites has been tested. This has led to undisputed conclusions that the application proposal will not lead to effects on site integrity, alone or in combination on the following two European Sites:

(i) Coedydd Nedd a Mellte SAC and

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<sup>54</sup> The ExA believes the enhancement measures proposed would avoid or reduce potential effects from the project and as such they qualify as mitigation. However, if these measures are being taken into account when effects on site integrity are being considered, and the conclusion is that site integrity would not be adversely affected then they cannot be considered at the compensatory measures stage also.

(ii) Cwm Cadlan SAC.

5.91 However, there was one European Site in respect of which there were outstanding disputed conclusions about in combination effects on site integrity:

- Blaen Cynon SAC i.e. Marsh fritillary butterfly *Euphadryas* (*Eurodryas*, *Hypodryas*) *aurinia*.

5.92 The ExA, through the review of representations, two rounds of questions and a hearing in respect of HRA matters, found that there will be no effect on integrity, either alone or in combination.

5.93 The ExA believes that the conservation objectives for the Blaen Cynon SAC European Site will not be significantly affected by the project because of:

- (i) The mitigation measures secured by Requirements in the draft DCO [PD-018]. The land management measures focus on the habitat for the designated feature (not the designated feature itself). These measures are considered to be effective mitigation of any impacts on the marsh fritillary butterfly itself because the net suitable habitat available to the designated feature would increase. These mitigation measures will ensure the avoidance of the deterioration of the habitats of the qualifying features, and the significant disturbance of the qualifying features, ensuring the integrity of the site is maintained. Requirement 10 [PD-018] ecological management plan measures associated with the Project will have an indirect slight net positive impact on the SAC;
- (ii) **The residual impacts of “a maximum deposition of 7.3% of minimum critical load” for the in combination acid deposition; and “a maximum in-combination of up to 1.6% of minimum critical load” for the in-combination nitrogen deposition will not be significant and**
- (iii) NRW do not consider that the nitrogen or acid deposition from the Hirwaun Power Station would hinder the return of Blaen Cynon SAC to favourable conservation status because the predicted contribution is so minute that it would not have any appreciable effect on the SAC or its return to favourable conservation status.

5.94 The ExA believes there is sufficient evidence to conclude that an adverse effect on the integrity of Blaen Cynon SAC will be avoided.

## **6 COMPULSORY ACQUISITION AND OTHER LAND MATTERS**

### **INTRODUCTION**

- 6.1 This section of the report deals with the request for powers to compulsorily acquire rights and/or land.
- 6.2 It is arranged into the following sub-sections:
- (i) The Request for Compulsory Acquisition Powers and Other Powers;
  - (ii) The Legislative and Guidance Context;
  - (iii) How the ExA examined the Case for Compulsory Acquisition;
  - (iv) Adequacy of Funding;
  - (v) The Purposes for which the Land and/or Rights are Required;
  - (vi) Alternatives;
  - (vii) Specific Groups of Affected Persons and Types of Land;
  - (viii) The Applicant's Case for Acquisition of land and rights for development;
  - (ix) Temporary Possession Powers;
  - (x) The Human Rights Act; and
  - (xi) The ExAs recommendation in regards to the granting of Compulsory Acquisition powers.

### **THE REQUEST FOR COMPULSORY ACQUISITION (CA) POWERS AND OTHER POWERS**

- 6.3 The Applicant is seeking Compulsory Acquisition (CA) powers to secure certain lands, rights and interests within the Order Land to facilitate the Project [APP-051].
- 6.4 The Order Land covers an area of approximately 13.59ha and comprises the land required for the:
- Power Generation Plant;
  - Gas Connection; and
  - Electrical Connection.
- 6.5 The area required by the **Power Generation Plant** extends to 6.56ha (the total area shown coloured pink on the Power Generation Plant Land Plan [PD-020]), is divided by Main Avenue and is accessed by public and adopted highways within the Hirwaun Industrial Estate. The Book of Reference dated November 2014 [APP-055] identifies seven plots in which the Applicant **applies to acquire 'all interests' i.e. Freehold to be compulsorily acquired** and in relation to which it is proposed to extinguish easements, servitudes and other private rights. These plots are 1\_MS, 2\_MS, 3\_MS, 4\_MS, 5\_MS, 6\_MS and 7\_MS. These plots cover the Power Generation Plant, Main Site area and relate to works 1, 2A, 2B, 2C, 2D, 2E, 2F and 2G. As such, they constitute land which is required for the development to which the

development consent relates or is required to facilitate that development.

- 6.6 The **Gas Connection** route has an approximate length of 0.9 km and its direction and width varies to account for natural and man made features along the route, but generally provides for a working width of up to 50m (the permanent easement width being sought is generally 10m whereas the construction footprint required would be of the order of 30m in width on agricultural land but wider at crossing points).
- 6.7 The Book of Reference dated 3 December 2014 [APP-055] and Land Plans [PD-020] identifies thirty plots in which the Applicant applies to acquire land or rights for the gas connection:
- Freehold to be compulsorily acquired and in relation to which it is proposed to extinguish easements, servitudes and other private rights. These plots are 10\_GR and 11\_GR. These plots cover the Above Ground Installation (AGI) and relate to numbered works 4A;
  - New rights to be compulsorily acquired and in relation to which it is proposed to extinguish easements, servitudes and other private rights. These plots are 1\_GR, 2\_GR, 3\_GR, 4\_GR, 5\_GR, 6\_GR, 7\_GR, 8\_GR and 9\_GR. These plots cover the new underground gas pipeline and relate to numbered works 3; and
  - Temporary use of land and in relation to which it is proposed to temporarily suspend easements, servitudes and other private rights. These plots are 1a\_GR, 1b\_GR, 2a\_GR, 3a\_GR, 3b\_GR, 4a\_GR, 4b\_GR, 5a\_GR, 6a\_GR, 6b\_GR, 6c\_GR, 7a\_GR, 7b\_GR, 8a\_GR, 8b\_GR, 9a\_GR, 9b\_GR, 10a\_GR and 11a\_GR. These plots cover the new underground gas pipeline and relate to numbered works 3, 4A and 4B.
- 6.8 Article 27 (Temporary use of land for carrying out the authorised development) seeks to authorise temporary possession of land (which is not a compulsory acquisition power) for the purpose inter alia of providing a working width and construction site on plots as listed above (see para. 6.114 of this report). Article 27 would authorise the applicant both to enter on and take temporary possession of the land but also to construct temporary or permanent works (subject to conditions including to reinstate and compensation).
- 6.9 The **Electrical Connection** extends to 0.59ha and is approximately 686m in length. The cable would run from the Power Generation Plant and lie within estate roads and pavements to the south and west of the area required for the Power Generation Plant, extending into the Rhigos Substation currently being built by National Grid.

- 6.10 The Book of Reference dated December 2014 [APP-055] and Land Plans [PD-020] identifies six plots in which the Applicant applies to acquire:
- New rights to be compulsorily acquired and in relation to which it is proposed to extinguish easements, servitudes and other private rights. These plots are 1\_ER, 2\_ER, 3\_ER, 4\_ER, 5\_ER and 6\_ER. These plots cover the new underground 400kV electrical cable and relate to numbered works 5.
- 6.11 The land over which CA powers are sought in respect of the freehold is shown edged red and shaded pink on the Land Plans [PD-020]. This land is described in more detail, together with the reason for the acquisition, in Table 1, at paragraph 6.3.1 of the Statement of Reasons [APP-051]. Article 17 of the DCO is relied upon in respect of this land.
- 6.12 The land over which permanent rights and interests are being compulsory sought is shown edged red and shaded blue on the Land Plans [PD-020]. This land is described in more detail, together with the reason for the permanent right and/or interest being sought, in Table 2, at paragraph 6.4.2 of the Statement of Reasons [APP-051]. Article 21 of the DCO is relied upon in respect of these rights and interests.
- 6.13 The land over which temporary use is sought (this is not a CA power) is shown edged red and shaded yellow on the Land Plans [PD-020]. This land is described in more detail, together with the reason for the use being sought, in Table 3, at paragraph 6.5.2 of the Statement of Reasons [APP-051]. Articles 27 and 28 of the DCO are relied upon in respect of this land.
- 6.14 There are various matters which affect the Order Land and which the Applicant requires to suspend or extinguish in order to facilitate the Project. The matters are each described on a plot by plot basis, together with the reasoning why the matters need to be suspended or extinguished, in Table 4 at paragraph 6.6.2 of the Statement of Reasons [APP-051]. Articles 11 (Extinguishment of public rights of way), 19 (Statutory authority to override easements and other rights) and 22 (Private rights) of the DCO are relied upon in respect of these matters.
- 6.15 The Project will also interfere with the following publically adopted highways:
- Main Avenue affected by temporary use and permanent rights acquisition and/or creation for Gas Connection works and Electrical Connection works;
  - Fourteenth Avenue affected by temporary use and permanent rights acquisition and/or creation for Electrical Connection works;

- Rhigos Road affected by temporary use and permanent rights acquisition and/or creation for Gas Connection works;
  - The A4061 affected by temporary use and permanent rights acquisition and/or creation for Gas Connection works; and
  - An un-named public footpath connecting Rhigos Road with Main Avenue affected by temporary use and permanent rights acquisition and/or creation for Gas Connection works.
- 6.16 The Applicant is not seeking formal rights of acquisition or new rights over the highways but is relying on Articles 9, 10, 12, 13, 26, and 27 of the DCO [PD-018] in relation to street works to enter onto them and to lay and maintain apparatus in them, to construct means of access and to create temporary prohibitions and restrictions of the use of such streets to carry out such works.
- 6.17 In summary the CA powers sought are:
- to acquire the freehold;
  - to acquire new rights over land; and
  - to extinguish and/or override existing rights.
- 6.18 These powers are referred to collectively in this Section as the CA powers, save where the context requires otherwise.
- 6.19 The draft DCO [PD-018] seeks to incorporate the provisions of the Compulsory Purchase (General Vesting Declarations) Act 1981 (Article 23) and the provisions set out in s.158 of the Act relating to the statutory authority and protection given to override easements and other rights (Article 19).

## **THE LEGISLATIVE AND GUIDANCE CONTEXT**

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

- 6.20 CA powers can only be granted if the conditions set out in sections 122 and 123 of the Planning Act 2008 are met. DCLG has issued guidance on compulsory acquisition procedures<sup>55</sup> (DCLG Guidance).
- 6.21 Section 122 (2) requires that the land must be either (a) required for the development to which the development consent relates or (b) is required to facilitate or incidental to the development. As to (a), the DCLG Guidance states that, the land to be taken must be no more than is reasonably required, and as to (b) and the land take must be reasonable for the purpose and be proportionate.<sup>56</sup>

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<sup>55</sup> Guidance related to procedures for compulsory acquisition DCLG September 2013

<sup>56</sup> Guidance related to procedures for compulsory acquisition DCLG September 2013 Paragraph 11

- 6.22 Section 122(3) requires that there must be a compelling case in the public interest which means that the public benefit derived from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is acquired.
- 6.23 Section 123 requires that one of three conditions is met by the proposal<sup>57</sup>. The ExA is satisfied that the condition in s.123 (2) is met because the application for the DCO included a request for compulsory acquisition of the land to be authorised.
- 6.24 A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers:
- all reasonable alternatives to compulsory acquisition must be explored;
  - the Applicant must have a clear idea of how it intends to use the land and to demonstrate funds are available; and
  - the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

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

- 6.25 The ExA examined the case for compulsory acquisition through:
- Identifying CA, including issues related to:
    - the requirement for the powers sought;
    - the need to establish a compelling case in the public interest; and
    - financial arrangements as a principal issue [DEC-004];
  - Specific questions on compulsory acquisition (questions CA01 – CA19) in the first round of written questions issued on 29 July 2014 [DEC-006];
  - Specific questions on compulsory acquisition (questions CA2-01 – CA2-02) in the second round of written questions issued on 22 October 2014 [DEC-009];
  - Specific questions on compulsory acquisition (questions CA3-01 – CA3-02) in the third round of written questions issued on 9 January 2015 [DEC-011]; and

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<sup>57</sup> (1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that one of the conditions in subsections (2) to (4) is met.

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

(3) The condition is that all persons with an interest in the land consent to the inclusion of the provision.

(4) The condition is that the prescribed procedure has been followed in relation to the land.

- Holding a Compulsory Acquisition Hearing on 24 September 2014 [HR-013].

### **ADEQUACY OF FUNDING**

- 6.26 In considering the adequacy of funding, the ExA had regard to EN-1, in particular para. 4.19 and to the DCLG Guidance, published in September 2013, in particular, paras. 9, 17 and 18.
- 6.27 The application documents submitted on 21 March 2014 included a fifty page Funding Statement [APP-036] and the adequacy, source and availability of the funding required for both acquiring the land and implementing the project for which the land is required was **addressed in the ExA's first written questions** (CA-18 and CA-19 [DEC-006]) and in the 24 September 2013 CA hearing [HR-013].
- 6.28 The adequacy of funding was not raised by any affected persons or other interested parties during the course of the examination.

### **The funding required for implementing the project**

- 6.29 The current cost estimate for the Project is approximately £200m. This cost estimate includes demolition and construction costs, development costs since 2011, project management costs, financing costs and land acquisition costs [APP-036].
- 6.30 The Applicant believes that through Noble Clean Fuels Ltd (NCFL) and Noble Group Limited<sup>58</sup>, it has the ability to procure the financial resources necessary to fund the works to be authorised by the Order, subject to final Board authority of Nobel Group Limited. Following approval of Noble Group Limited to fund the cost of the Project the funds would be released directly to NCFL to administer to the Applicant. There would be no further internal pre-conditions associated with the release of funds towards the Project. These funds would meet the capital expenditure for the cost of the Project, the cost of acquiring land for the Project which is identified in the Order (compulsorily or otherwise), and any compensation payable as a result of the Project and in accordance with the Order [HR-013].

### **Conclusion in relation to the funding required for implementing the project**

- 6.31 The ExA is sufficiently confident that the resource implications of the implementation of the proposed scheme have been met adequately based on the detailed accounts for NCFL (2012) and Noble Group Limited (2013). The Applicant's parent company,

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<sup>58</sup> Hirwaun Power Limited (HPL) is the Applicant for the Order. HPL is registered in England and is a wholly owned subsidiary of Watt Power Ltd incorporated in Scotland. Noble Clean Fuels Limited (NCFL) is the parent undertaking of Watt Power Ltd. NCFL is a wholly owned subsidiary of Noble Group Limited (incorporated in Bermuda), the ultimate holding company for the Noble group of companies.

Noble, has assets worth \$5 billion dollars) provided in Appendices 1 and 2 of the Funding Statement [APP-036].

### **The funding required for CA**

- 6.32 Para 9 of the DCLG Guidance states that the Applicant:
- 'The applicant must have a clear idea of how they intend to use the land which it is proposed to acquire. They should also be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available. Otherwise, it will be difficult to show conclusively that the compulsory acquisition of land meets the two conditions in section 122'.*
- 6.33 The Funding Statement did not contain any estimate of the amount of funding that would be required for compulsory acquisition. However, the Applicant in response [REP-030] to the ExA first round question CA-19(a) and (b), estimated that the costs of acquisition of the necessary land and rights i.e. the pink and blue land shown on the land plans [PD-020], together with obtaining voluntary agreement to the temporary use of land i.e. the yellow land shown on the land plans, would be, £2,456,095.65.
- 6.34 In the Applicants response to CA-19(c), the Applicant did not consider that security was necessary. The Applicant argued that should the Applicant proceed to implement the DCO (such decision would be made with NCFL and Noble Group Limited), then funding would be available and ready to be drawn down from NCFL and Noble Group Limited without any further internal pre-conditions associated with the release of funds towards the Project. With funding therefore available now for the Project, and given the standing of the Applicant's ultimate parent company, the Applicant did not consider there was a justification for security in this instance [APP-036].
- 6.35 The ExA pursued the question of what security was being proposed to ensure that the costs of acquisition of land and rights could be met in the event that the DCO application was approved e.g. parent company guarantee, at the 24 September 2014 CA hearing [HR-013].
- 6.36 The Applicants response was that because the value of land acquisition and compensation currently stood at £2.4 million, and compared with the funding available to the Applicant, it was not considered appropriate for security to be provided now [HR-012].
- 6.37 However, the Applicant was prepared to include in the DCO [PD-018] an Article that followed the Secretary of State's decision on

the North Killingholme Order, made on 11 September 2014<sup>59</sup>. The Secretary of State imposed an Article (Article 7, Guarantees in respect of payment of compensation) that prevents the commencement of the authorised development and the undertaker from exercising the compulsory acquisition powers unless either a guarantee in respect of the liabilities of the undertaker to pay compensation under the Order or an alternative form of security for that purpose is in place and which has been approved by the relevant planning authority [HR-012]. This was included as Article 40 in the Applicant's final draft DCO [PD-018].

- 6.38 RCT did not make any representations relating to the proposed Article 40.

### **Conclusion on Funding for CA**

- 6.39 Article 40 does not tie the Applicant to providing any particular form of security. There would have been more certainty about funding for CA liabilities if the Applicant could have agreed a form of security now (whether parent company guarantee or otherwise).
- 6.40 However given the Applicant's **overall** account of its company assets and parent company it is considered on balance reasonable to rely on Article 40 (and, therefore, on the role of the Local Planning Authority).

## **THE PURPOSES FOR WHICH THE LAND AND/OR RIGHTS ARE REQUIRED**

### **The Applicant's case**

- 6.41 As noted in paragraph 6.32 of this report the DCLG Guidance states that, in addition to demonstrating that funds for acquisition are likely to be available, the Applicant must have a clear idea how it proposes to use the land which it proposes to acquire.
- 6.42 The Applicant's overall case for CA as given in the Statement of Reasons [APP-051] is that it is necessary so that the Applicant has the requisite powers to construct, operate and maintain the Project which is a nationally significant infrastructure project for which there is a pressing national need.
- 6.43 The Project itself has been the subject of an extensive consultation exercise [APP-015 to APP-018]. It is in line with national and local policy in respect of planning and energy generation. The Applicant has contracts in place to acquire a substantial part of the land

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<sup>59</sup> <http://infrastructure.planningportal.gov.uk/projects/yorkshire-and-the-humber/north-killingholme-power-project/>

required for the Project. A contract has been signed to acquire the land where the Power Generation Plant will be located and for part of the Gas Connection [PD-020]. Negotiations with regard to the purchase of land, the acquisition of and/or creation of easement rights and any other rights and interests required for the remaining Gas Connection and for the Electrical Connection are in progress (the land affected by these negotiations are shown on the Gas Connection Land Plan and the Electrical Connection Land Plan, both in [PD-020]). Appendix A in the Applicant's response to the ExA third round question CA3-02 sets out the current negotiation status [REP-048].

- 6.44 Although negotiations for the purchase of land, rights and interests are on-going in respect of the remaining Gas Connection and for the Electrical Connection, it is necessary for the Applicant to seek CA powers to secure such land, rights and interests and to ensure that any third party interests or encumbrances affecting such land, rights and interests are acquired or overridden pursuant to the DCO, thereby ensuring that the Project can be constructed, operated and maintained in accordance with the powers sought under the DCO [HR-013].
- 6.45 Whilst the Applicant has secured a contract to acquire the land where the Power Generation Plant will be located and for part of the Gas Connection, the Applicant is seeking CA powers over this land [PD-020] to ensure that the certain easements and other private rights identified as affecting that land are extinguished so as to facilitate the construction and operation of the Project without hindrance (see sections 1.2, 1.3, 2.2 and 2.3 of the Book of Reference [APP-055]).
- 6.46 In addition, there may be unknown rights, restrictions, easements or servitudes affecting that land which also need to be overridden, removed and/or extinguished in order to facilitate the construction and operation of the Project without hindrance.
- 6.47 The Applicant considers that there is a compelling case in the public interest, in accordance with section 122(3) of the Act, for the making of the DCO and the inclusion of powers of compulsory acquisition to enable the Project to be constructed, operated and maintained [APP-051].
- 6.48 The Applicant has been seeking to acquire the remaining land, temporary use of land and rights (shown edged red and shaded pink, yellow and blue respectively on the Gas Connection and Electrical Connection Land Plans [PD-020]) by private treaty, in order to ensure implementation of the Project. However, it has not yet been possible to acquire all of the land, the temporary use of land and the rights required by private treaty. In addition, the Applicant requires certain matters to be suspended, overridden or extinguished within the Order Land so as to ensure there are no

impediments to the construction, operation and maintenance of the Project.

- 6.49 In the absence of powers of CA, the Applicant argues that the Order Land may not be assembled, uncertainty will continue to prevail and the Applicant considers that its objectives and Government policy objectives would not be achieved.
- 6.50 The Applicant's justification for seeking CA powers, in accordance with the provisions of the Act, is to secure land, the temporary use of land, the rights and other interests required to enable the Applicant to construct, operate and maintain the Project within a reasonable commercial timeframe. The inclusion of powers of compulsory acquisition in the DCO is sought in order to ensure that this can be achieved. The land and rights together with the land required for temporary use is no more than that is required to facilitate the Project, its construction and future maintenance. The necessary powers, together with powers to suspend, override and extinguish rights and other interests in or over land, are contained in Part 3 and Part 5 of the draft DCO [PD-018].
- 6.51 The Statement of Reasons [APP-051] makes full reference to the tests set in legislation and in guidance for compulsory acquisition. The Applicant states at para. 11.4 that:
- 'All reasonable alternatives to compulsory acquisition have been explored. Given the national and local need for the Project and the support for it found in policy, as well as the suitability of the Order Land (for the reasons outlined above), compulsory acquisition of the land, temporary use of land, permanent rights and other interests together with the suspension and extinguishment of matters affecting the Order Land identified by HPL for the Project is justified.'*
- 6.52 No evidence has been submitted to the Examination questioning the overall need for the project. (see para. 4.21 of this report).
- 6.53 The ExA has taken into account the overall need as one factor in assessing whether there is a compelling case in the public interest (s.122(3) of the Planning Act 2008 as amended) to justify compulsory acquisition.
- 6.54 The case for compulsory acquisition for specific plots is set out later in this section of this report.

## **ALTERNATIVES**

- 6.55 Para. 8 of the DCLG Guidance related to procedures for the compulsory acquisition of land states that:

*'The Applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored.'*

6.56 Section 4 (paras. 4.33 to 4.41 of this report) has considered the overall issue of the consideration of alternative sites for the project. The ExA has concluded that it:

*'...considers that the examination of alternatives has been addressed adequately and that the requirements of NPS EN-1 and the EIA Regulations are met (para 4.41).'*

6.57 The ExA has considered this in terms of the selection of the site, the scale of the development proposed, the specific characteristics of the development and then in relation to the proposed acquisition of each parcel of land (in the sections on those parcels described in this report).

6.58 Paragraph 25 of the DCLG Guidance states that applicants should seek to acquire land by negotiation wherever practicable, and that as a general rule, authority to acquire land compulsorily should only be sought if attempts to acquire by agreement fail. The Statement of Reasons [APP-051] states at para. 3.2.5 that:

*'Whilst land, rights and interests will be secured by agreement wherever possible, and negotiations continue with all identified owners, it is essential that compulsory purchase<sup>60</sup> powers are available to HPL to enable the Project to be constructed at the earliest opportunity.'*

6.59 The Applicant has demonstrably sought to purchase interests by agreement. The ExA have seen evidence of a range of contacts between parties involved in issues of CA and sees no reason to doubt that, in general, this approach has been adopted [REP-048].

6.60 The ExA concludes that overall and in general all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored.

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

6.61 This part of this section deals with specific groups of affected persons and types of land:

- Statutory Undertakers;
- Crown Land; and

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<sup>60</sup> Acquisition ExA correction

- Special category land.

### **Statutory Undertakers-Section 127**

6.62 The following Statutory Undertakers are potentially affected by the application:

- National Grid (National Grid Electricity Transmission (NGET), National Grid Gas (NGG), National Grid Property Holdings (NGPH);
- Western Power Distribution (South Wales) plc (WPD);
- Dwr Cymru Cyfyngedig (DCC - Welsh Water);
- South Wales Electricity Ltd (SWEL);
- Wales and West Utilities (WWU); and
- British Telecommunications plc (BT).

### ***National Grid ((NG) and, for the avoidance of doubt, National Grid plc and National Grid Property Holdings Ltd)***

6.63 Statutory undertaker NG land is included for the purposes of the Electrical Connection (the Applicant is seeking consent to install part of the cable within the Rhigos Substation currently being constructed by NGET). The Applicant has finalised an agreement with NGET regarding the Electrical Connection [AS-022]. Protective provisions have been agreed with National Grid Electricity Transmission (NGET) plc and are included at Schedule 9, Part 1 of the draft DCO [PD-018].

6.64 All outstanding matters between the parties have now been resolved and National Grid are satisfied that their interests in the Order Land will be adequately protected. NGET and NGG (and, for the avoidance of doubt, National Grid plc and National Grid Property Holdings Ltd) have withdrawn all representations in respect of the DCO application, and under s127 and s138 of the Planning Act 2008 [AS-022].

### ***Western Power Distribution (WPD) (South wales) plc***

6.65 The Order Land includes two un-numbered Western Power Distribution sub stations:

- The substation within plot 6\_MS will not be demolished under the Project proposals; and
- The substation within plot 2\_MS will be demolished under the Project proposals.

6.66 In addition, there are various assets belonging to WPD in the buildings within plots 1\_MS and 3\_MS which will be affected by the Project proposals.

- 6.67 The Order Land also contains various overhead electricity lines, however, these will not be affected by the Project. Protective provisions have been agreed with Western Power Distribution (South Wales) plc and are included at Schedule 9, Part 2 of the draft DCO [PD-018].
- 6.68 WPD (South Wales) plc has confirmed to the Examining Authority in its Written Representation dated 21 August 2014 [REP-009] that the agreed protective provisions are considered to be appropriate for the proposed impact of the development on Western Power's assets. Western Power also confirms in its letter that it no longer wishes to be considered an interested party and has no objection to the terms of the DCO, including CA powers.

***Dwr Cymru Cyfyngedig (DCC - Welsh Water)***

- 6.69 Protective provisions have been agreed with Dwr Cymru Cyfyngedig (DCC - Welsh Water) and are included at Schedule 9, Part 7 of the draft DCO [PD-018]. This was confirmed by Pinsent Masons on behalf of DCC in an email dated 22 December 2014 where they stated [AS-025]:

*'Dŵr Cymru Cyfyngedig, Welsh Water ("DCC") has agreed the terms of protective provisions with the Applicant. All outstanding matters between the parties have now been resolved and DCC is satisfied that their interests in the Order Land will be adequately protected. Accordingly, I have DCC's consent to write to notify you that DCC withdraws all representations in respect of the DCO application, and under s127 and s138 of the Planning Act 2008 with immediate effect.'*

***South Wales Electricity Ltd (SWEL), Wales and West Utilities Limited (WWU) and British Telecommunications plc (BT)***

- 6.70 South Wales Electricity Ltd (SWEL), Wales and West Utilities Limited (WWU) and British Telecommunications plc (BT) have not had any engagement with the Applicant. The most recent update on the position with SWEL, WWU and BT was provided by the Applicant on 16/01/2015 in response to the Examining Authority's third round of questions [REP-048]. As no representation has been made by either SWEL WWU or BT, s127 of the Planning Act 2008 is not engaged in relation to these parties.

***Summary***

- 6.71 There is no representation by a statutory undertaker which has not been withdrawn and accordingly the provisions of section 127 are not engaged.

## **Extinguishment of Rights, and Removal of apparatus of statutory undertakers etc. - Section 138**

- 6.72 Part 3 of Schedule 9 of the draft DCO contains protective provisions which provide protection for SWEL and WWU's apparatus. Part 4 of Schedule 9 of the draft DCO contains protective provisions which provide protection for BT's apparatus. The exact location of all of SWEL, WWU and BT's apparatus and rights is not yet known. The Applicant does not anticipate that the authorised development will interfere in any way with SWEL, WWU or BT's apparatus and/or rights but at this stage the possibility cannot be ruled out. Therefore, the Applicant has included powers to extinguish any right or remove any apparatus (contained in Article 29 of the draft DCO [PD-018]) but made subject to the protective provisions in Schedule 9.
- 6.73 Given the protective provisions in Schedule 9, the Secretary of State can be satisfied that any extinguishment or removal would be necessary for the purpose of carrying out the authorised development (s138).

### **Crown Land**

- 6.74 The Book of Reference which accompanied the application [APP-037] showed the Welsh Government (WG) as having a Part 1, (category 2) interest in all the plots 1\_MS, 2\_MS, 3\_MS, 4\_MS, 5\_MS, 6\_MS, 7\_MS and 4\_ER. Those plots were also shown as subject to Part 2 (category 3) and Part 3 Welsh Government interests.
- 6.75 Revision 3 of the Book of Reference relocated the Welsh Government's interests in all the plots listed above from Part 2 (category 3) and Part 3 (Easements or other private rights proposed to be interfered with, suspended or extinguished) to Part 4 (Crown interests) in the Main Site and Electrical Connection [APP-055].
- 6.76 The ExA in coming to a view on Crown Land, set out in the subsequent paragraphs of this sub-section, has considered the statutory position set out in s.135 and s.227 of the Planning Act 2008 (as amended) and has had regard to the guidance contained, in particular, in paras. 39 and 40 and in Annex B of the DCLG Guidance.
- 6.77 The relevant parts of s.135 are that:

*'(1) An order granting development consent may include provision authorising the compulsory acquisition of an interest in Crown land only if— (a) it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and b) the appropriate Crown authority consents to the acquisition.'*

*(2) An order granting development consent may include any other provision applying in relation to Crown land, or rights benefiting the Crown, only if the appropriate Crown authority consents to the inclusion of the provision.'*

- 6.78 The relevant representation submitted by the Welsh Government [RR-007] does not relate to its rights in the Order land, rather to transport matters. The Welsh Government has not raised an objection.
- 6.79 The Applicant has confirmed that it is not compulsorily acquiring the rights of the Crown. For plots 1\_MS to 7\_MS (inclusive), Part 1 of Section 1 to Revision 3 of the Book of Reference makes it clear that the interests owned by the WG are excepted. Similarly, for plot 4\_ER, Part 1 of Section 3 to Revision 3 of the Book of Reference makes it clear that the interests owned by the Welsh Government are also excepted [REP-048].
- 6.80 **In response to the ExA's** third round question CA3-03 [DEC-011], the Applicant responded on the application of s.135 as follows [REP-048]:

*'The Welsh Government's consent is not required as the draft Development Consent Order (latest revision being Revision 6) has carved the Crown out of the provisions referred to in the ExA's Question CA3-03. The nature of the Crown's interest is, in all cases, rights to run services through any conduits and, in the case of plot 5\_MS, a restrictive covenant not to obstruct the access way onto Main Avenue and to use reasonable endeavours to prevent it being obstructed.'*

*The draft Development Consent Order has excluded the Crown from Article 22 (Private Rights) as follows:*

- *Under Article 22(1), where the Applicant acquires the freehold, then all private rights are extinguished. Article 22(9)(a)(xi), makes it clear that the Article, and therefore this provision, does not apply to the Crown.*
- *Under Article 22(2), where the Applicant acquires rights, then all private rights are suspended and unenforceable, or, where so notified by the Applicant, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right. Article 22(9)(a)(xi), makes it clear that the Article, and therefore this provision, does not apply to the Crown.*
- *Under Article 22(4), where the Applicant takes temporary possession under the Order (i.e. under Article 27 (temporary use of land for carrying out the authorised development) and Article 28 (temporary use of land for maintaining the authorised development), then all private rights over such land are suspended and unenforceable for as long as the applicant remains in lawful possession of the land and in so*

*far as their continuance would be inconsistent with the exercise of the temporary possession of that land. Article 22(9)(a)(xi), makes it clear that the Article, and therefore this provision, does not apply to the Crown.'*

### **Conclusion on Crown Land**

6.81 The applicant states they are not compulsorily acquiring any crown rights (Applicants response to CA3-03 para. 1a [REP-048]). This is confirmed in Revision 3 of the BoR [APP-0054].

6.82 However, Articles 17(1) and 21(1) enable the acquisition of the land and rights:

*'The undertaker may acquire so much of the Order Land as is required for the authorised development or to facilitate it, or as is incidental to it'*

*"The undertaker may acquire compulsorily the existing rights over land...described in the book of reference and shown on the land plans' [PD-018].*

The description in the BoR of each plot in which the WG have an interest now includes the words:

*'except for those interests owned by the Welsh Government'.*

6.83 The ExA recommends the addition of a paragraph to Articles 17 and 21 to the effect that:

*'Nothing in this article authorises the acquisition of rights or other interests in land owned by the Crown'.*

6.84 The ExA believes that this would clarify intentions and powers. Its recommended draft DCO shows these alterations (Appendix D).

### **Special Category Land**

6.85 No land belonging to the National Trust, open space, common land or field garden allotment is included in or affected by the Order Land.

### **THE APPLICANT'S CASE FOR SPECIFIC PARCELS OF LAND**

6.86 This part of this section deals first with CA of land and rights which the Applicant maintains is necessary for the development.

6.87 There were few representations made to the ExA by affected persons because extensive discussions took place between the Applicant and affected persons to deal with their concerns [REP-

048]. This was achieved with a number of affected persons by agreements and proposed agreements of various sorts but in many cases the concerns were addressed by Protective Provisions as set out in Part 5 of Schedule 9 of the draft DCO [PD-018].

6.88 They were formulated to address the concerns of the following parties in particular:

- The Honourable John Crichton -Stuart;
- Celtic Energy;
- Wales and West Utilities Ltd;
- Eftec Ltd;
- Walters Plant Hire;
- Swan Mill Ltd and
- Tallyspace Ltd.

6.89 However, the Protective provisions as set out in Part 5 of Schedule 9 of the draft DCO are for the benefit of all affected persons [PD-018].

6.90 Representations were submitted by a number of parties (other than statutory undertakers) as follows:

***Ashtenne (AIF) Ltd (in respect of subsoil)***

6.91 The Revision 3 of the Book of Reference, [APP-055], shows AIF as having a category 1 interest in the plots numbered 1\_ER and 3a\_GR in respect of subsoil, and a category 2 interest in the plots numbered 5\_ER and 6\_ER. These plots are required for numbered works 5.

6.92 AIF summarised their concerns in their written representation as follows [REP-010]. This was re-iterated in [REP-041]:

***'AIF's concerns in relation to the proposed Hirwaun Power Station relate to detailed matters and their impact on the on-going operation and redevelopment potential of their land and estates at Hirwaun. It is likely these can be dealt with following this submission and without having to take up any further time within any of the hearing sessions.'***

6.93 Ashtenne's interest is only in respect of the subsoil and the Applicant does not intend to carry out below surface works on this plot. A key concern of Ashtenne is ensuring that the easement does not permanently reduce the ability to access its existing estates or land in any way, or would hinder its on-going operation or redevelopment potential [REP-010].

6.94 The Applicant has confirmed that the easement would not permanently reduce Ashtenne's ability to access its estates or land or hinder its on-going operation or redevelopment potential [REP-045].

- 6.95 To protect rights of access and rights to connect to, use, maintain, repair or renew services, the Applicant has included protective provisions in Schedule 9, Part 5 of the draft DCO which require the provision of substitute rights before any interference, suspension or extinguishment can occur[PD-018].
- 6.96 On 27 October 2014, solicitors for Ashtenne wrote to confirm that it continued to negotiate with the Applicant in relation to its interests in land that might be affected by the DCO. The Applicant's solicitor received detailed comments on the proposed option agreements and easements from the solicitor acting for Ashtenne in October 2014 and responded to these at the beginning of November 2014 [REP-045].

***Recommendation in respect of Ashtenne Industrial Fund (AIF)***

- 6.97 By virtue of the Applicant's direct functional need for the land for their underground gas pipeline and electrical connection, the ExA considers that the tests set out in guidance relating to legitimacy, proportionality, reasonableness, and necessity are met. Taking into account the correspondence cited in the preceding paragraphs and the protective provisions included by the Applicant in the draft DCO, the ExA recommends that the SoS can authorise compulsory acquisition of AIF interests in plot numbers 1\_ER, 3a\_GR, 5\_ER and 6 ER.

***Tower Regeneration Limited (TRL) (incorporating Tower Colliery Limited)***

- 6.98 The Revision 3 of the Book of Reference, [APP-055], shows TRL as having a category 1 interest in all the plots numbered 9\_GR, 9a\_GR, 10\_GR, 10a\_GR, 11\_GR and 11a\_GR and a category 2 interest in plots 11\_GR and 11a\_GR. These plots are required for numbered works 4A and 4B.
- 6.99 TRL in its relevant representations stated [RR-014]:

*'...Subject to timing, the proposed AGI as identified intercepts existing drainage channels essential to the working of the western coal extraction area as approved in planning permission 10/0292/10 in addition to potentially hindering or preventing the implementation of excavation, drainage and restoration works both within the AGI and adjacent land of planning permission ref: 10/0292/10.*

*Further, a full planning application to revise the extraction area approved under planning consent 10/0292/10 was submitted to RCTCBC in August 2013 (planning application ref: 13/0859/15). This seeks permission to extend the limit of excavation for coal extraction up to the western extent of Tower Colliery planning permission ref: 10/0292/10). The proposed AGI for the Hirwaun*

*Power Station is partly contained within the proposed revised extraction area and therefore, subject to timing, could prevent extraction of the mineral in that area in addition to preventing the implementation of excavation, drainage and restoration works of adjacent land within planning application ref: 13/0859/15. In addition, the above revised extraction area application (planning application ref: 13/0859/15) necessitates the diversion of the gas pipeline which is not accounted for within the Hirwaun Power Station submission.*

*This is contrary to paragraphs 11-20 of Mineral Planning Policy Wales, paragraphs 8, 22 and 34-43 of Minerals Technical Advice Note 2 and RCTCBC Local Development Plan (LDP) Policy AW 14, all of which seek to safeguard mineral deposits from sterilisation. We trust that these comments will be duly considered in the determination process.'*

- 6.100 The Applicant in response to the ExA first round question CA15 [DEC-006] stated [REP-030]:

*'15.5. The amount of coal reserves associated with numbered works 3, 4A and 4B cannot be quantified at this time. The volume of coal reserves which would be sterilised is a function of the length of the pipeline, the diameter of the pipeline and the quality of the ground conditions in this area. The sterilised reserves would be best thought of as a trapezoidal prism with the top short edge being where the pipeline would be located. The height and angle of the trapezoids sides would be dependent on the depth of the coal reserves in the area and the load bearing strength of the particular ground conditions.*

*15.6. Stranded reserves can also be viewed as sterilised reserves depending on the mechanics of the mining approach. Therefore it is not possible at this time of the Project development to confidently specify the volume of reserves that might be sterilised.*

*15.7. The Applicant understands that consultants on behalf of TRL has estimated 60,534 tonnes of coal could be sterilised by numbered works 3, 4A and 4B. The Applicant had not had sight of this report and notes that TRL does not own the majority of the land required for numbered work 3 and, as explained in this answer, there is currently no planning permission permitting coal extraction from the land required for numbered works 4A and 4B and if the S73 Application were to be granted the timing of HPL's operations would not sterilise the consented extraction.'*

- 6.101 TRL in response to the ExA second round question CA2-02 [DEC-009] stated [REP-046]:

*'To provide protection for Tower in relation to potential interference with storage bunds and drainage channels in relation to Tower's current mining operations (albeit the Applicant*

*considers these could be worked around subject to the necessary consents being obtained) and as agreed between Tower and the Applicant at the issue specific hearing on Compulsory Acquisition, Part 6 of revision 3.0 of the draft Order includes protective provisions in Part 6 of Schedule 9 that restrict the Applicant from:*

*1. vesting the land identified in the book of reference and the land plans by plot reference numbers 10\_GR and 11\_GR in itself;*

*2. exercising the powers conferred on it by Article 27 in respect of the land identified in the book of reference and the land plans by plot reference numbers 10\_GR, 10a\_GR, 11\_GR and 11a\_GR; or commencing the authorised development on the land identified in the book of reference and the land plans by plot reference numbers 10\_GR, 10a\_GR, 11\_GR and 11a\_GR, until on or after 1 January 2018 by which time, according to the approved plans, the mining operations will have moved away from the AGI Site.*

*3. The Applicant and Tower are continuing to actively and positively engage and further meetings to discuss the commercial terms of any voluntary agreement are currently being arranged for November 2014. The Applicant has also confirmed that it will be responsible for the fees incurred to date by Tower Regeneration Limited and Tower's anticipated fees.'*

6.102 At the CA Hearing on 24 September the Applicant repeated its commitment that in the next draft of the DCO a protective provision would be included that restricts the Applicant from vesting Plots 10\_GR and 11\_GR in itself and commencing any part of the authorised development on those plots until 1 January 2018. This protective provision can be found at Schedule 9, Part 6 of the draft DCO [PD-018]. Tower Regeneration Limited at the Hearing stated they were largely content with this proposal [HR-013].

6.103 The Applicant has pointed out that TRL submitted an application under section 73 of the Town and Country Planning Act 1990 (ref 13/0859/15) to amend the area where the excavation of minerals is permitted to allow extraction to be carried out in respect of plots numbered 10\_GR, 10a\_GR, 11\_GR and 11a\_GR. This application was refused on 28 October and, as far as the Applicant is aware, no appeal has been lodged. As such, the Applicant can confirm that it will not be interfering with any rights of Tower to excavate minerals.

6.104 TRL responded to the above stating [REP-046]:

*'This is not correct. No 'rights' have been lost. Planning permission has been refused, and this can be appealed, up to 28th April 2015. At present, an appeal can progress with the sole 'obstacle' being the refusal of planning permission, and it is clear that RCTCBC considers the principle of the extension acceptable, but has*

*refused the application because of a lack of environmental information. '*

- 6.105 A meeting to progress the heads of terms was held on 1 October 2014 and an updated offer was subsequently made by the Applicant in writing [REP-048]. On 11 November 2014 the Applicant's solicitors agreed to give a further undertaking to Tower Regeneration Limited in relation to incurred and anticipated fees. As at 15 January 2015, TRL and the Applicant confirm that the key principles for an agreement have been agreed and that TRL has agreed to the Applicant preparing a draft commercial agreement that reflects the agreed key principles. The Applicant is therefore preparing this commercial agreement, following which it anticipates that negotiations will take place with TRL over the drafting leading to a document to be completed by both parties [REP-048].

### **Conclusion in respect of Tower Regeneration Ltd.**

- 6.106 By virtue of the Applicant's direct functional need for the land for its underground gas pipeline and AGI, the ExA considers that the tests set out in guidance relating to legitimacy, proportionality, reasonableness, and necessity are met. Taking into account the correspondence, responses to ExA written questions and the exchanges at the CA hearing, cited in the preceding paragraphs and that an agreement has been agreed in principle, the ExA recommends that the Secretary of State can authorise compulsory acquisition of TRL interests in plot numbers 9\_GR, 9a\_GR, 10\_GR, 10a\_GR, 11\_GR and 11a\_GR.

### *The Coal Authority*

- 6.107 Revision 3 of the Book of Reference, [APP-055], shows The Coal Authority as having a category 2 interest in numbered plots in 10\_GR and 10a\_GR, and interests unknown in 7\_GR and 7a\_GR. These plots are required for numbered works 3.
- 6.108 The Coal Authority in its Relevant Representations [RR-005] stated:
- 'Accordingly, The Coal Authority does not object to this application for a Development Consent Order, but would request that the undertaking of, and submission of details of, the recommended site investigations and any necessary remedial measures are made a requirement of the Development Consent Order.'*
- 6.109 The Relevant Representation was concerned with the imposition of a Requirement on the draft DCO which has since been agreed between the Applicant and the Coal Authority (Requirement 22 Appendix D).
- 6.110 The Coal Authority has been in discussions with the Applicant and has not objected to the application [RR-005]. The Coal Authority

has confirmed that it has no concerns with the approach in the draft DCO regarding the loss of potential mineral working area in respect of these plots [REP-028].

### **Recommendation in respect of The Coal Authority**

- 6.111 By virtue of the Applicant's direct functional need for the land for their underground gas pipeline, the ExA considers that the tests set out in guidance relating to legitimacy, proportionality, reasonableness, and necessity are met. Taking into account the correspondence cited in the preceding paragraphs and the requirement 9A agreed by the Applicant and The Coal Authority in the draft DCO, the ExA recommends that the SoS can authorise compulsory acquisition of The Coal Authority interests in plot numbers 7\_GR, 7a\_GR, 10\_GR and 10a\_GR. Requirement 9A has been renumbered Requirement 22 in the ExA's recommended draft DCO (Appendix D).

### **TEMPORARY POSSESSION POWERS**

- 6.112 The DCO at articles 27 and 28 respectively seeks powers to take temporary possession of land to carry out the authorised development and to maintain it [PD-018]. The land which is subject to these powers is described in Revision 3 of the Book of Reference [APP-055] and shown on the revised Land Plans [PD-020]. The nature of the power is also described in the Book of Reference and the purpose and justification for these powers is set out in the Statement of Reasons [APP-051]. The Funding Statement [APP-036] submitted with the application concludes that there will be no funding shortfall in meeting any compensation payments.
- 6.113 As indicated above these powers are not compulsory acquisition powers and accordingly the tests under sections 122 and 123 are not applicable. However, the use of the power must be justified in order to enable the proposed development to be implemented and maintained, the inevitable interference with human rights must be justified and there must be adequate compensation provisions in place for those whose land is affected.
- 6.114 The Human Rights Act considerations have been addressed above and the ExA is satisfied that the powers are needed both to facilitate implementation of the proposed development and to maintain it and that there are also adequate compensation provisions in place in articles 27 and 28 of the draft DCO. The ExA accordingly recommends to the SoS that the temporary powers be granted

## **HUMAN RIGHTS ACT 1998 CONSIDERATIONS**

- 6.115 In considering specific plots and specific parties the ExA has had particular regard to Article 1 of the First Protocol to the European Convention on Human Rights, as embodied in the Human Rights Act 1998, which states that:

*'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*

*The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.'*

- 6.116 The ExA in relation to Article 1 First Protocol is satisfied that the proposed interference with the individual's rights would be lawful, necessary, proportionate and justified in the public interest
- 6.117 The ExA has also had regard to Article 8 dealing with the right to respect for private and family life. None of the applications for compulsory acquisition relate to the compulsory acquisition of a house or dwelling.
- 6.118 The ExA concludes that, the process of examining this application, including the opportunities to submit representations, a series of written questions and the opportunities to be heard at hearings all means that those whose rights may be affected have been given access to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law for the purpose of Article 6.

## **THE EXA'S RECOMMENDATIONS ON THE GRANTING OF CA POWERS**

- 6.119 The ExA's approach to the question whether and what compulsory acquisition powers it should recommend to the Secretary of State to grant has been to seek to apply the relevant sections of the Planning Act 2008, notably s.122 and s.123, the Guidance<sup>61</sup>, and the Human Rights Act 1998; and, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.

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<sup>61</sup> Planning Act 2008, Guidance related to procedures for compulsory acquisition (CLG, 2013)

- 6.120 The ExA understands, however, that the draft DCO deals with both the development itself and compulsory acquisition powers. The case for compulsory acquisition powers cannot properly be considered unless and until the ExA has formed a view on the case for the development overall, and the consideration of the compulsory acquisition issues must be consistent with that view.
- 6.121 The ExA has shown in the conclusion to Section 4 of this report that it has reached the view that development consent should be granted. The question therefore that the ExA addresses here is the extent to which, in the light of the factors set out above, the case is made for compulsory acquisition powers necessary to enable the development to proceed.

### **The public benefit and private loss**

- 6.122 The benefits of providing for a large scale energy project are set out clearly in NPS EN-1 and NPS EN-2. The project would contribute to the achievement of the objectives of Planning Policy Wales. There is a need to secure the land and rights required to construct the development. There would be some private loss of land or rights in relation to the:
- Main site;
  - installation of the underground gas pipeline and
  - the 400kV underground electric cable.

The case in the public interest for the project is compelling. There is no disproportionate or unjustified interference with human rights such as to conflict with the provisions of the Human Rights Act 1998.

- 6.123 The ExA is satisfied that all of the land is required for the development to which the development consent relates or is required to facilitate the development. The ExA is also satisfied that the land to be taken is no more than is reasonably required and is proportionate.<sup>62</sup>
- 6.124 The ExA is satisfied that the condition in s.123 (2) of the Planning Act, 2008 is met because the application for the DCO included a request for compulsory acquisition of the land to be authorised.
- 6.125 Having regard to all the particular circumstance in this case for CA, there would be a compelling case in the public interest (s122 (3)) for the grant of the CA powers sought by the Applicant in respect of the CA land as shown coloured pink and blue on the Land Plans and for the grant of temporary powers in respect of land coloured yellow [PD-020].

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<sup>62</sup> Guidance related to procedures for compulsory acquisition DCLG September 2013

6.126 Lastly, with regard to the incorporation of other statutory powers pursuant to s120 (5)(a) of the Planning Act, 2008, the ExA is satisfied that as required by section 117(4), the DCO has been drafted in the form of a statutory instrument and further that no provisions of the DCO contravene the provisions of s126, of the Planning Act, 2008 which precludes the exclusion of compensation provisions.

## **7 DRAFT DEVELOPMENT CONSENT ORDER**

### **INTRODUCTION**

- 7.1 A draft DCO [APP-033] and Explanatory Memorandum (EM) [APP-034] were submitted with the application for development consent. The EM describes the purpose and form of the draft DCO and each of its articles and schedules. The draft DCO is based on the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009, but with differences.
- 7.2 During the examination, several further drafts of the DCO and EM [PD-023] were submitted by the applicant incorporating progressive changes arising from the ExA's written questions, points made by interested parties, and from the proceedings at the DCO hearing held on 23 September 2014 [HR-010]. The ExA asked 40 questions on the DCO in its three rounds of written questions [DEC-006] [DEC-009][DEC-011] and the Applicant's responses can be viewed at [REP-030], [REP-045] and [REP-048].
- 7.3 All versions of the DCO were subject to comment and revisions were made to address changes sought by interested parties in their written or oral representations [REP-024] [REP-025][REP-026][REP-029]. Comments were also provided in response to the ExA written questions on drafting or seeking justification for the powers sought in the DCO or in response to questions raised at the DCO hearings [HR-010].
- 7.4 The draft DCO constitutes the consent sought for the proposed development. It sets out the authority to be given to the Applicant, including:
- The permanent compulsory acquisition of land and interests in land;
  - The obligations that the applicant is prepared to accept to facilitate the development;
  - The further approvals [APP-044] that are required before particular works can commence;
  - The protective provisions necessary to safeguard the interest of other parties; and
  - The requirements (corresponding to planning conditions) to be met when implementing the consent.
- 7.5 Section 120(5)(a) of the Planning Act 2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the DCO. If the Order includes such provision, s 117(4) requires that it must be in the form of a statutory instrument. The ExA confirms that the DCO is in the form of a statutory instrument.
- 7.6 Version 6 [PD-018] and a tracked copy showing changes from the Rev.5 and Rev.6 [PD-019] were submitted on the 16 January 2015 as the final version of the applicant's draft DCO.

- 7.7 The ExA has used Version 6 to inform this report.
- 7.8 The ExA has prepared a version of the draft DCO, which it recommends to the Secretary of State, (Appendix D). All of the suggested changes were considered in the Examination.
- 7.9 Much of the draft DCO was not the subject of objection. Some proposed alterations are made for the purposes of clarification, for the correction of minor errors, or to reflect changes proposed elsewhere in the draft DCO. Those aspects of the draft DCO which are contentious or to which substantial alterations are proposed are considered in the following paragraphs.
- 7.10 In the event that the DCO is made, the following plans and documents would require certification in accord with Article 36:
- (a) the book of reference [APP-055];
  - (b) the land plans [PD-020];
  - (c) the works plans [APP-011];
  - (d) the rights of way, streets and access plan [APP-014];
  - (e) the environmental statement [APP-019];
  - (f) the flood risk assessment [APP-041];
  - (g) the design principles statement (contained in Appendix 02 of the design and access statement [APP-0049]);
  - (h) the mitigation commitments register [HR-009];
  - (i) ecological mitigation plan (Requirement 10);
  - (j) outline construction environmental management plan[APP-020] and
  - (k) outline lighting strategy (Requirement 16).

## **ARTICLES**

- 7.11 The principal powers sought in the DCO are for the construction, operation and maintenance of the Works described in Schedule 1 of the draft DCO.
- 7.12 The numbering of articles reflects that of the Applicant's final draft DCO, Version 6 [PD-018].

### **Article 2 - Date of final commissioning**

- 7.13 Article 2(1) of the submission draft DCO [APP-033] stated:

*"date of final commissioning" means the date on which the authorised development commences operation by generating power on a commercial basis'.*

- 7.14 The ExA questioned how could this be objectively ascertained by a third party e.g. a landowner, served with notice under Article 27(3) ([DEC-006] question DCO09).

- 7.15 The Applicant has included a new Requirement 19 in its final version of the draft DCO, that the Applicant must notify Rhondda Cynon Taf County Borough Council (RCT) of the date of final commissioning so that anyone affected by the DCO can obtain the "date of final commissioning" from Rhondda Cynon Taf County Borough Council [REP-030].
- 7.16 The ExA agrees that this would clarify intentions and powers. Its recommended draft DCO shows this alteration (Appendix D).

### **Article 2 - Definition of gross rated electrical output**

- 7.17 Paras. 4.87 to 4.106 of this report have discussed in detail operational mechanisms to not exceed 299MWe.
- 7.18 In the ExA's recommended draft DCO (Appendix D), the ExA has inserted the definition in Article 2 of:

**' ..."gross rated electrical output" means the aggregate of the gross electric power as measured at the terminals of each generator comprised in the generating station, ascertained in accordance with standards agreed with the regulating authority under the Environmental Permitting (England and Wales) Regulations 2010 (as amended) or subsequent legislation.'**

and has also inserted into Schedule 1 Authorised Development, the word "gross" before "rated electrical output".

- 7.19 The ExA believes that this would clarify intentions and powers. Its recommended draft DCO shows this alteration (Appendix D).
- 7.20 The ExA would not recommend a cap on the rated electrical output as this would hinder the achievement of maximum efficiency in the operation of the generating station.

### **Article 2 - Interpretation of Maintain**

- 7.21 The ExA queried the definition of 'maintain', which includes adjust, alter, remove, reconstruct, replace and improve, and seems to extend the normal **meaning of 'maintain'** ([DEC-006] question DCO10).
- 7.22 The applicant responded that Article 2 of the draft DCO includes a definition of "maintain" which is the same as the definition in the Model Provisions<sup>63</sup> **save for the addition of "refurbish" and "improve"** [REP-030].

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<sup>63</sup> Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (now repealed) contains in Schedule (Model Provisions for Railways) the following definition "maintain" and any of its derivatives include to inspect repair, adjust, alter, remove, reconstruct or replace the authorised project and any derivative of "maintain" shall be construed accordingly.

- 7.23 The Applicant's reason for extending the definition to include the words "refurbish" and "improve" is to ensure that when maintenance involves replacing worn out parts of the Project that the latest technology can be used rather than trying to source an identical like for like replacement. The Applicant considers that it is inherent in the normal meaning of maintain that it does not mean just preserving the asset in it's as-built state, but also that during maintenance the asset will be brought up to date (if possible and within the parameters of the DCO).
- 7.24 The Applicant has pointed out [REP-030] by way of example that:
- The Daventry International Rail Freight Interchange Alteration Order 2014 contains a definition of "maintain" which includes both "improve" and "refurbish";
  - The East Northamptonshire Resource Management Facility Order 2013 contains a definition of "maintain" which includes both "improve" and "refurbish"; and
  - The Kentish Flats Extension Order 2013 contains a definition of "maintain" which includes "refurbish".
- 7.25 The ES [APP-019] assesses the Project as described in section 4 of the ES. Section 4 describes the construction, operation and decommissioning of each element of the Project and in describing the operation there are the following specific subsections describing maintenance activities:
- Power Generation Plant: paragraphs 4.5.53 – 4.5.61;
  - Gas Connection: paragraph 4.6.14 and paragraphs 4.6.25 – 4.6.34; and
  - Electrical Connection: paragraphs 4.7.7 – 4.7.10.
- 7.26 The ExA accepts that it is clear from these sections in the ES [APP-019] that the types of maintenance activities anticipated (and hence assessed) are appropriately described by the current definition of "maintain".

### **Article 2(2) - Reference to Restrictive Covenants**

- 7.27 The applicant has not proposed to impose any restrictive covenants (the only covenants referred to in the BoR [APP-055] are covenants to which the Order land is subject). Similarly the amendments to the CA statutes in Schedule 7 makes no mention of covenants in paragraph 1, yet the other paragraphs do. The Applicant states in the table of amendments that accompanied HPL's letter of 10 September [AS-013]:

*'... that references to restrictive covenants remain in [Schedule 7] as the Applicant is currently in discussions with various landowners over the rights to be acquired. The Applicant will revert on whether the references to restrictive covenants are to be deleted by deadline 4'.*

None of the amendment tables accompanying the subsequent DCO revisions mention Schedule 7 again.

**Article 3 - Development consent etc granted by the Order;**

**Article 4 - Maintenance of authorised development; and**

**Article 5 - Operation of authorised development.**

7.28 No issues were raised with respect to Articles 3, 4, and 5 during the course of the examination.

**Article 6 - Benefit of the Order**

7.29 The ExA queried how Article 6(2) would work in practice as both the undertaker and National Grid are given the benefit of the order for numbered work 4A ([DEC-006] question DCO12).

7.30 The Applicant explained that Articles 7(1) and 7(4)(1) allow the benefit of the Order to be transferred to a statutory undertaker without seeking the consent of the SoS. For clarity, Article 6(2) specifically provides that the provisions of the Order in relation to numbered work 4A are also for National Grid. This is because it is already known that National Grid will construct and subsequently own and operate this element of the Project [HR-009].

7.31 The ExA is satisfied that above explanation clarifies the Articles intention.

**Article 7 - Consent to transfer benefit of the Order**

7.32 The ExA was concerned that as initially drafted [APP-033] Article 7(4)(b)(iii) – (v) could be interpreted as meaning that, provided at least one claim had been compromised etc. , SoS consent was not required. The ExA argued that the intention is that SoS consent will continue to be required until all outstanding claims have been settled or dismissed ([DEC-006] question DCO13).

7.33 The Applicant redrafted Article 7(4)(b) (iii) – (v) to refer to all such claims having been either compromised, withdrawn, settled etc. , rather than any.

7.34 The ExA agrees that this would clarify intentions and powers. Its recommended draft DCO shows this alteration (Appendix D).

**Articles 8 to 14 - Part 3 Streets**

7.35 RCT were concerned that any decision will be “deemed” to be made if a deadline is not met. Given the long run in period prior to any construction, it should be feasible for the Applicant to agree, where necessary, an appropriate extension of time [REP-029].

- 7.36 The ExA expressed concern that a number of provisions e.g. Article 8 to 14, confer deemed consent if a consultee does not **respond within 28 days (a 'guillotine')**. The ExA queried whether those provisions contain an express requirement that the application for consent should contain a statement drawing the **consultee's attention to the "guillotine"** ([DEC-006] question DCO24).
- 7.37 The Applicant amended Articles 8, 12 and 38 (Procedure in relation to certain approvals etc.) to provide a procedure in relation to consents and approvals required pursuant to the Order i.e. 28 days was changed to 56. It applies to all such consents etc., bar those for which applications are to be made to the relevant planning authority, where a separate more detailed procedure is provided for in Schedule 10.
- 7.38 Article 38(3) provides that Schedule 10 applies to all consents to be granted by the relevant planning authority. This provides for 56 days but also paragraph 1(c) of Schedule 10 provides that the parties may agree a longer time period.
- 7.39 This position has been agreed between the Applicant and the relevant planning authority (RCT) as set out in paragraph 3.17.1 of the SoCG between the Applicant and RCT [REP-031].
- 7.40 The ExA agrees that this would clarify intentions and powers. Its recommended draft DCO shows this alteration (Appendix D).

### **Article 15 - Discharge of Water**

- 7.41 Article 15(7) referred to 'controlled waters' [APP-033]. Regulation 12 of the Environmental Permitting 2010 Regulations<sup>64</sup> requires an environmental permit for water discharge activities and groundwater activities as defined in Schedules 21 and 22 of the Regulations. The definitions of those activities do not refer to **'controlled waters', although that phrase is used in other** parts of the Regulations. The ExA requested that in the interests of clarity, the provision should be amended to reflect the terms of Regulation 12 [DEC-006].
- 7.42 The Applicant redrafted Article 15(7) to refer to 'water discharge activities or groundwater activities' rather than 'controlled waters'.
- 7.43 The ExA agrees that this would clarify the provision. Its recommended draft DCO shows this alteration (Appendix D).

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<sup>64</sup> <http://www.legislation.gov.uk/ukxi/2010/105/contents/made>

## **Article 16 - Authority to survey and investigate the land**

- 7.44 No issues were raised with respect to Articles 16 during the course of the examination.

## **Article 17 - Compulsory Acquisition of Land**

- 7.45 To protect the interests of the Crown in respect of Crown Land (see paras. 6.34-6.42 of this report) the ExA recommends the addition of a paragraph to Article 17 of the draft DCO to the effect that:

*'Nothing in this article authorises the acquisition of rights or other interests in land owned by the Crown'.*

- 7.46 The ExA believes that this would clarify intentions and powers. Its recommended draft DCO shows this alteration (Appendix D).

## **Article 18 - Compulsory acquisition of land - incorporation of the mineral code**

- 7.47 Part 2 of Schedule 2 of the Land Act 1981 (minerals) provides that minerals are not compulsorily acquired unless expressly purchased. However, Part 3 provides that the undertaker may prevent working of the minerals, subject to compensation being given.

- 7.48 The applications EM [APP-034] in relation to this Article merely stated:

*'Should any mines and minerals below the authorised development be proposed to be worked at a future date, it would be appropriate for the undertaker to have the power to restrict the working ...in accordance with the Statutory Code so as to protect the authorised development'.*

- 7.49 The ExA queried why would it be 'appropriate' or necessary to do so in this particular case ([DEC-006] question DCO18).

- 7.50 In the Applicants revised EM [PD-023] it explained that Article 18 is a model provision providing for the incorporation of the Statutory Minerals Code set out at Schedule 2 of the Acquisition of Land Act 1981 into the draft Order. This is because the authorised development is in an area with mining activity and because mines and minerals in the land are excluded from some freehold titles. The Code effectively provides flexibility for the Applicant to allow the owner of the mines and minerals to work the mines and minerals or, where they would affect the authorised development, to prevent the working of the mines and minerals with compensation payable instead.

- 7.51 The ExA agrees that revised text in the EM has clarified the intentions and powers.

## **Articles 19-20 Powers of Acquisition**

- 7.52 No issues were raised with respect to Articles 19 to 20 during the course of the examination.

## **Article 21 Compulsory acquisition of rights etc.**

- 7.53 To protect the interests of the Crown in respect of Crown Land (see paras. 6.34-6.42 of this report) the ExA recommends the addition of a paragraph to Article 21 of the draft DCO to the effect that:

*'Nothing in this article authorises the acquisition of rights or other interests in land owned by the Crown'.*

- 7.54 The ExA believes that this would clarify intentions and powers. Its recommended draft DCO shows this alteration (Appendix D).

## **Article 22 - Private Rights**

- 7.55 The Applicant has confirmed that it is not compulsory acquiring the rights of the Crown. For plots 1\_MS to 7\_MS and 4\_ER. Part 1 of Section 3 to Revision 3 of the Book of Reference makes it clear that the interests owned by the Welsh Government are also excepted [APP-0055].

- 7.56 The Applicant argues that the Welsh Government's consent is not required as the draft Development Consent Order [PD-018] has carved the Crown out of the provisions referred to in the ExA's Question CA3-03 [DEC-011]. The nature of the Crown's interest is, in all cases, rights to run services through any conduits.

- 7.57 The draft Development Consent Order has carved out the Crown from Article 22 (Private Rights) as follows:

- Under Article 22(1), where the Applicant acquires the freehold, then all private rights are extinguished. Article 22(9)(a)(xi), makes it clear that the Article, and therefore this provision, does not apply to the Crown.
- Under Article 22(2), where the Applicant acquires rights, then all private rights are suspended and unenforceable, or, where so notified by the Applicant, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right. Article 22(9)(a)(xi), makes it clear that the Article, and therefore this provision, does not apply to the Crown.
- Under Article 22(4), where the Applicant takes temporary possession under the Order (i.e. under Article 27 (temporary use of land for carrying out the authorised development) and Article 28 (temporary use of land for maintaining the authorised development), then all private rights over such land are suspended and unenforceable for as long as the applicant remains in lawful possession of the land and in so

far as their continuance would be inconsistent with the exercise of the temporary possession of that land. Article 22(9)(a)(xi), makes it clear that the Article, and therefore this provision, does not apply to the Crown.

7.58 The relevant representation submitted by the WG [RR-007] does not relate to its rights in the Order land, rather to transport matters. The WG has not raised an objection.

7.59 The ExA believes that the amendment to Articles 17(3) and 21(6) (see paras. 7.45 and 7.53 of this report) would clarify intentions and powers. Its recommended draft DCO shows this alteration (Appendix D).

### **Articles 23 to 26 - Acquisition Powers**

7.60 No issues were raised with respect to Articles 23 to 26 during the course of the examination.

### **Article 27 - Temporary use of land for carrying out the authorised development**

7.61 The ExA were concerned that Article 27(1)(d), which refers to "other mitigation works", was too vague and the works that can be constructed should be limited by what was assessed in the EIA ([DEC-006] question DCO021).

7.62 The Applicant clarified that the "other mitigation works" referred to are limited to those mitigation works envisaged in the ES or required pursuant to the requirements in Schedule 2 to the DCO. Mitigation works envisaged in the ES or required pursuant to the DCO requirements have been assessed in the EIA [REP-030].

7.63 The ExA is satisfied with the above explanation and has not made any change to this Article in the recommended DCO (Appendix D).

### **Articles 28 - 34**

7.64 No issues were raised with respect to Articles 28 to 34 during the course of the examination.

### **Article 35 - Protective Provisions**

7.65 This is discussed in detail in paras. 7.89 to 7.99 of this report. Article 35 provides for Schedule 9, which protects the interests of statutory undertakers, persons who hold rights which may be extinguished, suspended or interfered with by the Order, and Tower Regeneration Limited – to have effect.

### **Article 36 - Certification of plans etc.**

7.66 The first draft of the DCO [APP-033] limited certification to:

- the book of reference [APP-055];
- the land plans [PD-020];
- the works plans [APP-011]; and
- the rights of way, streets and access plan [APP-014].

7.67 The Applicant's final draft now also includes the:

- the environmental statement [APP-019];
- the flood risk assessment [APP-041];
- the design principles statement (contained in Appendix 02 of the design and access statement [APP-049]);
- the mitigation commitments register [HR-009];
- ecological mitigation plan (Requirement 10);
- outline construction environmental management plan (Requirement 12);
- outline lighting strategy (Requirement 16).

7.68 The ExA recommended draft DCO shows this alteration (Appendix D).

### **Article 37 - Service of notices**

7.69 No issues were raised with respect to Article 37 during the course of the examination.

### **Article 38 - Procedure in relation to certain approvals etc**

7.70 The ExA queried Article 38(1) as to how this provision could bind the consentor to do so in writing, as it purports to do [APP-033]. The ExA was concerned that if an oral consent was to be ineffective, then the 28 day guillotine would then apply, such that any conditions on the oral consent would be circumvented ([DEC-006] question DCO24).

7.71 The Applicant noted that Article 38(1) is identical in all material respects to Article 46 of The Hinkley Point C (Nuclear Generating Station) Order 2013. It was considered appropriate that any consent etc. given should be in writing for reasons of certainty and transparency [REP-030].

7.72 However, the Applicant agreed that Article 38(1) should be amended so it is clear that any decision, whether approval or refusal, by a consenting body will only be taken as a valid decision for the purposes of the Applicant complying with the Articles where such decision is in writing. This will place the consenting body on notice that unless it provides its decision in writing, then the guillotine provision will apply (deemed approval).

7.73 The ExA also expressed concern that a number of provisions e.g. Article 8 to Article 14, confer deemed consent if a consultee does **not respond within 28 days (a 'guillotine')**. The ExA queried whether those provisions contain an express requirement that the

application for consent should contain a statement drawing the **consultee's attention to the "guillotine"** ([DEC-006] question DCO24).

- 7.74 The Applicant amended Article 38 (Procedure in relation to certain approvals etc. ) to provide a procedure in relation to consents and approvals required pursuant to the Order i.e. 28 days was changed to 56. It applies to all such consents etc., bar those for which applications are to be made to the relevant planning authority, where a separate more detailed procedure is provided for in Schedule 10. The applicant also added paragraph 38(4) to require the applicant to draw the consenting body's attention to the guillotine when making such an application.
- 7.75 Article 38(3) provides that Schedule 10 applies to all consents granted by the relevant planning authority. This provides for 56 days but also paragraph 1(c) of Schedule 10 provides that the parties may agree a longer time period.
- 7.76 This position has been agreed between the Applicant and the relevant planning authority (RCT) as set out in paragraph 3.17.1 of the Statement of Common Ground between the Applicant and RCT [REP-031].
- 7.77 The ExA agrees that this would clarify intentions and powers. Its recommended draft DCO shows this alteration (Appendix D).

### **Article 39 - Arbitration**

- 7.78 No issues were raised with respect to Article 39 during the course of the examination.

### **Article 40 - Guarantees in respect of payment of compensation**

- 7.79 The ExA pursued the question (see paras. 6.33 to 6.41 of this report) of what security is being proposed to ensure that the costs of acquisition of land and rights can be met in the event that the DCO application is approved (e.g. a parent company guarantee), at the 24 September 2014 CA hearing [HR-013].
- 7.80 The Applicants response was that because the value of land acquisition and compensation currently standing at £2.4 million, and compared with the funding available [APP-036] to the Applicant, it was not considered appropriate for security to be provided now [HR-012].
- 7.81 However, the Applicant was prepared to include in the draft of the DCO [PD-012] an Article that follows the SoS's decision on the

North Killingholme Order, made on 11 September 2014<sup>65</sup>. The SoS imposed an Article (Article 7, Guarantees in respect of payment of compensation) that prevents the commencement of the authorised development and the undertaker from exercising the compulsory acquisition powers unless either a guarantee in respect of the liabilities of the undertaker to pay compensation under the Order or an alternative form of security for that purpose is in place and which has been approved by the relevant planning authority [HR-012].

- 7.82 RCT did not make any representations relating to the proposed Article 40.
- 7.83 Article 40 does not tie the Applicant to providing any particular amount or form of security. There would have been more certainty about funding for CA liabilities if the Applicant could have agreed a form of security now (whether a parent company guarantee or otherwise).
- 7.84 However given the Applicant's overall account of its company assets and parent company it is considered on balance reasonable to rely on Article 40 (and, therefore, on the role of the Local Planning Authority in assessing the amount and form of security).

## **SCHEDULE 1 - AUTHORISED DEVELOPMENT**

- 7.85 The development which would be authorised by the DCO is described in Schedule 1 of the Order. The nationally significant infrastructure project<sup>66</sup> is identified as numbered works 1 to 5. It is described as a generating station with a rated electrical output<sup>67</sup> of between 50.1 - 299MWe.
- 7.86 The matters for which development consent is sought can be summarised as follows:
- A simple cycle gas turbine power generation plant with a rated electrical output of between 50.1 and 299 MWe;
  - An integral underground electrical cable connection line to export electricity from the power generation plant into the National Grid at Rhigos Substation; and
  - An integral underground gas pipeline connection to bring natural gas to the power generation plant from the existing high pressure gas network, including an above ground installation and new access.

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<sup>65</sup> <http://infrastructure.planningportal.gov.uk/projects/yorkshire-and-the-humber/north-killingholme-power-project/>

<sup>66</sup> As defined in s14 and s15 of the PA2008

<sup>67</sup> In the ExA's recommended draft DCO it has inserted into Schedule 1 Authorised Development the word "gross" before "rated electrical output".

- 7.87 A further, more detailed, description of the various elements of the authorised development is provided in Schedule 1 of the Order and in Section 4 of the ES [APP-019].
- 7.88 The ExA explored whether all the numbered works would be an integral part of the generating station in its first round written question DCO05 [DEC-006] and at the DCO hearing [HR-007, HR-009 and HR-010].
- 7.89 The Applicants response can be viewed at [REP-030] and [HR-009]. The ExA pursued the following questions at the DCO hearing:
- Is the generating station by itself the NSIP, with the infrastructure required to provide its fuel and to transmit electricity once generated being ancillary development?
  - Or is there in reality one project, with the generating station and other development forming part of that NSIP?
- 7.90 The Applicant argued that the latter is the appropriate definition of the NSIP for the following reasons:
- (i) First, this holistic approach is consistent with the wording of the Act:
- S.31 of the Planning Act 2008 is clear that a DCO can and must authorise "development which is or forms part of a nationally significant infrastructure project";
  - Development involving the simple, physical construction of a generating station is clearly caught by the relevant s.14 identification of an NSIP;
  - In the case of a generating station, it also requires a fuel supply in order to generate otherwise it cannot operate. It would therefore be artificial to suggest that, in this case, the gas pipe-line and Above Ground Installation that provide that fuel were not part of the project for the construction of a generating station;
  - By the same logic, a generating station needs a means of transmitting its generated electricity to the national grid, otherwise what is the point of it operating?
  - Again, it would be artificial to suggest that the electric cable that links the generating station to the National Grid substation compound was not part of the project for the construction of a generating station;
  - Without the gas pipeline, Above Ground Installation and the electric cable, the generating station is simply incapable of generating electricity at all.

- (ii) Second, this approach follows the Secretary of State's decision on Brechfa, the Order being made on 12 March 2013<sup>68</sup>. The Order is for a generating station for the purposes of s14 of the Planning Act 2008. As part of the decision making process, the Secretary of State found that a sub-station and an access track were not "associated development" which would require separate planning permission in Wales, but were an integral part of the project, the "construction of a generating station." As such, because these developments formed an integral part of the Project (though strictly speaking they did not directly involve the construction of the generating station and did not serve a generation purpose) they could even in Wales be made the subject of the DCO and
- (iii) Finally, this holistic approach is consistent with the aims and objectives of the Planning Act 2008.

7.91 The relevant planning authority, RCT, agrees with this position, as set out in paragraph 2.1.2 of the Statement of Common Ground with RCT [REP-031].

7.92 The ExA concluded in paras 4.107 to 4.132 of this report, that all the numbered works would be an integral part of the generating station without which it would not be able to operate.

7.93 The text in the final paragraph after Numbered Work 5 in Schedule 1 could be perceived as been too widely drawn. The ExA is satisfied that the flexibility allowed is reasonable because:

1. **It does not allow "any materially new or materially different environmental effects from those assessed in the environmental statement". The ES is subject to Certification under Article 36;**
2. It will be constrained by Requirement 4 – Detailed Design and
3. It will be constrained by Requirement 18 – Amendments to approved details.

## **PROTECTIVE PROVISIONS**

7.94 Schedule 9 of the applicant's final draft DCO [PD-018] contains draft Protective Provisions for the protection of:

- National Grid (Part 1);
- Western Power Distribution (Part 2);

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<sup>68</sup> <http://infrastructure.planningportal.gov.uk/wp-content/uploads/projects/EN010008/3.%20Post%20Decision%20Information/Decision/The%20Secretary%20of%20State's%20decision%20letter.pdf>

- Electricity, Gas, Water and Sewerage Undertakers to cover SWEL and WWU (Part 3);
- Electronic Communications Code Networks to cover BT (Part 4);
- Affected Persons (Part 5);
- Tower Regeneration Limited (Part 6) and
- Dwr Cymru Cyfyngedig (Welsh Water (Part 7)

7.95 The status of these draft Protective Provisions is as follows.

7.96 **National Grid** has withdrawn its representations in relation to s.127 and s.138 [AS-022]. The draft Protective Provisions, which are in an agreed version, should be incorporated into the final DCO.

7.97 **WPD** has withdrawn its representations in relation to s.127 and s.138 [REP-009]. The draft Protective Provisions, which are in an agreed version, should be incorporated into the final DCO.

7.98 The Protective Provisions for Electricity, Gas, Water and Sewerage Undertakers to cover **SWEL and WWU** were not in an agreed version by the time that the examination closed. As no representation had been made by either company, s127 of the Planning Act 2008 is not engaged. Given the protective provisions in Schedule 9, Part 3 the SoS can be satisfied that any extinguishment or removal would be necessary for the purpose of carrying out the authorised development (s138(4)).

7.99 The Protective Provisions for Electronic Communications Code Networks to cover **BT** were not in an agreed version by the time that the examination closed. As no representation has been made, s127 of the Planning Act 2008 is not engaged. Given the protective provisions in Schedule 9, Part 4 the SoS can be satisfied that any extinguishment or removal would be necessary for the purpose of carrying out the authorised development (s138(4)).

7.100 Schedule 9, Part 5 provides protective provisions for the protection of affected persons with rights or other interests in land which may be extinguished, suspended or interfered as a result of the authorised development or the powers conferred on the undertaker by the Order.

7.101 Schedule 9, Part 6 provides protective provisions for the protection of **Tower Regeneration Limited (TRL)**, that restricts the Applicant from vesting Plots 10\_GR and 11\_GR in itself and commencing any part of the authorised development on plots 10\_GR, 10a\_GR, 11\_GR and 11a\_GR until 1 January 2018. From the responses given by Tower Regeneration Limited at the CA Hearing, the ExA believes that TRL is content with this proposal [HR-013].

7.102 **Dwr Cymru Cyfyngedig (Welsh Water DCC)** has withdrawn its representations in relation to s.127 and s.138 [AS-025]. The draft

Protective Provisions, which are in an agreed version, should be incorporated into the final DCO.

- 7.103 Thus the Protective Provisions for SWEL, WWU, BT and TRL were not in an agreed version by the time that the examination closed.
- 7.104 The ExA recommends the protective provisions for these parties should be endorsed by the SoS for the reasons outlined in paras. 7.93 to 7.94 of this report, and that, therefore, Schedule 9, Parts 3, 4, 5 and 6 of the applicant's draft DCO have been incorporated into the ExA's recommended DCO (Appendix D).

## **OTHER SCHEDULES**

- 7.105 Schedule 3 (Streets subject to permanent and temporary alteration of layout) sets out the streets to be permanently altered (Part 1) or temporarily altered (Part 2).
- 7.106 Schedule 4 (Streets subject to street works) sets out the streets that would be subject to street works (including reference to the relevant plan, the location and the specific street).
- 7.107 Schedule 5 (Temporary prohibition or restriction of the use of streets) sets out the streets that will be subject to a temporary prohibition or restriction on the use of that street (including reference to the relevant plan, the location and the extent of the temporary prohibition or restriction on use).
- 7.108 Schedule 6 (Access) sets out those parts of accesses that are to be maintained at public expense or by the street authority (Parts 1 and 2 respectively) and those parts of works to restore temporary accesses that are to be maintained at public expense or by the street authority (Parts 3 and 4 respectively) which are referred to in Article 10 of the Order.
- 7.109 Schedule 7 (Modification of compensation and compulsory purchase enactments for creation of new rights) modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. Schedule 7 [APP-0033] appeared to have been taken straight from Schedule 7 of the East Anglia One DCO. That DCO sought the ability to compulsorily impose restrictive covenants as well create new rights, and the Schedule is constructed accordingly. As the Hirwaun DCO does not otherwise refer to restrictive covenants, the ExA requested that Schedule 7 be corrected in the draft version of the DCO ([DEC-006] question DCO32). The ExA recommended draft DCO shows this alteration (Appendix D).
- 7.110 Schedule 8 (Land of which temporary possession may be taken) sets out the land temporary possession of which may be taken

pursuant to Article 27. It also makes clear the purpose for which such temporary possession may be taken.

- 7.111 Schedule 10 (Procedure for discharge of requirements) provides a clear procedure for the discharge of requirements by the relevant planning authority. It sets out clear time limits for decisions to be made within and makes provision for appeals to be made in the event of a refusal of an application in relation to a requirement or if the relevant planning authority requires further information to be provided in relation to that application. It also includes procedure for seeking input of statutory consultees.
- 7.112 At the ExA's request [DEC-009] a deadline for the SoS in Paragraph 3(2)(b) for the appointment of a person to conduct and decide an appeal was replaced with the following:

*'... as soon as reasonably practicable after receiving the appeal documentation.'*

The Applicant noted that this reflects the wording of the Hinkley Point C (Nuclear Generating Station) Order 2013 (paragraph 4(1)(c) of Schedule 14). The ExA recommended draft DCO shows this alteration (Appendix D).

## **SCHEDULE 2 - REQUIREMENTS**

- 7.113 Key requirements set out in Schedule 2 of the draft DCO, and those which were found to be contentious in the Examination, are described in the following paragraphs. An explanation of modifications to those set out in the applicant's first draft DCO, either agreed by the applicant or suggested by the ExA, are given.
- 7.114 **The numbering of requirements reflects that of the applicant's final draft DCO, Revision 6 [PD-018].**

### **Requirement 1 - Interpretation, Definition of commence**

- 7.115 The term commence is used in the Requirements in Schedule 2 to the DCO as the trigger point for complying with certain Requirements. The ExA requested that the Applicant provide a definition of commence ([DEC-006] question DCO11).
- 7.116 The Applicant provided the following definition of "commence" in Schedule 2 as follows:

*'... "commence" means the carrying out of a material operation, as defined in section 155 of the Planning Act 2008 (which explains when development begins), comprised in or carried out for the purposes of the authorised development and the words*

*"commencement" and "commenced" and cognate expressions shall be construed accordingly.'*

- 7.117 The ExA agrees that this would clarify intentions and powers. The ExA has inserted the above definitions in Article 2 (1). The ExA recommended draft DCO shows this alteration (Appendix D).

### **Requirement 2 - Time limits; and**

### **Requirement 3 - Numbered Works**

- 7.118 No issues were raised with respect to Requirements 2 and 3 during the course of the examination. Requirement 2 sets a time limit of 5 years for the commencement of development; requirement 3 provides that references in the requirements to numbered works 2 and 4 encompass works 2A-2G and 4A-4B respectively.

### **Requirement 4 - Detailed Design**

- 7.119 Requirement 4(1) sets out a list of plans in accordance with which the authorised development must be carried out. The requirement also notes that any documents approved pursuant to the requirements themselves will need to be complied with. This is more robust wording than that used in the Model provisions but carries the model provision principle through.
- 7.120 Requirement 4(2) sets a series of parameters for certain buildings or structures in order to set the maximum and minimum parameters of these. This was introduced in order to align with the Environmental Statement [APP-019] and to provide certainty.
- 7.121 Requirement 4(3) and 4(4) require details of the layout, scale and appearance of numbered work 2 and 4 to be submitted and approved by the relevant planning authority (in consultation with the Brecon Beacons National Park Authority (BBNPA) was inserted following BBNPA request [REP-026]) prior to work commencing on that numbered work (insofar as not already approved under requirement 6 which provides for approval of new accesses). This is because these details will not be known until the technology choice has been finalised post-consent.
- 7.122 Requirement 4(5) draws in the Design Principles Statement (Appendix 02 of [APP-049]) and ensures that relevant numbered works are designed substantially in accordance with this.
- 7.123 Requirement 4(6) requires that the authorised development is carried out substantially in accordance with the mitigation measures identified in the Mitigation Commitments Register [HR-009]. The Mitigation Commitments Register [HR-009] is based on the Environmental Mitigation Roadmap [APP-060] which identified the mitigation commitments in the Environmental Statement and set out how each was secured in the draft Order.

7.124 NRW requested to be named as a consultee in relation to Requirements 4, 5, 12 and 16 [REP-019] (in addition to Requirements 9 and 10 in which NRW are already a named consultee). It was agreed by all IPs that it was not necessary for NRW to be consulted in relation to Requirement 5 because this relates to localised landscaping only [HR-010]. It was agreed at the DCO hearing [HR-010] in relation to Requirements 4(3), 12(1) and 16(1) that instead of NRW being named as a consultee, the Applicant would update Schedule 10, paragraph 1(7) so that if RCT exercises its discretion to consult NRW in relation to the discharge of a requirement then, if directed by RCT, the Applicant will provide NRW with a copy of the application materials. This was to relieve the administrative burden on RCT. The ExA recommended draft DCO shows this alteration (Appendix D).

### **Requirement 5 - Provision of landscaping**

7.125 Requirement 5 secures the landscaping proposals set out in the ES [APP-019] through the submission of a landscaping plan (which must be broadly in accordance with the landscaping mitigation proposals set out in Figure 11.5 of the ES [APP-028]) for the approval of the relevant planning authority. Landscaping works then have to be carried out in accordance with this approved plan and to the timescales set out in that plan. This is in the interest of avoiding any material effects which were not anticipated and assessed through the environmental information presented to the examination.

7.126 The requirement also requires that if any tree or shrub dies or becomes seriously damaged or diseased within 5 years of planting it must be replaced. This follows the principle of the model provision, tailored to reflect the specific details of the authorised development.

### **Requirement 6 - Highway accesses**

7.127 No issues were raised with respect to Requirement 6 during the course of the examination.

### **Requirement 7 - Fencing and other means of enclosure**

7.128 Requirement 7 secures the submission of details on all proposed permanent and temporary enclosures to the relevant planning authority for approval and to be implemented thereafter. This follows the model provision save that temporary enclosures must be removed within three months of the completion of development, rather than on completion to allow flexibility.

7.129 Requirement 7(5) also secures a set back for permanent gates and was included at the request of the RCT [REP-029]. The ExA recommended draft DCO shows this alteration (Appendix D).

### **Requirement 8 - Surface and foul water drainage; and**

### **Requirement 9 - Contaminated land and groundwater**

- 7.130 No issues were raised with respect to Requirements 8 or 9 during the course of the examination.

### **Requirement 10 - Ecological Management Plan**

- 7.131 Requirement 10 is based on a model requirement and requires a written ecological management plan covering each numbered work to be submitted to the relevant planning authority for approval (in consultation with NRW) and to be implemented thereafter. The plan is to reflect the mitigation and enhancement measures contained in the ES [APP-019] and the ecological mitigation plan. The relevant planning authority (RCT) at paragraph 3.8.2 of its SoCG with the Applicant agrees that all reasonable mitigation is shown in Figure 11.5 and secured in requirements 10 (EMP) and 12 (CEMP)[REP-031].
- 7.132 Requirement 10(1) originally referred to numbered works 2-5, but the ExA requested it was amended to 1-5 [HR-010]. Figure 8.5 (ecological mitigation) was submitted at Deadline 2 (and incorporated into the definition of "environmental statement" in revision 2.0 of the draft DCO [PD-008]). The ExA recommended draft DCO shows these alterations (Appendix D).

### **Requirement 11 - Archaeology**

- 7.133 No issues were raised with respect to Requirement 11 during the course of the examination.

### **Requirement 12 - Construction Environment Management Plan (CEMP)**

- 7.134 Requirement 12 is not a model provision, although it does incorporate several separate provisions. The requirement secures the submission for approval by the relevant planning authority of a management plan for the construction phase of the authorised development. The plan must be substantially in accordance with revision 1.0 of the outline CEMP contained in the ES [APP-019] and approved by the relevant planning authority. Thus the CEMP would relate substantially to an outline form on which consultation has taken place.
- 7.135 The requirement also specifies particular measures that the CEMP must contain. The approved CEMP must be implemented for all construction works.

### **Requirement 13 - Construction traffic**

- 7.136 Requirement 13 secures the submission of a Construction Traffic Management Plan for approval by the relevant planning authority

(in consultation with the Welsh Government). The provision specifies particular measures that the plan needs to contain. The approved plan must be implemented. The Welsh Government agreed the wording of this Requirement with the Applicant [RR-07]. The ExA recommended draft DCO shows these alterations (Appendix D).

### **Requirement 14 - Construction hours**

- 7.137 Requirement 14 is based on a model provision and specifies the hours within which construction works and the delivery and removal of materials can take place. The requirement does not prevent the undertaker from undertaking these works outside the specified hours but this must be done with the prior, written approval of the relevant planning authority.
- 7.138 Requirement 14(3) defining start up and shut down periods was removed at the request of RCT because of their concerns over noise [REP-031]. The ExA recommended draft DCO shows these alterations (Appendix D).

### **Requirement 15 - Control of noise during the operational phase**

- 7.139 Requirement 15 is based on a model provision and specifies the noise limits for the operational phase of the authorised development and a complaints procedure.
- 7.140 At the ExA's suggestion [DEC-006] a requirement for some action to be taken in respect of the measurements, e.g. for them to be submitted to the relevant planning authority at (specified) regular intervals (Requirement 15(3)) was inserted.
- 7.141 RCT agreed the wording of this Requirement with the Applicant [REP-031]. The ExA recommended draft DCO shows these alterations (Appendix D).

### **Requirement 16 - Control of artificial light emissions**

- 7.142 Requirement 16 is based on a model provision and requires the submission of a written scheme for the management and mitigation of artificial light emissions (which must be substantially in accordance with the outline lighting strategy) for the approval of the relevant planning authority (in consultation with the BBNPA). The approved scheme must be implemented.
- 7.143 Appendix 11.2 (lighting strategy) was submitted at Deadline 2 (and incorporated into the definition of "environmental statement" in revision 2.0 of the draft DCO), compliance with which is secured by Requirement 16 [AS-011].

- 7.144 BBNPA has agreed to Requirement 16 in the draft DCO, as confirmed in paragraph 2.7.8 of the SoCG between the BBNPA and the Applicant [REP-033].

### **Requirement 17 - Decommissioning strategy**

- 7.145 No issues were raised with respect to Requirement 17 during the course of the examination.

### **Requirement 18 - Amendments to approved details**

- 7.146 Requirement 18 is based on a model provision and allows the relevant planning authority to approve amendments to details or plans already specified or approved. This is to allow flexibility but only within the parameters that have been assessed in the ES [APP-019].
- 7.147 Requirement 18(1) originally dealt only with amendments to **“other plans, details or schemes”**. The ExA requested that it also deal with **other ‘matters’** –such as approvals to out of hours working under Requirement 14. The Applicant agreed to this amendment. The ExA believes that enabling the LPA to vary the plans and parameters that have been subject to examination and the eventual SoS decision is inappropriate, as it could be seen to be circumventing the statutory process for modification of DCOs<sup>69</sup>.
- 7.148 Requirement 18(2) originally only applied to amendments to the parameters in Requirement 4(2). The ExA requested that it also apply to all approvals by the relevant planning authority, so as to ensure that the development as built will be within the confines of what was assessed in the ES [APP-0019]. The Applicant agreed to this amendment.
- 7.149 The ExA believes Requirement 18 provides a reasonable but limited degree of flexibility in implementation of Requirement 4, which will in the first instance have been subject to approval by the relevant planning authorities (RCT and BBNPA). The ExA does not consider that it will enable fundamental changes to be made to the nature of the development. Requirement 18(2) now explicitly limits such flexibility to be applied to be within the parameters considered in the ES. Such amendments are restricted to those for which there would be no materially different environmental effects.
- 7.150 The ExA recommended draft DCO shows these alterations (Appendix D).

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<sup>69</sup> PINS Advice Note 15 paragraph 19

### **Requirement 19 - Date of final commissioning and cessation**

- 7.151 The Applicant has included a new Requirement 19 in its final version of the draft DCO, that the Applicant must notify Rhondda Cynon Taf County Borough Council of the date of final commissioning so that anyone affected by the DCO can obtain the "date of final commissioning" from Rhondda Cynon Taf County Borough Council [REP-030].
- 7.152 The ExA agrees that this would clarify intentions and powers. Our recommended draft DCO shows this alteration.
- 7.153 No issues were raised with respect to Requirement 19 during the course of the examination.

### **Requirement 20 - Provision of details to the Ministry of Defence**

- 7.154 A new Requirement 20 was included in revision 2.0 of the draft DCO [PD-008]. This is in the form requested by the Defence Infrastructure Organisation, subject to removing part (f) because the Applicant has confirmed there will be no lighting requirements.
- 7.155 The CAA in their Relevant Representation [RR-001] and their Written Representation [REP-011] confirm they do not believe there is a need for lighting.

### **Requirement 21 - Operational limits**

- 7.156 Requirement 21 was inserted at the request of the ExA (Question OM2-02 [DEC-009]). It secures that in any calendar year the operation of the gas turbine generators comprised in numbered work 2A shall not exceed 1500 hours in total. This is the maximum number of hours assessed in the ES [APP-019] and so this requirement ensures that the authorised development is operated in accordance with the worst case scenario assessed.

### **Requirement 22 - Site investigation**

- 7.157 Requirement 22 secures the carrying out of a geotechnical site investigation and preparation of a report for approval by the relevant planning authority in respect of numbered work 4A and for the authorised development to be carried out in accordance with the ground precautions recommended in the approved report. This requirement was included at the request of the Coal Authority who approved the wording [RR-005]. This Requirement was originally numbered 9A. The ExA recommended draft DCO shows this alteration (Appendix D).

## **OTHER LEGAL AGREEMENTS**

- 7.158 The applicant and RCT, International Greetings UK and HSBC have agreed a section 106 Agreement under the 1990 Act (Appendices E1-E3 of [REP-048]). It contains obligations relating to the following matters:
- (i) Bus stop improvements;
  - (ii) Landscaping and amenity improvements;
  - (iii) Vehicular Crossover reinstatement
  - (iv) Monitoring contribution to NRW;
  - (v) Local services scheme;
  - (vi) Young recruits programme and
  - (vii) Bog reinstatement activities.
- 7.159 The obligation meets the aims of local RCT LDP Policy AW4 – Community Infrastructure & Planning Obligations, which provides for planning obligations to be sought where necessary to make proposals acceptable in land use planning terms. The matters covered by the section 106 are important and relevant and have been accorded appropriate weight in this report.
- 7.160 The tests for the acceptability of planning obligations are that they should be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. The ExA considers that the obligations within the section 106 Agreement satisfy these tests.

## **8 SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS**

- 8.1 The Examining Authority (ExA) considers that the application is in line with, and supports, the Government's policy objectives for energy as set out in National Policy Statements EN-1 (Overarching National Policy Statement for Energy) and EN-2 (Fossil Fuel Electricity Generating Infrastructure).
- 8.2 The ExA considers that this project contributes to meeting the need for energy capacity and, in doing so, will bring benefits to the area in terms of economic activity.
- 8.3 The ExA considers that the application fulfils the relevant legal **requirements including the UK Government's relevant international obligations.**
- 8.4 The ExA also had regard to the Local Impact Reports (LIRs) submitted by Rhondda Cynon Taf County Borough Council (RCT) and Brecon Beacons National Park Authority (BBNPA).
- 8.5 In the ExA's view the evidence presented in the examination does not allow the conclusion that there would be no likely significant effects on Blaen Cynon SAC as a result of the combined aerial emissions from the Project and other developments in the vicinity. Therefore, the SoS, as the competent authority, will need to carry out an Appropriate Assessment (AA). Taking into account the Applicant's initial assessment, additional material provided during the Examination and the proposed mitigation measures secured through the DCO, the ExA accepts the Applicant's and NRW's conclusion that the project would not put the UK in breach of the Habitats Directive and that there would be no significant adverse effect on the integrity of the European site identified.
- 8.6 The ExA concludes that whilst there are impacts of the scheme in terms of ecology and landscape and visual impact, the recommended draft DCO (Appendix D) contains sufficient measures to mitigate those impacts. It is concluded, therefore, that the benefits of this proposal would outweigh its impacts.
- 8.7 The ExA concludes that the project as applied for conforms to, and supports, Welsh and local planning policy.
- 8.8 The ExA have considered the requests for powers to compulsorily acquire land and rights which formed part of the application. It concludes that, in respect of all the plots, the requests for powers meet the tests set out in statute and in guidance.
- 8.9 The ExA therefore recommends that the Secretary of State should give consent to the application in the terms of the draft DCO attached at Appendix D.

## APPENDICES

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# EXAMINATION LIBRARY

## CONTENTS

The following is a list of documents that were submitted during the course of the Examination. The documents are grouped together by document type.

Each document has been given an identification number (e.g. APP-001), and all documents are available to view on the Planning Inspectorate's National Infrastructure Planning website at the Hirwaun Power Station project page:

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AS-008	<a href="#">National Grid Gas Plc and National Grid Electricity Transmission Plc - Late representation submitted during Pre-Examination</a>
AS-009	<a href="#">Neale Thomas on behalf of Hirwaun &amp; Penderyn Community Council - Late representation/correspondence submitted during Pre-Examination</a>
AS-010	<a href="#">Tower Regeneration Limited - Late representation/correspondence submitted during Pre-Examination</a>
AS-011	<a href="#">Hirwaun Power Limited - Additional submission for deadline 2, including comments on responses to the ExA's first written questions, responses to comments on RRs, comments on written representations, etc</a>
AS-012	<a href="#">Hirwaun Power Limited - Additional Submission for Deadline 3 - comments on Local Impact Reports, responses to comments on Written Representations, Revision 1.0 of Appendix 4.1 of the Environmental Statement and Revision 2.0 of the Book of Reference</a>
AS-013	<a href="#">Hirwaun Power Limited- Additional Submission for Deadline 4 - Cover Letter and Appendix of amendments to Revision 3.0 of the draft DCO</a>
AS-014	<a href="#">Tower Regeneration Limited - Additional Submission for Deadline 4 - statement by Tower Regeneration Limited of their current position (dated 07 Oct 2014) with Hirwaun Power Limited</a>
AS-015	<a href="#">A Morgan Farms - Additional Submission for Deadline 5 - statement relating to potential compulsory acquisition of their land and their negotiations with Hirwaun Power Limited</a>
AS-016	<a href="#">Colin Turnbull on behalf of Hirwaun Power Limited - Additional Submission for Deadline 5 - statement confirming negotiations between Hirwaun Power Limited and A Morgan Farms</a>
AS-017	<a href="#">Geldards LLP on behalf of Ashtenne Industrial Fund - Additional Submission for Deadline 5 - Letter from Geldards LLP in response to correspondence from Pinsent Masons sent to Ashtenne Industrial Fund</a>
AS-018	<a href="#">Colin Turnbull on behalf of Hirwaun Power Limited - Additional Submission for Deadline 6 - Joint statement of agreement between Hirwaun Power Limited and A Morgan Farms</a>
AS-019	<a href="#">A Morgan Farms - Additional Submission for Deadline 6 - Confirmation of agreement with Hirwaun Power Limited</a>
AS-020	<a href="#">Yohanna Weber on behalf of National Grid - Additional Submission for Deadline 6 - Confirmation of agreement between National Grid and Hirwaun Power Limited</a>
AS-021	<a href="#">Hirwaun Power Limited - Additional Submission for Deadline 6 - Cover letter stating final DCO and Explanatory Memorandum will be submitted at Deadline 7</a>
AS-022	<a href="#">National Grid - Additional Submission for Deadline 7 - Request to withdraw all representations under s.127 and s138 of Planning Act 2008</a>

DOC REF	TITLE
AS-023	<a href="#">Hirwaun Power Limited - Additional Submission for Deadline 7 - includes Schedule 1: Amendments made in rev 4.0 of the DCO, and Schedule 2: A table of the statutory undertakers potentially affected by the authorised development</a>
AS-024	<a href="#">Hirwaun Power Limited Cover Letter for supplementary submission at Deadline 7</a>
AS-025	<a href="#">Welsh Water - Confirmation of agreement of protective provisions with Applicant and withdrawal of representations</a>
AS-026	<a href="#">Hirwaun Power Limited - Joint statement between the Applicant and A Morgan Farms (the Landowners)</a>
AS-027	<a href="#">Nick Sharp on behalf of Natural Resources Wales - Statement confirming status of Blaen Cynon SAC Core Management Plan and draft s106 agreement</a>
AS-028	<a href="#">Natural Resources Wales - Comments on draft planning obligation</a>
AS-029	<a href="#">Hirwaun Power Limited - Statement confirming status of s.106 agreement.</a>
	<b>Key Correspondence</b>
AS-030	<a href="#">Mrs Elizabeth Freeman - Application to attend Accompanied Site Visit, including list of concerns and objections with the proposed development</a>
AS-031	<a href="#">The Vale of Glamorgan Council - Correspondence confirming their response to the Rule 8 Letter</a>
AS-032	<a href="#">Colin Turnbull on behalf of Hirwaun Power Limited - Correspondence relating to notice of hearings</a>

## APPENDIX B: EVENTS IN THE EXAMINATION

The Table below lists the main 'events' occurring during the Examination and the main procedural decisions taken by the Examining Authority (ExA).

DATE	EXAMINATION EVENT
<b>23 July 2014</b>	Preliminary Meeting and start of Examination
<b>29 July 2014</b>	<p>Notification by the ExA of procedural decision under Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010 made at and following the Preliminary Meeting. Including issue of:</p> <ul style="list-style-type: none"> <li>• Confirmation of the Examination Timetable</li> <li>• The ExA's first written questions</li> <li>• Requests for SoCG and LIRs</li> <li>• Other procedural decisions made by the ExA</li> </ul>
<b>21 August 2014</b>	<p>Deadline for receipt of:</p> <p>(i) Local impact reports (LIR) from any local authorities (see s60 of the Planning Act 2008)</p> <p>(ii) Responses to the <b>ExA's first written</b> questions</p> <p>(iii) Comments on relevant representations (RRs)</p> <p>(iv) Summaries of all RR's exceeding 1500 words</p> <p>(v) Written representations (WRs) by all interested parties</p> <p>(vi) Summaries of all WRs exceeding 1500 words</p> <p>(vii) Comments on any submissions received prior to the preliminary meeting</p> <p>(viii) Submissions from interested parties recommending locations or items for the itinerary for the accompanied site visit</p> <p>(ix) Comments on whether the <b>applicant's additional/replacement</b> documents submitted before the</p>

	preliminary meeting would constitute a
	<p>material change to the application</p> <p>(x) Any further information requested by the ExA for this deadline</p> <p>Notifications:</p> <p>(xi) Notification by interested parties of wish to be heard at the open floor hearing</p> <p>(xii) Notification of wish to be heard at the compulsory acquisition hearing</p> <p>(xiii) Notification by interested parties of wish to attend and/or make oral representations at all hearings scheduled in the timetable</p> <p>(xiv) Notification by interested parties of their intention to attend the accompanied site visit</p> <p>(xv) Notification by statutory parties of wish to be considered an interested party</p>
<b>10 September 2014</b>	<p>Deadline for receipt of:</p> <p><b>(i) Comments on responses to ExA's</b> first written questions</p> <p>(ii) Responses to comments on RRs</p> <p>(iii) Comments on WRs</p> <p>(iv) Responses to comments on any additional representations and submissions received prior to the preliminary meeting</p> <p>(v) Responses to comments on <b>whether the applicant's</b> additional/replacement documents submitted before the preliminary meeting constitutes a material change to the application</p> <p>(vi) Any revised draft DCO from applicant</p> <p>(vii) Any further information requested by the ExA for this deadline</p> <p>(viii) Statements of Common Ground (SoCG) requested by the ExA</p>
<b>16 September 2014</b>	<p>Deadline for receipt of:</p> <p>(i) Comments on LIRs</p> <p>(ii) Responses to comments on WRs</p>

<b>22 September 2014</b>	Accompanied Site Visit and Open Floor Hearing
<b>23 September 2014</b>	Issue Specific Hearing on draft DCO
<b>24 September 2014</b>	Compulsory Acquisition Hearing and Issue Specific Hearing on environmental matters
<b>25 September 2014</b>	Date reserved for continuation of Issue Specific Hearing on environmental matters, but was not required.
<b>3 October 2014</b>	Issue of Rule 17 notification of changes to the examination timetable
<b>7 October 2014</b>	Deadline for receipt of: <b>(i) Applicant's final preferred draft DCO</b> (ii) Updated SoCGs (iii) Any information requested by the ExA at the hearings (iv) Written summaries of oral cases put at hearings (v) Any further information requested by the ExA
<b>21 October 2014</b>	Issue of: <b>(i) The ExA's Report on Implications for European Sites (RIES)</b> <b>(ii) The ExA's second round of written questions</b>
<b>30 October 2014</b>	Deadline for receipt of: <b>(i) Comments on applicant's final preferred draft DCO</b> (ii) Any further information requested by the ExA for this deadline
<b>13 November 2014</b>	Deadline for receipt of: (i) Comments on the RIES <b>(ii) Responses to ExA's second written questions</b>
<b>25 November 2014</b>	Deadline for receipt of: (i) Responses to comments on <b>applicant's final preferred draft DCO</b> (ii) Any further information requested by the ExA for this deadline

<b>9 January 2015</b>	Issue of Rule 17 request for further information from the applicant
<b>23 January 2015</b>	Close of examination

## **APPENDIX C: LIST OF ABBREVIATIONS**

AA	Appropriate Assessment
AGI	Above Ground Installation
AIF	Ashtenne Industrial Fund
AOD	Above Ordnance Datum
AONB	Areas of Outstanding Natural Beauty
APFP	Applications: Prescribed Forms and Procedures
AQS	Air Quality Standards
ASV	Accompanied Site Visit
BBNP/A	Brecon Beacons National Park/Authority
BoR	Book of Reference
BT	British Telecommunications
CA	Compulsory Acquisition
CAA	Civil Aviation Authority
CCR	Carbon Capture Ready
CCS	Carbon Capture Storage

CEMP	Construction Environmental Management Plan
CHP	Combined Heat and Power
CO2	Carbon Dioxide
CSGL	Cefn Strain Gauges Limited
CTMP	Construction Transport Management Plan
DAS	Design and Access Statement
DCC	Dwr Cymru Cyfyngedig (Welsh Water)
DCfW	Design Commission for Wales
DCLG	Department for Communities and Local Government
DCO	Development Consent Order
DECC	Department of Energy and Climate Change
DNO	Distribution Network Operator
DTI	Department of Trade and Industry
EEA	European Economic Area
EfW	Energy from Waste

EIA	Environmental Impact Assessment
EM	Explanatory Memorandum
EMP	Ecological Management Plan
ER	Electrical Route
EP	Environmental Permit
EPS	European Protected Species
EPS	Emission Performance Standards
EPUK	Environmental Protection UK
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
FRA	Flood Risk Assessment
GR	Gas Route
ha	Hectares
HIA	Health Impact Assessment

HPCC	Hirwaun and Penderyn Community Council
HRA	Habitats Regulations Assessment
HPL	Hirwaun Power Limited
HSC	Hazardous Substances Consent
HSE	Health and Safety Executive
IDA	International Dark Sky Association
IGE	Institute of Gas Engineers
IPC	Infrastructure Planning Commission
IROPI	Imperative Reasons of Overriding Public Interest
ISH	Issue Specific Hearing
Km	Kilometres
kV	Kilovolts
kW	Kilowatts
LCPD	Large Combustion Plant Directive
LDP	Local Development Plan

LIR	Local Impact Report
LNR	Local Nature Reserve
LSE	Likely Significant Effect
LTS	Local Transmission System
LVIA	Landscape and Visual Impact Assessment
MCR	Mitigations Commitment Register
MMO	Marine Management Organisation
MMP	Materials Management Plan
MOC	Minimum Offtake Connection
MS	Main Site
MW	Megawatt
MWe	Megawatt Electrical
NCFL	Noble Clean Fluids Limited
NERC	Natural Environment and Rural Communities
NETS	National Electricity Transmission System

NG	National Grid
NGC	National Grid Company
NGET	National Grid Electricity Transmission
NGG	National Grid Gas
NGPH	National Grid Property Holdings
NNR	National Nature Reserves
NO	Nitric Oxide
NO2	Nitrogen Dioxide
Nox	Nitrogen Oxide
NPS	National Policy Statement
NPT	Neath Port Talbot
NRW	Natural Resources Wales
NSER	No Significant Effects Report
NSIP	Nationally Significant Infrastructure Project
NTS	National Gas Transmission System

OHL	Overhead Lines
OWC	Ordinary Water Consent
PIG	Pipeline Inspection Gauge
PM	Preliminary Meeting
PPG	Planning Policy Guidance Notes
PPS	Planning Policy Statement
PPW	Planning Policy Wales
PTF	Pig Trap Facility
PV	Photovoltaics
RBD	River Basin Districts
RBMP	River Basin Management Plans
RCT/CBC	Rhondda Cynon Taf/County Borough Council
RIES	Report on the Implications for European Sites
SAC	Special Area of Conservation
SCGT	Simple Cycle Gas Turbine

SFCA	Strategic Flood Consequence Assessment
SINC	Site of Importance for Nature Conservation
SoCG	Statement of Common Ground
SoS	Secretary of State
Sox	Sulphur Oxide
SPA	Special Protection Area
SPG	Supplementary Planning Guidance
SSSI	Site of Special Scientific Interest
STOR	Short Term Operating Reserve
SuD <sub>s</sub>	Sustainable Drainage Systems
SWEL	South Wales Electricity Limited
SWMP	Site Waste Management Plan
TAN	Technical Advice Note
TRL	Tower Regeneration Limited
WCA	Wildlife and Countryside Act 1981

WFD	Water Framework Directive
WG	Welsh Government
WPD	Western Power Distribution
WPHL	Walters Plant Hire Limited
WWU	Wales and West Utilities

**201\* No.**

**INFRASTRUCTURE PLANNING**

**The Hirwaun Power (Gas Fired Power Station) Order 2015**

*Made* - - - - - \*\*\*

*Laid before Parliament* \*\*\*

*Coming into force* - - - \*\*\*

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An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009**(a)**.

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the Planning Act 2008**(b)** (“the 2008 Act”).

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.

The Secretary of State, having considered the report and recommendation of the single appointed person, and decided the application, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals.

The Secretary of State, in exercise of the powers conferred by sections 103, 114, 115, 120 and 122 of the 2008 Act, makes the following Order—

---

**(a)** S.I. 2009/2264 as amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635) and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc) (Amendment) Regulations 2013 (S.I. 2013/522). There are other amendments to the Regulations which are not relevant to this Order.

**(b)** 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c.20), and by sections 22 to 27 of the Growth and Infrastructure Act 2013 (c.27), see S.I. 2013/1124 for transitional provisions.

# PART 1

## PRELIMINARY

### Citation and commencement

1. This Order may be cited as the Hirwaun Power (Gas Fired Power Station) Order 2015 and comes into force on [X] 2015.

### Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(a);

“the 1965 Act” means the Compulsory Purchase Act 1965(b);

“the 1980 Act” means the Highways Act 1980(c);

“the 1984 Act” means the Road Traffic Regulation Act 1984(d);

“the 1990 Act” means the Town and Country Planning Act 1990(e);

“the 1991 Act” means the New Roads and Street Works Act 1991(f);

“the 2008 Act” means the Planning Act 2008(g);

“address” includes any number or address used for the purposes of electronic transmission;

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“authorised development” means the development described in Schedule 1 (authorised development) which is development within the meaning of section 32 of the 2008 Act;

“the book of reference” means revision 3 of the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“commence” means the carrying out of a material operation, as defined in section 155 of the Planning Act 2008 (which explains when development begins), comprised in or carried out for the purposes of the authorised development and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;

“date of final commissioning” means the date on which the authorised development commences operation by generating power on a commercial basis;

“design principles statement” means the design principles statement contained within Appendix 2 of the design and access statement document with submission document reference number 10.2.0 submitted with the application and certified as the design principles statement by the Secretary of State for the purposes of this Order;

“ecological mitigation plan” means the ecological mitigation plan, revision 1.0, dated September 2014 and certified as such by the Secretary of State for the purposes of this Order;

“electronic transmission” means a communication transmitted –

(a) by means of an electronic communications network; or

- 
- (a) 1961 (c.33).  
(b) 1965 (c.56).  
(c) 1980 (c.66).  
(d) 1984 (c.27).  
(e) 1990 (c.8).  
(f) 1991 (c.22).  
(g) 2008 (c.29).

(b) by other means but while in electronic form;

“the environmental statement” means the environmental statement submitted under regulation 5(2)(a) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 updated as follows –

(a) Appendix 11.2 is superseded by the outline lighting strategy;

(b) Figure 8.5 is superseded by the ecological mitigation plan; and

(c) Appendix 4.1 is superseded by the outline construction environmental management plan;

and certified as such by the Secretary of State for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“flood risk assessment” means the flood risk assessment with submission document reference number 5.2.0 submitted with the Order application and certified as the flood risk assessment by the Secretary of State for the purposes of this Order;

“gas turbine generator” means either one or two gas turbines which drive a single electricity generator for the purposes of generating electricity;

“gross rated electrical output” means the aggregate of the gross electric power as measured at the terminals of each generator comprised in the generating station, ascertained in accordance with standards agreed with the regulating authority under the Environmental Permitting (England and Wales) Regulations 2010 (as amended) or subsequent legislation;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the land plans” means revision 1 of the plans identified with document reference number 2.2 certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means, in respect of numbered works 1, 2 and 4 the outer limits of the corresponding numbered area shown on the works plans and, in respect of numbered works 3 and 5, the limits to either side of the corresponding numbered line shown on the works plans;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve to the extent that the same are unlikely to give rise to any materially new or materially different environmental effects as identified in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“mitigation commitments register” means the document identifying mitigation commitments with document reference MCR submitted during the examination of the Order application and certified as the mitigation commitments register by the Secretary of State for the purposes of this Order;

“National Grid” means National Grid Electricity Transmission plc. (Company No. 02366977) whose registered office is at 1-3 Strand, London, WC2N 5EH and/or National Grid Gas plc. (Company No. 02006000) whose registered office is at 1-3 Strand, London, WC2N 5EH as the context requires;

“Order land” means the land required for, or affected by, the proposed development shown on the land plans and described in the book of reference;

“the Order limits” means the limits shown on figure 1 of the works plans within which the authorised development may be carried out;

“outline construction environmental management plan” means the outline construction environmental management plan, revision 1.0, dated September 2014 and certified as such by the Secretary of State for the purposes of this Order;

“outline lighting strategy” means the outline lighting strategy, revision 1.0, dated September 2014 and certified as such by the Secretary of State for the purposes of this Order;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

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(a) 1981 (c.67). Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34).

“Hirwaun Power Limited” means Hirwaun Power Limited (Company No. 8190283) whose registered office is at 33 Cavendish Square, London W1G 0PW;

“Order application” means the application made by the undertaker to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and Part 5 of the 2008 Act for this Order.

“relevant planning authority” means the County Borough Council for the area in which the land to which the provisions of this Order apply is situated and any relevant successor bodies;

“requirements” means those matters set out in Schedule 2 to this Order;

“rights of way, streets and access plan” means revision 1.0 of the plan identified with document reference number 2.7 certified as the rights of way, streets and access plan by the Secretary of State for the purposes of this Order;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and “street” includes any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“undertaker” means Hirwaun Power Limited or the person who has the benefit of this Order in accordance with articles 6 and 7;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means revision 0 of the plans identified with document reference number 2.3 certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the air-space above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references in this Order to the creation or acquisition of new rights include the imposition of restrictive covenants which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) All areas described in square metres in the book of reference are approximate.

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 and shown on the works plans and a reference to numbered work 2 means numbered works 2A – 2G (inclusive) and a reference to numbered work 4 means numbered works 4A and 4B (inclusive).

(6) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the rights of way, streets and access plan.

(7) The expression “includes” is to be construed without limitation.

## PART 2

### PRINCIPAL POWERS

#### **Development consent etc. granted by the Order**

3.—(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Subject to paragraph (3), each numbered work must be situated on the corresponding numbered line or numbered area shown on the works plans.

(3) In constructing each numbered work, the undertaker may deviate from the corresponding numbered line shown on the works plans or within the corresponding numbered area(s) shown on the works plans up to the limits of deviation.

### **Maintenance of authorised development**

4.—(1) Except to the extent that this Order or an agreement made under this Order provides otherwise and subject to the provisions of this Order and to the requirements, the undertaker is authorised to, and may at any time, maintain the authorised development.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

### **Operation of authorised development**

5.—(1) The undertaker is authorised to operate and use the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of a generating station.

### **Benefit of the Order**

6.—(1) Section 156(1) of the 2008 Act applies to the grant of development consent by this Order.

(2) Without prejudice to paragraph (1), in relation to numbered work 4A consent is granted by this Order for the benefit of the undertaker and National Grid.

### **Consent to transfer benefit of the Order**

7.—(1) Subject to paragraph 4, the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be agreed in writing between the undertaker and the lessee.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

- (a) the transferee or lessee is a statutory undertaker; or
- (b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
  - (i) no such claims have been made;
  - (ii) any such claims that have been made have all been compromised or withdrawn;
  - (iii) compensation has been paid in final settlement of all such claims;
  - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or

- (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

## PART 3

### STREETS

#### **Power to alter layout, etc., of streets**

**8.**—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street in the case of permanent works as specified in column (2) of Part 1 of Schedule 3 (streets subject to permanent and temporary alteration of layout) in the manner specified in relation to that street in column (3) and in the case of temporary works as specified in column (2) of Part 2 of Schedule 3 (streets subject to permanent and temporary alteration of layout) in the manner specified in relation to that street in column (3).

(2) Regardless of the specific powers conferred by paragraph (1) but subject to paragraph (3), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge; and
- (b) make and maintain passing place(s).

(3) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority.

(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 56 days beginning with the date on which the application was made, it is deemed to have granted consent.

(6) Paragraphs (3), (4) and (5) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

#### **Street works**

**9.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of section 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Where the undertaker is not the street authority, the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

## **Construction and maintenance of new or altered means of access**

**10.**—(1) Those parts of each means of access specified in Part 1 of Schedule 6 to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.

(2) Those parts of each means of access specified in Part 2 of Schedule 6 to be constructed under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.

(3) Those restoration works carried out pursuant to Article 8(3) identified in Part 3 of Schedule 6 must be completed to the reasonable satisfaction of the highway authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.

(4) These restoration works carried out pursuant to Article 8(3) identified in Part 4 of Schedule 6 which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the street authority.

(5) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(6) For the purposes of a defence under paragraph (5), a court is, in particular, to have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed.

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

## **Extinguishment of public rights of way**

**11.**—(1) Subject to sub-paragraph (2), the undertaker may in connection with the carrying out of the authorised development stop up the section of the public right of way (being a footpath) shown marked by a pecked red line on the rights of way, streets and access plan and, with effect from the date that the aforementioned section of the public rights of way is physically stopped up by the undertaker in connection with the carrying out of the authorised development, the public rights of way over the aforementioned section will be extinguished.

(2) The undertaker must not stop up the public right of way described in sub-paragraph (1) unless and until it has constructed and made available for public use the alternative replacement section of the public right of way shown marked by a pecked blue line on the rights of way, streets

and access plan and, with effect from the date of opening of such replacement section of public right of way to the public following completion of any works relating thereto, public rights of way of the same type, namely use as a footpath, over the replacement section will be deemed to be created.

### **Temporary prohibition or restriction of use of streets**

**12.**—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily alter, divert, prohibit the use of or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary alteration, diversion, prohibition or restriction of a street under this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily alter, divert, prohibit the use of or restrict the use of the streets specified in columns (1) and (2) of Schedule 5 (temporary prohibition or restriction of the use of streets) to the extent specified in column (3) of that Schedule.

(5) The undertaker must not temporarily alter, divert, prohibit the use of or restrict the use of—

- (a) any street specified in paragraph (4) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

(6) If a street authority fails to notify the undertaker of its decision within 56 days of receiving an application for consent under paragraph (5)(b) that street authority is deemed to have granted consent.

(7) This article does not remove the requirement for the undertaker to obtain any order required under sections 1, 9 or 22BB of the 1984 Act.

### **Access to works**

**13.**—(1) The undertaker may, for the purposes of the authorised development—

- (a) form and lay out the permanent means of access, or improve existing means of access, in the location specified in Part 1 of Schedule 3 (streets subject to permanent and temporary alteration of layout);
- (b) form and lay out the temporary means of access in the location specified in Part 2 of Schedule 3 (streets subject to permanent and temporary alteration of layout); and
- (c) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other temporary means of access or improve the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

### **Agreements with street authorities**

**14.**—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new street including any structure carrying the street;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of the structure of any bridge or tunnel carrying a street;

- (d) any alteration, diversion, prohibition or restriction in the use of a street authorised by this Order; or
  - (e) the carrying out in the street of any of the works referred to in article 10(1) (construction and maintenance of new or altered means of access).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
  - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
  - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

**15.**—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

- (4) The undertaker must not make any opening into any public sewer or drain except—
- (a) in accordance with plans approved by the person to whom the sewer or drain belongs but approval must not be unreasonably withheld; and
  - (b) where that person has been given the opportunity to supervise the making of the opening.

(5) Except as authorised under this Order, the undertaker must not, in carrying out or maintaining works, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise any water discharge activities or groundwater activities for which a licence is required pursuant to regulation 12(b) of the Environmental Permitting (England and Wales) Regulations 2010(b).

- (8) In this article—
- (a) “public sewer or drain” means a sewer or drain which belongs to Natural Resources Wales, a harbour authority within the meaning of section 57 of the Harbours Act 1964(c)

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(a) 1991 (c.56). Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

(b) S.I. 2010/675.

(c) 1964 (c.40); There are amendments to section 57 that are not relevant to this Order.

(interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(a) have the same meaning as in that Act.

#### **Authority to survey and investigate the land**

**16.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority, but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

## **PART 5**

### **POWERS OF ACQUISITION**

#### **Compulsory acquisition of land**

**17.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or as is incidental to it.

(2) This article is subject to article 21 (Compulsory acquisition of rights etc.), article 24 (Acquisition of subsoil only) and article 27 (Temporary use of land for carrying out the authorised development).

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(a) 1991 (c.57).

(3) Nothing in this article authorises the acquisition of rights or other interests in land owned by the Crown.

### **Compulsory acquisition of land – incorporation of the mineral code**

**18.**—(1) Part(s) 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981(minerals) are incorporated in this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for “the acquiring authority” substitute “the undertaker”.

### **Statutory authority to override easements and other rights**

**19.**—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract, authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(4) Subsection (2) of section 10 of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act is to be applied to the construction of paragraph (2) (with any necessary modifications).

### **Time limit for exercise of authority to acquire land compulsorily**

**20.**—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(a).

(2) The authority conferred by article 27 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Compulsory acquisition of rights etc.**

**21.**—(1) The undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new rights described in the book of reference and shown on the land plans.

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(a) 1981 (c. 66).

(2) Subject to section 8 of the 1965 Act, as substituted by article 25 (acquisition of part of certain properties), where the undertaker acquires a right over land under paragraph (1), the undertaker is not to be required to acquire a greater interest in that land.

(3) Schedule 7 is to have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

(4) In any case where the acquisition of new rights under paragraph (1) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(5) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (4) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(6) Nothing in this article authorises the acquisition of rights or other interests in land owned by the Crown.

### **Private rights**

**22.**—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry)(a),

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of acquisition of the right by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry) in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which article 29 (statutory undertakers) applies.

(7) Paragraphs (1) to (3) have effect subject to—

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(a) Section 11 is amended by section 34 of, and Schedule 4 to the Acquisition of Land Act 1981 (c.67), section 3 of Schedule 1 to the Housing (Consequential Provisions) Act 1985 (c.71) and paragraph 64 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307).

- (a) any notice given by the undertaker before—
    - (i) the completion of the acquisition of the land or the acquisition of rights over land,
    - (ii) the undertaker’s appropriation of it,
    - (iii) the undertaker’s entry onto it, or
    - (iv) the undertaker’s taking temporary possession of it,
 that any or all of those paragraphs do not apply to any right specified in the notice; and
  - (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.
- (8) If any such agreement as is referred to in paragraph (7)(b)—
- (a) is made with a person in or to whom the right is vested or belongs; and
  - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,
- it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.
- (9) This article does not apply to—
- (a) any land or interest in land owned by—
    - (i) Rhondda Cynon Taf County Borough Council in plots 1\_GR, 1a\_GR, 1b\_GR, 3\_GR, 3a\_GR, 3b\_GR, 4\_GR, 4a\_GR, 4b\_GR, 5\_GR, 5a\_GR, 8\_GR, 8a\_GR, 8b\_GR, 9\_GR, 9a\_GR, 9b\_GR, 1\_ER, 2\_ER, 3\_ER and 4\_ER;
    - (ii) Paul Jonathan Lloyd in plots 2\_ER and 3\_ER;
    - (iii) Hirwaun Estates Limited in plots 4\_ER and 5\_ER;
    - (iv) Skipton Building Society in plot 4\_ER;
    - (v) J.D. Burford Limited in plot 5\_ER;
    - (vi) Wendy Joseph in plot 5\_ER;
    - (vii) Philip Sedgemore in plot 5\_ER;
    - (viii) Tip Top Toilets Limited in plot 5\_ER;
    - (ix) Walter Energy Limited in plot 5\_ER;
    - (x) Welsh Tyre Recycling in plot 5\_ER; and
    - (xi) The Welsh Government in plots 1\_MS, 2\_MS, 3\_MS, 4\_MS, 5\_MS, 6\_MS, 7\_MS and 4\_ER,
  - (b) any reference to a plot in this article is a reference to a plot of land identified on the land plans and referred to in the book of reference.

**Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

- 23.—**(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) applies as if this Order were a compulsory purchase order.
- (2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, has effect with the following modifications.
- (3) In section 3 (preliminary notices), for subsection (1) there is substituted—

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(a) 1981 (c. 66). Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Section 15 was amended by section 56 and 321 of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c 50); Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and paragraph 7(2) of Schedule 19 to the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28) section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed under paragraph 40(4) of Schedule 10 to the Finance Act 1975 (c. 7) and Schedule 9 to the Capital Transfer Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.

(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” are omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 must be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

### **Acquisition of subsoil only**

**24.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 17 (compulsory acquisition of land) and paragraph (1) of article 21 (compulsory acquisition of rights etc.) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is to not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 25 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

### **Acquisition of part of certain properties**

**25.**—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner is to be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner is required to sell only the land subject to the notice to treat is to be, unless the undertaker agrees to take the land subject to the counter-notice, referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner is to be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is to be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is to be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is to be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

## **Rights under or over streets**

26.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) is not to apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not to be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

## **Temporary use of land for carrying out the authorised development**

27.—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—
  - (i) the land specified in columns (1) and (2) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule;
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) (other than in connection with the requisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 (execution of declaration);
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works specified in relation to that land in column (3) of Schedule 8, or any other mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 2.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land referred to in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of final commissioning of the authorised development; or
- (b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase

(Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be required to replace a building removed under this article.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

(9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority)(a) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 8.

### **Temporary use of land for maintaining the authorised development**

**28.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

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(a) Section 13 is amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article "the maintenance period" means the period of 5 years beginning with the date of final commissioning.

### **Statutory undertakers**

**29.** Subject to the provisions of Schedule 9 (protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plans within the limits of the land to be acquired and described in the book of reference;
- (b) extinguish or suspend the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the land plans and described in the book of reference; and
- (c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the land plans and described in the book of reference.

### **Recovery of costs of new connections**

**30.—(1)** Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is to be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 29 (statutory undertakers) any person who is—

- (a) the owner or occupier of premises the drains of which communicated with the sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is to be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this paragraph –

"public communications provider" has the same meaning as in section 151(1) of the Communications Act 2003; and

"public utility undertaker" has the same meaning as in the 1980 Act.

## PART 6 OPERATIONS

### **Felling or lopping of trees**

**31.**—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

## PART 7 MISCELLANEOUS AND GENERAL

### **Application of landlord and tenant law**

**32.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

### **Cases in which land is to be treated as not being operational land**

**33.** Development consent granted by this Order insofar as it relates to numbered works 2 and 4A described in Schedule 1 is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (Cases in which land is to be treated as not being operational land).

## Defence to proceedings in respect of statutory nuisance

**34.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by persons aggrieved by statutory nuisances)(a) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), is not to apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

## Protective provisions

**35.** Schedule 9 (protective provisions) has effect.

## Certification of plans etc.

**36.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference;
- (b) the land plans;
- (c) the works plans;
- (d) the rights of way, streets and access plan;
- (e) the environmental statement;
- (f) the flood risk assessment;
- (g) the design principles statement;
- (h) the mitigation commitments register;
- (i) ecological mitigation plan;
- (j) outline construction environmental management plan;
- (k) outline lighting strategy,

for certification that they are true copies of the documents referred to in this Order.

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(a) 1990 (c.43). section 82 is amended by section 5 of the Noise and Statutory Nuisance Act 1993 (c.40), section 106 of and Schedule 17 to the Environment Act 1995 (c.25) and section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16). There are other amendments to this section which are not relevant to this Order.

(b) 1974 c.40. sections 61 and 65 are amended by section 133 of and Schedule 7 to the Building Act 1984 (c.55), section 120 of and Schedule 24 of the Environment Act 1995 (c.25) and section 162 of, and Schedule 15 to, the Environmental Protection Act 1990 (c.43); there are other amendments not relevant to this Order.

(2) A plan or document so certified is to be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Service of notices**

**37.**—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

- (a) in the case of the secretary or clerk of that body corporate, the registered or principal office of that body, and,
- (b) in any other case, the last known address of that person at that time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

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(a) 1978 (c.30).

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

**Procedure in relation to certain approvals etc.**

**38.**—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a traffic authority, a street authority, or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Save for applications made pursuant to Schedule 10, if, within 56 days after the application or request has been submitted to an authority or an owner as referred to in paragraph (1) of this article it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(3) Schedule 10 is to have effect in relation to all consents, agreements or approvals required from the relevant planning authority.

(4) Where an application is made to or request is made of the consenting body as referred to in paragraph (1) of this article, such application must draw the consenting body’s attention to the procedure set out in paragraph (2) of this article.

**Arbitration**

**39.** Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

**Guarantees in respect of payment of compensation**

**40.** The authorised development must not be commenced and the undertaker must not begin to exercise the powers provided in parts 3, 4, 5 or 6 of this Order unless either a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order or an alternative form of security for that purpose is in place which has been approved by the relevant planning authority.

Signed by authority of the Secretary of State for Energy and Climate Change

Address  
Date

*Name*  
Title  
Department for Energy and Climate Change

## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

In the County Borough of Rhondda Cynon Taf—

A nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act consisting of a generating station with a gross rated electrical output of between 50.1 – 299MWe comprising—

**Numbered work 1** development comprising the demolition of all existing buildings and structures, including foundations, hardstanding and services,

**Numbered work 2A** development comprising—

- (a) up to 5 gas turbine generators; and
- (b) up to 5 exhaust gas emission flue stacks,

**Numbered work 2B** development comprising—

- (a) an administration building;
- (b) a store;
- (c) a control room/office/workshop;
- (d) telemetry apparatus;
- (e) black start diesel generator;
- (f) a natural gas receiving station and gas treatment compound containing—
  - (i) a pipeline inspection gauge (PIG) receiving facility;
  - (ii) isolation valves, metering, heating, filtering, compression, pressure regulation equipment;
  - (iii) electricity supply kiosk; and
  - (iv) control and instrumentation kiosks,

**Numbered work 2C** development comprising a switchyard / banking compound containing up to eight transformers, switchgear building and other plant required to manage the transmission of electricity,

**Numbered work 2D** development comprising a construction and maintenance compound including new hardstanding,

**Numbered work 2E** development comprising—

- (a) security infrastructure, including cameras, perimeter fencing and a gatehouse;
- (b) site lighting infrastructure, including perimeter lighting columns;
- (c) internal roadways, car parking, pedestrian network, cycle parking, hardstanding and water treatment trailers;
- (d) site drainage, attenuation pond and waste management infrastructure;
- (e) electricity, water, wastewater and telecommunications and other services;
- (f) a raw / fire water tank and demineralised water storage tank;
- (g) landscaping including tree planting, fencing and other boundary treatments and ecological mitigation (including bat mitigation structure);
- (h) tree and hedge removal;

- (i) high voltage and low voltage cabling, equipment and controls and associated telemetry and electrical protection auxiliary cabling;
- (j) underground gas pipeline connection, associated telemetry and cathodic protection test / transformer rectifier unit; and
- (k) other ancillary equipment,

**Numbered work 2F** development comprising new or modified permanent means of access to numbered work 2 including permanent road surface, drainage, gates and fencing,

**Numbered work 2G** development comprising the maintenance strengthening or re-laying in a new location of the existing culvert forming that part of ordinary watercourse River Camnant within the Order limits, such works subject to maintaining the existing flow rate,

**Numbered work 3** development comprising—

- (a) a new underground gas pipeline connection and telemetry cabling, approximately 900 metres in length connecting the natural gas receiving station in numbered work 2B to numbered work 4A;
- (b) pipeline field marker posts and cathodic protection test / transformer rectifier unit;
- (c) below ground drainage works;
- (d) tree and hedge removal;
- (e) landscaping including tree planting, fencing and other boundary treatments and, if required, ecological mitigation for bats; and
- (f) new or modified permanent means of accesses to numbered work 3 from the A4061 and Rhigos Road including permanent road surface, drainage, gates and fencing,

**Numbered work 4A** development comprising—

- (a) an above ground installation (also referred to as a minimum offtake connection compound) containing—
  - (i) a minimum offtake connection comprising remotely operable valves, control and instrumentation kiosks and electrical supply kiosks;
  - (ii) a pipeline inspection gauge (PIG) facility, comprising a PIG launching facility, emergency control valves, isolation valves, control and instrumentation kiosks and electricity supply kiosks;
- (b) security infrastructure including cameras, lighting (including perimeter lighting columns) and perimeter fencing;
- (c) site drainage and waste management infrastructure;
- (d) electricity and telecommunications connections and other services;
- (e) below ground sacrificial anode pit;
- (f) landscaping including tree planting, fencing and other boundary treatments; and
- (g) other ancillary equipment,

**Numbered work 4B** development comprising new permanent means of access to numbered work 4A from the A4061 including permanent road surface, drainage, gates and fencing,

**Numbered work 5** development comprising an underground 400kV electrical cable circuit and associated telemetry and electrical protection auxiliary cabling, approximately 686m in length, including joint bays,

and such other integral works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the works in this Schedule 1 but only within the Order limits and insofar as unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

## SCHEDULE 2 REQUIREMENTS

Articles 3 and 38

### Interpretation

1. In this Part of Schedule 2—

(1) the following expressions have the following meanings—

“AOD” means above ordnance datum;

### Time limits

2. The authorised development must be commenced within 5 years of the date of this Order.

### Numbered Works

3. Where these requirements refer to numbered work 2 or numbered work 4, such reference is to be taken to mean numbered works 2A – 2G (inclusive) and numbered works 4A and 4B (inclusive) respectively.

### Detailed Design

4.—(1) The authorised development must be carried out in accordance with the approved plans, inclusive of any limits of deviation, bearing the references listed below and any other plans, drawings, documents, details, schemes, statements or strategies which are approved by the relevant planning authority pursuant to any requirement (as the same may be amended by approval of the relevant planning authority in accordance with requirement 18(1))—

**Table 1**

Works plans	Submission document reference number 2.3 Revision 0
Rights of way, streets and access plan	Submission document reference number 2.7 Revision 1.0

(2) The authorised development must be carried out in accordance the parameters specified below (as the same may be amended by approval of the relevant planning authority pursuant to requirement 18(1))—

**Table 2**

<i>Building Structure</i> or	<i>Maximum height (metres above 211m AOD)</i>	<i>Minimum height (metres above 211m AOD)</i>	<i>Maximum length (metres)</i>	<i>Minimum length (metres)</i>	<i>Maximum width (metres)</i>	<i>Minimum width (metres)</i>
Each gas turbine generator (where one or two gas turbine generators are constructed) (Part of numbered work 2A)	19.0	–	30.0	–	30.0	–

<b><i>Building Structure or</i></b>	<b><i>Maximum height (metres above 211m AOD)</i></b>	<b><i>Minimum height (metres above 211m AOD)</i></b>	<b><i>Maximum length (metres)</i></b>	<b><i>Minimum length (metres)</i></b>	<b><i>Maximum width (metres)</i></b>	<b><i>Minimum width (metres)</i></b>
Each gas turbine generator (where three, four or five gas turbine generators are constructed) (part of numbered work 2A)	10.0	–	36.0	–	23.0	–
Each exhaust gas emission flue stack (part of numbered work 2A)	35.0	30.0	–	–	10.0	–
Control room/office/workshop (part of numbered work 2B)	6.0	–	29.0	–	23.0	–
Natural gas receiving station and gas treatment compound (part of numbered work 2B)	3.0		50.0	–	46.0	–
Black start diesel generator (part of numbered work 2B)	5.0	–	13.0	–	5.0	–
Switchyard / banking compound (numbered work 2C)	11.3	–	60	–	60	–
Switchgear Building (part of numbered work 2C)	11.3	–	21.0	–	15.0	–
Gatehouse (part of numbered work 2E)	4.5	–	9.0	–	8.0	–

<i>Building Structure or</i>	<i>Maximum height (metres above 211m AOD)</i>	<i>Minimum height (metres above 211m AOD)</i>	<i>Maximum length (metres)</i>	<i>Minimum length (metres)</i>	<i>Maximum width (metres)</i>	<i>Minimum width (metres)</i>
Demineralised water tank (part of numbered work 2E)	16.0	–	23.0	–	23.0	–
Raw/fire water tank (part of numbered work 2E)	18.0	–	15.0	–	15.0	–
Bat mitigation structure (part of numbered work 2E)	6.0	–	10.0	–	5.0	–
Above ground installation (numbered work 4A)	3.0	–	72.0	–	52.0	–
Pipeline inspection gauge facility (part of numbered work 4A)	2.0	–	36.0	–	27.0	–
Minimum offtake connection (part of numbered work 4A)	2.0	–	36.0	–	25.0	–

(3) Numbered works 2 and 4 of the authorised development is not to commence until, for that numbered work, details of the layout, scale and external appearance of the numbered work have been submitted to and approved by the relevant planning authority in consultation with the Brecon Beacons National Park Authority.

(4) Paragraph (3) is not to apply to any new permanent or temporary means of access to a highway forming part of numbered works 2 or 4 which has been approved pursuant to requirement 6.

(5) To the extent that design principles for any numbered work are set out in the design principles statement, that numbered work must be designed substantially in accordance with the relevant design principle set out therein.

(6) The authorised development must be carried out substantially in accordance with the mitigation measures identified in the mitigation commitments register.

### **Provision of landscaping**

**5.—**(1) Each of numbered works 2, 3 and 4 of the authorised development is not to commence until a written landscaping plan for that numbered work has been submitted to and approved by the relevant planning authority. The landscaping plan must include details of all proposed hard and soft landscaping works, such plan is to be substantially in accordance with

the landscaping mitigation proposals set out in figure 11.5 of the environmental statement, and include details of—

- (a) location, number, species, size and planting density of any proposed planting including details of any proposed tree planting and the proposed times of such planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) vehicular and pedestrian access, parking and circulation areas;
- (f) minor structures, such as furniture, refuse or other storage units and signs;
- (g) existing trees to be retained, with measures for their protection together with any landscaping and visual mitigation required during the construction period;
- (h) implementation timetables for all landscaping works;
- (i) measures for the management of the ecological resources that will remain within the Order land on completion of the authorised development; and
- (j) landscaping maintenance throughout the operational life of the authorised development.

(2) All landscaping works must be carried out in accordance with the landscaping plan approved under this requirement 5 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(3) The landscaping works must be carried out in accordance with implementation timetables approved in the landscaping plan.

(4) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

### **Highway accesses**

6.—(1) Each of numbered works 2, 3 and 4 of the authorised development is not to commence until for that numbered work, written details of the design, layout and (where not already identified in Schedule 3 and the rights of way, streets and access plan) siting of any new permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic, has been submitted to and approved by the relevant planning authority (in consultation with the highway authority).

(2) The highway accesses must be constructed in accordance with the approved details.

### **Fencing and other means of enclosure**

7.—(1) Each of numbered works 2 and 4A of the authorised development is not to commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure for that numbered work have been submitted to and approved by the relevant planning authority.

(2) Any construction sites must remain securely fenced at all times during construction of the authorised development.

(3) Any temporary fencing must be removed within three months of the completion of the authorised development.

(4) The details approved pursuant to this requirement must be implemented.

(5) Any permanent gates comprised in numbered works 2 and 4 are to be set back a minimum of 10 metres from the nearside edge of the carriageway.

### **Surface and foul water drainage**

8.—(1) Each of numbered works 2 and 4 of the authorised development is not to commence until, for that numbered work, written details of a surface and foul water drainage plan (including means of pollution control) have, after consultation with the relevant sewerage and drainage authority, been submitted to and approved by the relevant planning authority, such strategy to be in substantial accordance with the principles set out in Section 5.2 of the flood risk assessment.

(2) The surface and foul water drainage plan must be implemented in accordance with the approved details.

### **Contaminated land and groundwater**

9.—(1) Numbered work 2 of the authorised development is not to commence until a written scheme applicable to that numbered work, to deal with the contamination of any land, including groundwater, which is likely to cause significant harm to persons, the environment or significant pollution of controlled waters has, after consultation with Natural Resources Wales been submitted to and approved by the relevant planning authority.

(2) The scheme must include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(3) Remediation must be carried out in accordance with the approved scheme.

### **Ecological management plan**

10.—(1) Each of numbered works 1-5 of the authorised development is not to commence until a written ecological management plan covering that numbered work reflecting a pre-construction ecological constraints survey and the ecological mitigation and enhancement measures identified in the ecological mitigation plan, figure 11.5 and section 8.7 of the environmental statement has been submitted to and approved by the relevant planning authority in consultation with Natural Resources Wales.

(2) The ecological management plan must include an implementation timetable and must be carried out as approved.

### **Archaeology**

11.—(1) Each of numbered works 1, 2, 3 and 4 of the authorised development is not to commence until a written scheme of investigation covering that numbered work has been submitted to and approved by the relevant planning authority.

(2) The written scheme of investigation is to be a technical document that outlines the aim and objectives and methods to be employed during a scheme of archaeological investigation work.

(3) The scheme must identify areas where field work or a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(4) Any archaeological works or watching brief carried out under the scheme must be by a suitably qualified person or body approved by the relevant planning authority.

(5) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

### **Construction environment management plan**

12.—(1) No numbered work of the authorised development is to commence until a construction environment management plan covering that numbered work has been submitted

to and approved by the relevant planning authority. The construction environment management plan must be substantially in accordance with the outline construction environmental management plan and must include the following during demolition and construction—

- (a) complaints procedures;
- (b) nuisance management including measures to avoid or minimise the impacts of construction works (covering noise and vibration);
- (c) a dust management plan;
- (d) a site waste management plan;
- (e) surface and ground water protection measures;
- (f) security measures; and
- (g) demolition method statement (in relation to numbered work 1 only).

(2) All construction works must be undertaken in accordance with the approved construction environment management plan.

### **Construction traffic**

**13.—**(1) No numbered work of the authorised development other than tree felling is to commence until a construction traffic management plan covering that numbered work has been submitted to and approved by the relevant planning authority in consultation with Welsh Government Transport. The construction traffic management plan is to detail the proposals for the movement of construction traffic and abnormal indivisible loads associated with the authorised development and is to include—

- (a) construction vehicle routing plans at 1:2,500 scale for all traffic including abnormal indivisible loads showing—
  - (i) swept path analysis from the point of entry onto the highway network to the Order land;
  - (ii) highway mitigation in respect of any identified constraints on vehicle movements such as embargo periods, route traffic sensitivity, temporary road works and other highway restrictions to be developed following consultation with the South Wales Trunk Road Agent, and, where relevant, referring to supporting HD19/03 safety audit documentation (as contained within the Design Manual for Roads and Bridges Volume 5 Section 2 Part 2 and as amended or replaced); and
  - (iii) land ownership boundaries for any required holding areas, passing areas and layover areas;
- (b) evidence of appropriate trial runs that demonstrate the suitability of the route from point of entry onto the trunk road network to the Order land for the proposed types of abnormal indivisible loads;
- (c) site access plans at 1:2,500 scale that include supporting HD19/03 safety audit documentation (as contained within the Design Manual for Roads and Bridges Volume 5 Section 2 Part 2 and as amended or replaced);
- (d) proposals for the management of junctions to and crossings of the public highway during delivery of abnormal indivisible loads;
- (e) proposals for the scheduling and timing of movements of delivery vehicles, to be developed following consultation with the Welsh Government and potentially affected undertakers, and, in relation to any abnormal indivisible loads, details of vehicle parameters, number of vehicles in convoy size, dimensions (width, length, height) and weight (total vehicle with load and axel loading);
- (f) details of escorts for abnormal indivisible loads highlighting where and when along the route private vehicles, banksman and Police vehicles escorts will be used (including emergency contingencies);

- (g) proposals for temporary warning signs and banksman for abnormal indivisible loads, including provision of plan drawings and associated traffic signs schedule highlighting locations along the route where temporary traffic management (including cones and temporary signs) needs to be deployed;
  - (h) a methodology for undertaking a conditions survey of Main Avenue, Fourth Avenue and any other land identified during the trial runs that may have a constraining impact on the abnormal indivisible load movements including the timescales for undertaking the surveys and the method(s) of reporting the findings to the relevant planning authority, comprehensive photographs and potential compensation arrangements;
  - (i) details of any temporary or permanent improvements to highways;
  - (j) proposals for the making good of any incidental damage to highways by construction traffic associated with the authorised development including street furniture, structures, drainage features, highway verge and carriageway surfaces;
  - (k) proposals for traffic management controls (such as temporary signals), diversion routes and signage required during any of the activities, operations or works set out in Schedules 4, 5 or 6; and
  - (l) proposals for the notification of occupiers of land adjacent to the construction traffic route of the scheduling and timing of abnormal indivisible load movements from the point of exit from the trunk road network to the Order land.
- (2) The construction traffic management plan must be implemented as approved.
- (3) During the operation or decommissioning of numbered work 2 no abnormal indivisible loads must be transported into or out of the Order land without the prior written approval of the relevant planning authority in consultation with Welsh Government Transport.

**Construction hours**

- 14.**—(1) No construction work, or the delivery or removal of materials, is to take place outside the hours of—
- (a) 0700 and 1830 hours on weekdays (excluding public holidays); and
  - (b) 0700 and 1300 hours on Saturdays and public holidays.
- (2) Sub-paragraph (1) does not prevent outside such hours construction works, or the delivery or removal of materials, being carried out with the prior written approval of the relevant planning authority.

**Control of noise during operational phase**

- 15.**—(1) Following the date of final commissioning of numbered work 2, site-attributable noise attributable to numbered work 2 during the operational phase must be limited at all times of day to the noise levels set out below measured at the coordinates set out below—

**Table 3**

<i>Noise Limit Sound Pressure Level, L<sub>Aeq, 5mins</sub> dB</i>	<i>Coordinates</i>	
	<i>X</i>	<i>Y</i>
52	293820.1	206257.2
52	293738.8	206173.6
53	293622.9	206319
54	293741.2	206353.3

- (2) Noise measurements at each of the identified locations must be undertaken in accordance with BS 7445. Measurements should be undertaken with the power plant running at base load. A single LAeq 5min measurement will be required at each identified location during the day, evening and night time periods identified as follows — daytime (0700hrs to 1900hrs), evening (1900hrs to 2300hrs) and night time (2300hrs to 0700hrs).

(3) Records of the noise measurements referred to in paragraph (2) at each location referred to in paragraph (1) must be retained by the undertaker for twelve months and provided to the relevant planning authority or any other person within three working days of a request (although the undertaker is not be required to respond to more than one request per person per month).

(4) Any complaint made to the undertaker in relation to a breach of paragraph (1) must be—

- (a) acknowledged by the undertaker within three working days of the date of the complaint;
- (b) investigated within seven working days of the date of the acknowledgement referred to in sub-paragraph (a); and
- (c) a response provided within seven working days of the date of completion of period for the investigation referred to in sub-paragraph (b).

(5) Any subsequent complaint by person from whom the undertaker has previously investigated a complaint under paragraph (4) must be referred by the undertaker to the relevant planning authority (although only one complaint per person per month must be referred).

### **Control of artificial light emissions**

**16.**—(1) Each of numbered works 2 and 4A of the authorised development is not to commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of artificial light emissions for that numbered work which is substantially in accordance with the outline lighting strategy has been submitted to and approved by the relevant planning authority in consultation with the Brecon Beacons National Park Authority.

(2) The approved scheme for the management and mitigation of artificial light emissions must be implemented before and maintained during the operation of the relevant numbered work.

### **Decommissioning strategy**

**17.**—(1) Subject to obtaining the necessary consents, unless otherwise agreed with the relevant planning authority, within twenty four months of the site ceasing to be used for the purposes of electricity generation (either actively generating electricity or being available to generate electricity on a standby basis), a scheme for the demolition and removal of numbered work 2 must be submitted to the relevant planning authority.

(2) The demolition and removal of numbered work 2 must be implemented in accordance with the approved scheme.

### **Amendments to approved details**

**18.**—(1) With respect to any plans, details, schemes or matters which require approval by the relevant planning authority pursuant to any other requirement (the “Plans, Details or Schemes”), the undertaker may submit to the relevant planning authority for approval any amendments to the Plans, Details or Schemes and following any such approval by the relevant planning authority the Plans, Details or Schemes are to be taken to include the amendments approved pursuant to this sub-paragraph (1).

(2) Approval under requirement sub-paragraph (1) must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).

### **Date of final commissioning and cessation**

**19.**—(1) The undertaker must notify the relevant planning authority of the date of final commissioning as soon as reasonably practicable and in any event within three months after the occurrence of that date.

(2) The undertaker must notify the relevant planning authority of the date the authorised development permanently ceases to generate power on a commercial basis as soon as reasonably practicable and in any event within three months after the occurrence of that date.

### **Provision of details to the Ministry of Defence**

**20.** Numbered work 2 of the authorised development is not to commence until the following details for that numbered work have been provided to the Ministry of Defence Defence Geographic Centre—

- (a) location of the authorised development;
- (b) proposed date of commencement;
- (c) anticipated date of final commissioning;
- (d) the height above ground of the tallest structure forming part of the authorised development; and
- (e) the maximum extension height of the tallest structure anticipated to be within the Order land during construction of the authorised development.

### **Operational Limits**

**21.**—(1) In any calendar year the operation of the gas turbine generators comprised in numbered work 2A must not exceed 1500 hours in total.

(2) Within three months of the end of a calendar year, the undertaker must submit a written report to the relevant planning authority detailing the actual total number of hours of operation of the gas turbine generators comprised in numbered work 2A.

(3) For the purposes of this requirement, “operation of the gas turbine generators” means the duration in which any energy is exported at the settlement metering point, being the point at which a supply to the transmission system from the authorised development is measured.

### **Site investigation**

**22.** Numbered work 4A of the authorised development is not to commence until a detailed site investigation report covering an assessment of the geotechnical properties of the substrata for that numbered work has been submitted to and approved in writing by the relevant planning authority. The report should be undertaken by a chartered engineer and should be sufficient to establish if any ground precautions are necessary in relation to numbered work 4A and the precautions that should be adopted in the design and construction of numbered work 4A in order to minimise any damage which might arise as a result of ground condition. Numbered work 4A of the authorised development must thereafter be carried out in accordance with the approved site investigation report.

SCHEDULE 3

Articles 8 and 13

STREETS SUBJECT TO PERMANENT AND TEMPORARY  
ALTERATION OF LAYOUT

**PART 1**

Permanent alteration of layout

**Table 4**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
In the District of Rhondda Cynon Taf	Main Avenue	The lowering of the levels of the kerb between the points marked D and E on the rights of way, streets and access plan to provide a permanent access to numbered work 2.
In the District of Rhondda Cynon Taf	Main Avenue	The lowering of the levels of the kerb between the points marked F and G on the rights of way, streets and access plan to provide a permanent access north to numbered works 2 and 3.
In the District of Rhondda Cynon Taf	Main Avenue	The lowering of the levels of the kerb between the points marked F and G on the rights of way, streets and access plan to provide a permanent access south to numbered works 2 and 3.
In the District of Rhondda Cynon Taf	Fourth Avenue	The lowering of the levels of the kerb between the points marked I and J on the rights of way, streets and access plan to provide a permanent access to numbered work 2.
In the District of Rhondda Cynon Taf	Rhigos Road (north and south sides)	The lowering of the levels of the kerb between the points marked L and M on the rights of way, streets and access plan to provide a permanent access to numbered work 2.
In the District of Rhondda Cynon Taf	Rhigos Road (north and south sides)	The lowering of the levels of the kerb between the points marked L and M on the rights of way, streets and access plan to provide a permanent access to numbered work 3.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
In the District of Rhondda Cynon Taf	A4061 (north west side)	The lowering of the levels of the kerb between the points marked P and Q on the rights of way, streets and access plan to provide a permanent access to numbered work 3.
In the District of Rhondda Cynon Taf	A4061 (south east side)	The lowering of the levels of the kerb between the points marked P and Q on the rights of way, streets and access plan to provide a permanent access to numbered work 4A.

**PART 2**  
**TEMPORARY ALTERATION OF LAYOUT**

**Table 5**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
In the District of Rhondda Cynon Taf	Rhigos Road (north and south sides)	The lowering of the levels of the kerb between the points marked K and L, M and N on the rights of way, streets and access plan to provide a temporary access to numbered work 3.
In the District of Rhondda Cynon Taf	A4061 (north west side)	The lowering of the levels of the kerb between the points marked O and P, Q and R on the rights of way, streets and access plan to provide a temporary access to numbered work 3.
In the District of Rhondda Cynon Taf	A4061 (south east side)	The lowering of the levels of the kerb between the points marked O and P, Q and R on the rights of way, streets and access plan to provide a temporary access to numbered work 4A.

SCHEDULE 4

Article 9

STREETS SUBJECT TO STREET WORKS

**Table 6**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
In the District of Rhondda Cynon Taf	Fourteenth Avenue (works for numbered work 5 to be installed within Fourteenth Avenue between the points marked A and C on the rights of way, streets and access plan).
In the District of Rhondda Cynon Taf	Main Avenue (works for numbered work 5 to be installed within Main Avenue between the points marked C and F on the rights of way, streets and access plan).
In the District of Rhondda Cynon Taf	Main Avenue (works for numbered work 3 to cross and be installed in Main Avenue between the points marked G and H on the rights of way, streets and access plan).
In the District of Rhondda Cynon Taf	Rhigos Road (works for numbered work 3 to cross and be installed in Rhigos Road between the points marked L and M on the rights of way, streets and access plan).
In the District of Rhondda Cynon Taf	A4061 (works for numbered work 3 to cross and be installed in the A4061 between the points marked P and Q on the rights of way, streets and access plan).

SCHEDULE 5

Article 12

TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF  
STREETS

**Table 7**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Extent of temporary prohibition or restriction of use of streets</i>
In the District of Rhondda Cynon Taf	Fourteenth Avenue	<p><b>Prohibition/Restriction:</b> From the points marked A to C on the rights of way, streets and access plan, being approximately 182 metres.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of part of the street to cover numbered work 5 being installed in the road.</p>
In the District of Rhondda Cynon Taf	Main Avenue	<p><b>Prohibition/Restriction:</b> From the points marked C to F on the rights of way, streets and access plan, being approximately 444 metres.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of part of the street to cover numbered work 5 being installed in the road.</p>
In the District of Rhondda Cynon Taf	Main Avenue	<p><b>Prohibition/Restriction:</b> From the points marked G to H on the rights of way, streets and access plan, being approximately 50 metres.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of part of the street to cover numbered work 3 being installed in the road.</p>
In the District of Rhondda Cynon Taf	Rhigos Road	<p><b>Prohibition/Restriction:</b> From the points marked K to N on the rights of way, streets and access plan, being</p>

<i>(1)</i> Area	<i>(2)</i> Street	<i>(3)</i> Extent of temporary prohibition or restriction of use of streets
In the District of Rhondda Cynon Taf	A4061	<p>approximately 102 metres.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of bus stop on Rhigos Road to cover numbered work 3 crossing and being installed in the road. Bus stop to be relocated without further carriageway works.</p> <p><b>Prohibition/Restriction:</b> From the points marked O to R on the rights of way, streets and access plan, being approximately 80 metres.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of part of the street to cover both the access to numbered work 4A and 4B and work number 3 crossing and being installed in the road.</p>

SCHEDULE 6  
ACCESS

Article 10

PART 1

Those parts of accesses to be maintained at the public expense

**Table 8**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the District of Rhondda Cynon Taf	Main Avenue	Those parts of the modified accesses at Main Avenue providing permanent access to numbered work 2 and shown on the rights of way, streets and access plan hatched blue between points marked D and E, F and G.
In the District of Rhondda Cynon Taf	Rhigos Road	That part of— (i) the new access at the northern side of Rhigos Road; and (ii) the new access at the southern side of Rhigos Road, providing permanent access to numbered work 3 and shown on the rights of way, streets and access plan hatched blue between points marked L and M.
In the District of Rhondda Cynon Taf	A4061	That part of—(i) the new access at the A4061 providing permanent access to numbered work 3; and (ii) the new access constituting numbered work 4B, and shown on the rights of way, streets and access plan hatched blue between points marked P and Q.

## PART 2

### THOSE PARTS OF ACCESSES TO BE MAINTAINED BY THE STREET AUTHORITY

**Table 9**

<i>(1)</i> Area	<i>(2)</i> Street	<i>(3)</i> Description of the relevant part of access
In the District of Rhondda Cynon Taf	Main Avenue	Those parts of the modified accesses at Main Avenue providing permanent access to numbered work 2 and shown on the rights of way, streets and access plan hatched red between points marked D and E, F and G.
In the District of Rhondda Cynon Taf	Fourth Avenue	That part of the modified access at Fourth Avenue shown on the rights of way, streets and access plan hatched red between points marked I and J for access to numbered works 2.
In the District of Rhondda Cynon Taf	Rhigos Road	That part of— (i) the new access at the northern side of Rhigos Road; and (ii) the new access at the southern side of Rhigos Road, providing permanent access to numbered work 3 and shown on the rights of way, streets and access plan hatched red between points marked L and M.
In the District of Rhondda Cynon Taf	A4061	That part of— (i) the new access at the A4061 providing permanent access to numbered works 3; and (ii) the new access constituting numbered work 4B, and shown on the rights of way, streets and access plan hatched red between points marked P and Q.

### PART 3

#### THOSE WORKS TO RESTORE TEMPORARY ACCESSSES WHICH WILL BE MAINTAINED AT THE PUBLIC EXPENSE

**Table 10**

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the District of Rhondda Cynon Taf	Rhigos Road	Those areas between the points marked K and L, M and N on the rights of way, streets and access plan hatched blue.
In the District of Rhondda Cynon Taf	A4061	Those areas between the points marked O and P, Q and R on the rights of way, streets and access (north side and south side) plan hatched blue.

## PART 4

### THOSE WORKS TO RESTORE TEMPORARY ACCESSES WHICH WILL BE MAINTAINED BY THE STREET AUTHORITY

**Table 11**

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the District of Rhondda Cynon Taf	Rhigos Road	Those areas between the points marked K and L, M and N on the rights of way, streets and access plan hatched red.
In the District of Rhondda Cynon Taf	A4061	Those areas between the points marked O and P, Q and R on the rights of way, streets and access (north side and south side) plan hatched red.

## MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

### *Compensation enactments*

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

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

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there are substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there are substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraph (a) and (b) there are substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there are substituted the words “right or restrictive covenant over or affecting the whole of the park or garden”;
- (c) for the words “part proposed” there are substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there are substituted the words “right or restrictive covenant is”.

### *Application of the 1965 Act*

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there is substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right

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(a) 1973 (c.26).

is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

**5.** For section 8 of the 1965 Act (provisions as to divided land) there is substituted the following section—

“**8.**—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
  - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
  - (ii) where the land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

The Hirwaun Power (Gas Fired Power Station) Order 201[X] (“the Order”) ceases, in relation to that person, to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section must be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

**6.** The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

**7.** Section 11 of the 1965 Act (powers of entry) is modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power,

exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on that date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

**8.** Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

**9.** Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) is modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 8

Article 27

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

**Table 12**

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
Land forming part of public adopted highway known as Main Avenue, Hirwaun	1a_GR	Temporary use to facilitate construction for the numbered works 2G and 3	Part of numbered works 2G and 3
Land forming part of public adopted highway known as Main Avenue, Hirwaun	1b_GR	Temporary use to facilitate construction for the numbered works 2G and 3	Part of numbered works 2G and 3
Land situated to the south of Building 6, Hirwaun Industrial Estate, Hirwaun	2a_GR	Temporary use to facilitate construction for the numbered works 2G and 3 together with construction of a temporary means of access to numbered work 3	Part of numbered works 2G and 3
Land forming part of the northern half width of public adopted highway known as Rhigos Road together with a bus lay-by, situated to the south of Building 6, Hirwaun Industrial Estate, Hirwaun	3a_GR	Temporary use to facilitate construction for the numbered works 2G and 3 together with construction of a temporary means of access to numbered work 3	Part of numbered works 2G and 3
Land forming part of the northern half width of public adopted highway and drain known as Rhigos Road together with part of a Public Right of Way leading from Rhigos Road to Main Avenue situated to the south of Building 6, Hirwaun Industrial Estate, Hirwaun	3b_GR	Temporary use to facilitate construction for the numbered works 2G and 3 together with construction of a temporary means of access to numbered work 3	Part of numbered works 2G and 3
Land and overhead electricity lines	4a_GR	Temporary use to facilitate construction	Part of numbered works 2G and 3

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
forming part of the southern half width of public adopted highway known as Rhigos Road situated to the south of Building 6, Hirwaun Industrial Estate, Hirwaun		for the numbered works 2G and 3 together with construction of a temporary means of access to numbered work 3	
Land and overhead electricity lines forming part of the southern half width of public adopted highway and drain known as Rhigos Road situated to the south of Building 6, Hirwaun Industrial Estate, Hirwaun	4b_GR	Temporary use to facilitate construction for the numbered works 2G and 3 together with construction of a temporary means of access to numbered work 3	Part of numbered works 2G and 3
Land forming part of the southern half width of public adopted highway known as Rhigos Road situated to the south of Building 6, Hirwaun Industrial Estate, Hirwaun	5a_GR	Temporary use to facilitate construction for the numbered works 2G and 3 together with construction of a temporary means of access to numbered work 3	Part of numbered works 2G and 3
Agricultural land, drains and overhead electricity lines (including poles) situated to the east and south east of The Fairways, Hirwaun	6a_GR	Temporary use to facilitate construction for the numbered works 2G and 3 together with construction of a temporary means of access to numbered work 3	Part of numbered works 2G and 3
Agricultural land, drains and overhead electricity lines (including poles) situated to the east and south east of The Fairways, Hirwaun	6b_GR	Temporary use to facilitate construction for the numbered works 2G and 3 together with construction of a temporary means of access to numbered work 3	Part of numbered works 2G and 3
Land and overhead electricity lines situated to the east of The Fairways, Hirwaun	6c_GR	Temporary use to facilitate construction for the numbered works 2G and 3	Part of numbered works 2G and 3

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
Agricultural land, drains, overhead electricity lines (including poles) and footbridge situated to the south of Rhigos Road and west of the A4061, Hirwaun	7a_GR	Temporary use to facilitate construction for the numbered work 3 together with construction of a temporary means of access to numbered work 3	Part of numbered work 3
Agricultural land, drains and overhead electricity lines situated to the south of Rhigos Road and west of the A4061, Hirwaun	7b_GR	Temporary use to facilitate construction for the numbered work 3 together with construction of a temporary means of access to numbered work 3	Part of numbered work 3
Land forming part of the north western half width of public adopted highway known as the A4061, Hirwaun	8a_GR	Temporary use to facilitate construction for the numbered works 3 and 4B together with construction of a temporary means of access to numbered work 3	Part of numbered works 3 and 4B
Land forming part of the north western half width of public adopted highway known as the A4061, Hirwaun	8b_GR	Temporary use to facilitate construction for the numbered works 3 and 4B together with construction of a temporary means of access to numbered work 3	Part of numbered works 3 and 4B
Land forming part of the south eastern half width of public adopted highway known as the A4061, Hirwaun	9a_GR	Temporary use to facilitate construction for the numbered works 3 and 4B together with construction of a temporary means of access to numbered works 3 and 4A	Part of numbered works 3 and 4B
Land forming part of the south eastern half width of public adopted highway known as the A4061, Hirwaun	9b_GR	Temporary use to facilitate construction for the numbered works 3 and 4B together with construction of a temporary means of access to numbered works 3 and 4A	Part of numbered works 3 and 4B

<i>(1) Location</i>	<i>(2) Number of land shown on land plans</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Relevant part of the authorised development</i>
Land forming part of the Tower Colliery open cast mining complex situated to the south east of public adopted highway known as the A4061, Hirwaun	10a_GR	Temporary use to facilitate construction for the numbered works 3 and 4A together with construction of a temporary means of access to numbered works 3 and 4A	Part of numbered works 3 and 4A
Land and overhead electricity lines forming part of the Tower Colliery open cast mining complex situated to the south east of public adopted highway known as the A4061, Hirwaun	11a_GR	Temporary use to facilitate construction for the numbered works 3 and 4A together with construction of a temporary means of access to numbered works 3 and 4A	Part of numbered works 3 and 4A

## PROTECTIVE PROVISIONS

## PART 1

## FOR THE PROTECTION OF NATIONAL GRID

**Application**

1. For the protection of National Grid as referred to in this Part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

**Interpretation**

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means

- (a) electric lines or electrical plant as defined in the Electricity Act 1989<sup>(a)</sup>, belonging to or maintained by National Grid;
- (b) mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply;

“authorised development” has the same meaning as in article 2 of this Order and (unless otherwise specified) for the purposes of this Schedule shall include the use and maintenance of the authorised development;

“commence” has the same meaning as under section 56 of the 1990 Act and means the earliest date on which any material operation comprised in the authorised development begins to be carried out and commencement shall be construed to have the same meaning;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“National Grid” means either—

- (a) National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH; or
- (b) National Grid Gas PLC (Company No. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH,

as the context shall require.

3. Except for paragraphs 4 (apparatus in streets subject to temporary prohibition or restriction), 8, 9 (retained apparatus: protection), 10 (expenses) and 11 (indemnity) this

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(a) 1989 (c.29).

Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

#### **Apparatus of National Grid in streets subject to temporary prohibition or restriction**

4. Notwithstanding the temporary prohibition or restriction under the powers of article 12 (temporary prohibition or restriction of use of streets), National Grid shall be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

#### **Acquisition of land**

5.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order the undertaker must not acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid as of right or other use in relation to the apparatus then the provisions in this Schedule shall prevail.

#### **Removal of apparatus**

6.—(1) If, in the exercise of the agreement reached in accordance with paragraph (5) or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to National Grid to their satisfaction (taking into account paragraph 7 sub-paragraph (1) below) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

#### **Facilities and rights for alternative apparatus**

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to National Grid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under paragraph 7 sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph (2), article 39 of the Order shall apply.

#### **Retained apparatus: protection of National Grid as Gas Undertaker**

8.—(1) Not less than 56 days before the commencement of any authorised development authorised by this Order that involves activities or works specified in National Grid's "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" that are within the proximities described therein to any apparatus the removal of which has not been required by the undertaker under paragraph 6 sub paragraph (2) or otherwise, the undertaker must submit to National Grid a plan.

(2) In relation to works which will be situated on, over, under or within 15 metres measured in any direction of any apparatus to which sub-paragraph (1) applies, or (wherever situated) impose any load directly upon any such apparatus or involve embankment works within 15 metres of any such apparatus, the plan to be submitted to National Grid under sub-paragraph (1) shall show—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) intended maintenance regimes; and
- (g) details of any ground monitoring scheme (if required in accordance with National Grid's "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22").

(3) The undertaker must not commence any works to which sub-paragraph (2) applies until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) must not be unreasonably withheld.

(5) In relation to a work to which sub-paragraphs (1) and (2) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) or (2) shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (2), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (4), (5), (7) and/or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).

(8) If National Grid in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 7 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 6 sub-paragraph (2).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(10) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and the Health and Safety Executive's "HS(~G)47 Avoiding Danger from underground services".

### **Retained apparatus: protection of National Grid as Electricity Undertaker**

**9.—**(1) Not less than 56 days before the commencement of any authorised development under this Order that is near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6 sub-paragraph (2) or otherwise and to which sub-paragraph (2)(i) or (2)(ii) applies, the undertaker must submit to National Grid a plan and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted under sub-paragraph (1) shall show—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;

- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) shall be detailed including a method statement and describing in addition to the matters set out in sub-paragraph (2)—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and on-going maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers;
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraphs (1), (2) or (3) apply until National Grid has given written approval of the plan so submitted,

(5) Any approval of National Grid required under sub-paragraph (1), (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (8);
- (b) must not be unreasonably withheld.

(6) In relation to a work to which sub-paragraphs (1), (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (1), (2) or (3) must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraphs (2), (3) or (5), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5), (6), (8) and/or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(8) Where National Grid require any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the undertakers' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraphs (1), (2), (3) or (5) (except in an emergency)

(9) If National Grid in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 7 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 6 sub-paragraph (2).

(10) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and shall

- (a) comply with sub-paragraph (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order comply with National Grid's policies for development near overhead lines ENA TA 43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

## **Expenses**

**10.**—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by that undertaker in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 6 sub-paragraph (3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 39 (arbitration) of the Order to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be,

the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## **Indemnity**

**11.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works), any material damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision shall not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised development and/or any other works authorised by this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or under Article 6 of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-section 3(b) shall be subject to the full terms of this Schedule including this paragraph 11 in respect of such new apparatus.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the undertaker and considering their representations.

(5) National Grid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 11 applies. If requested to do so by the undertaker, National Grid shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 11 for claims reasonably incurred by National Grid.

### **Enactments and agreements**

**12.** Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

**13.** National Grid and the undertaker must each use their best endeavours to co-ordinate with the other party on the timing and method of execution of any works carried out under the Order or this Schedule (including, for the avoidance of doubt, pursuant to paragraph 6 sub-paragraph (2) and paragraphs 8 or 12) in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the other party's operations.

### **Access**

**14.** If in consequence of the agreement reached in accordance with paragraph 5 sub-paragraph (1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**15.** Save for differences or disputes arising under paragraph 6(2), 6(4), 7(1), 8 and 9 any difference or dispute arising between the undertaker and National Grid under this Schedule shall, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 39 (arbitration) of the Order.

## PART 2

### FOR THE PROTECTION OF WESTERN POWER DISTRIBUTION

**16.** For the protection of WPD as referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the undertaker and WPD, have effect.

**17.** In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable WPD to fulfil its statutory functions in a manner not less efficient than previously;

“alternative rights” means all and any necessary legal easements, consents, or permissions required by WPD in order to permit or authorise a diversion;

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by WPD;

“diversion” means an alteration to the WPD Network in order to enable or facilitate the authorised development;

“WPD” means Western Power Distribution (South Wales) PLC (company number 02366985) whose registered office is at Avonbank, Feeder Road, Bristol BS2 0TB;

“WPD Network” means WPD’s distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the 1989 Act; and

for the avoidance of doubt, all other terms are as defined in Part 1 of the Order.

**18.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and WPD are regulated by the provisions of Part 3 of the 1991 Act.

**19.** Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

**20.—**(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of WPD to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of WPD.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to WPD written notice of that requirement, together with a plan and section of the work proposed.

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed on the land referred to in sub-paragraph 20(2), WPD must on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its reasonable endeavours to obtain the alternative rights in other land in which the alternative apparatus is to be constructed.

(4) WPD must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 39 of the Order and after the grant to WPD of any alternative rights, proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(5) In respect of apparatus on plots numbered 1\_MS and 3\_MS in the book of reference and land plans—

(a) if requested by the undertaker, WPD must remove any of its apparatus within a building on those plots (or relocate such apparatus as applicable) within 56 days of the undertaker making such a request, unless factors outside the control of WPD prevent such a removal or relocation within the 56 day time period (for the avoidance of doubt the 56 day period

shall only begin once all necessary consents and permissions for the relevant removal or relocation have been granted); and

- (b) WPD and the undertaker may agree for the undertaker to remove or relocate as applicable any of such apparatus; and
- (c) following the removal or relocation by WPD or the undertaker (as applicable) under sub-paragraph 20(5)(a) or 20(5)(b), the undertaker may demolish such building(s).

**21.—**(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect any apparatus the removal of which has not been required by the undertaker under paragraph 20(2), the undertaker must submit to WPD a plan, section and description of the works to be executed. For the avoidance of doubt, if any works referred to require any diversion or require WPD to obtain any alternative rights, the undertaker shall give WPD sufficient notice to obtain any such alternative rights and shall not commence works of the type described unless or until any such alternative rights have been obtained.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph 21(1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph 21(3) by WPD for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

(3) Any requirements made by WPD under sub-paragraph 21(2) must be made within a reasonable period beginning with the date on which a plan, section and description under sub-paragraph 21(1) are submitted to it.

(4) If WPD in accordance with sub-paragraph 21(3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 16 to 20 apply as if the removal of the apparatus had been required by the undertaker under paragraph 20(2)).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than the reasonable period provided for in sub-paragraph 21(3) before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph 21(1) in a case of emergency but in that case it must give to WPD notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph 21(1)) in so far as is reasonably practicable in the circumstances.

**22.—**(1) Subject to the following provisions of this paragraph, the undertaker must repay to WPD the proper and reasonable expenses reasonably incurred by WPD in, or in connection with, the inspection, removal, alteration or protection of any apparatus.

(2) The value of any apparatus removed under the provisions of this Part of the Schedule is to be deducted from any sum payable under sub-paragraph 22(1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 39 of the Order to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as

the case may be, the amount which apart from this sub-paragraph would be payable to WPD by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph 22(3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to WPD in respect of works by virtue of sub-paragraph 22(1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on WPD any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

**23.** The undertaker will indemnify WPD and keep them indemnified in respect of any losses, costs, claims or liabilities arising out of, or as a consequence of anything done under this Part of this Schedule.

**PART 3**  
**FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE**  
**UNDERTAKERS**

**24.** For the protection of the utility undertakers referred to in this Part of this Schedule (save for National Grid, which is protected by and as defined in Part 1 of this Schedule, WPD, which is protected by and as defined in Part 2 of this Schedule and DCC, which is protected by and as defined in Part 7 of this Schedule), the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

**25.** In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
  - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
  - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991(a);
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
  - (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(b),
  - (c) a water undertaker within the meaning of the Water Industry Act 1991; and
  - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

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(a) 1991 (c.56). Section 51A to the 1991 Act was inserted by section 92(1) of the Water Act 2003(c.37).

(b) 1986 (c.44). A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

**26.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

**27.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 (temporary prohibition or restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

**28.** Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

**29.—(1)** If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 39 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 39 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling

around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

**30.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 39 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**31.**—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 29(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 24 to 30 apply as if the removal of the apparatus had been required by the undertaker under paragraph 29(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**32.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 29(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 39 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 29(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**33.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 29(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**34.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 4

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

**35.**—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(**a**);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A)(**b**) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(**c**);

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

**36.** The exercise of the powers of article 29 (statutory undertakers) is subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984(**d**) (undertaker’s works).

**37.**—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the

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(a) 2003 (c.21).

(b) Paragraph 1(3A) was inserted by section 106(2) of, and paragraphs 1 and 4 of Schedule 3 to, the Communications Act 2003.

(c) See section 106.

(d) 1984 (c.12). Paragraph 23 was amended by section 190 of, and paragraph 68 of Schedule 25 and part 1 of Schedule 27 to, the Water Act 1989 (c.15), section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and section 106(2) of, and Schedule 3 to, the Communications Act 2003.

undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 39 (arbitration).

**38.** This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

**39.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

**PART 5**  
**FOR THE PROTECTION OF AFFECTED PERSONS**

**40.** For the protection of affected persons as referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the undertaker and the affected person concerned, have effect.

**41.** In this Part of this Schedule—

“affected person” means a person who:

- (a) is identified in column 3 of the tables at sections 1.3, 2.3 and 3.3 of the book of reference as having the benefit of any right listed in column 4 of the tables at sections 1.3, 2.3 and 3.3 of the book of reference; and
- (b) is not subject to any protective provisions set out in Parts 1-4 and Part 6 of this Schedule;

“affected rights” means the rights listed in column 4 of the tables at sections 1.3, 2.3 and 3.3 of the book of reference in relation to the Order land for an affected person to:

- (a) pass along, or exercise rights of access over, Order land; or
- (b) connect to, use, maintain, repair or renew services in, on or over the Order land;

“services” means water, gas, electricity, sewerage and/or telecommunications services;

for the avoidance of doubt, all other terms are as defined in Part 1 of this Order.

**42.** The undertaker must comply with paragraphs 43 and 44.

**43.** In respect of part (a) of the definition of “affected rights”:

(1) where the undertaker interferes with such affected rights, such interference, in so far as reasonably practicable, must be to the minimum area and for the minimum period; and

(2) where the undertaker requires suspension as a result of the exercise of the powers under the Order, the undertaker must provide alternative access which is no less convenient than the access enjoyed prior to the suspension for the period in which the affected rights are suspended.

**44.** In respect of part (b) of the definition of “affected rights”:

(1) where the undertaker requires the extinguishment of any such affected rights, the undertaker must not extinguish such affected rights unless and until replacement rights have been granted to the affected person on equivalent terms and conditions to those affected rights that are being extinguished save that this sub-paragraph will not apply where such replacement rights can only be obtained on land outside the Order land; and

(2) where the undertaker requires the relocation of any such affected rights, the undertaker must not interfere with or suspend such affected rights unless and until the relocated affected rights have been brought into operation provided that this sub-paragraph will not apply where the relocated affected rights can only be obtained on land outside the Order land.

**45.** The undertaker is not required to comply with paragraphs 43 and 44 in a case of emergency but in that case it must give to the affected person notice of the interference or suspension with the affected right as soon as is reasonably practicable and thereafter comply with paragraphs 43 and 44 in so far as is reasonably necessary and practicable in the circumstances.

## PART 6

### FOR THE PROTECTION OF TOWER REGENERATION LIMITED

**46.** For the protection of Tower Regeneration Limited the following provision, unless otherwise agreed in writing between the undertaker and Tower Regeneration Limited, has effect.

**47.**—(1) The undertaker must not—

(2) vest the land identified in the book of reference and the land plans by plot reference numbers 10\_GR and 11\_GR in itself;

(3) exercise the powers conferred on it by Article 27 in respect of the land identified in the book of reference and the land plans by plot reference numbers 10\_GR, 10a\_GR, 11\_GR and 11a\_GR;  
or

(4) commence the authorised development on the land identified in the book of reference and the land plans by plot reference numbers 10\_GR, 10a\_GR, 11\_GR and 11a\_GR;

until on or after 1 January 2018.

## PART 7

### FOR THE PROTECTION OF DWR CYMRU CYFYNGEDIG

**48.** For the protection of DCC referred to in this Part 7 of Schedule 9, the following provisions shall, unless otherwise agreed in writing between the undertaker and DCC, have effect.

**49.** In this Part of this Schedule:

“acceptable insurance” means a policy of public liability/third party liability insurance effected and maintained by the undertaker and available in the market on commercially reasonable terms having regard (inter alia) to premiums required and the policy terms obtainable, with a level of insurance cover to be agreed between the undertaker and DCC, during the construction of the works pursuant to this Order with a reputable insurer and with DCC named as an insured party under the policy;

“accessories” has the same meaning as that set out in section 219 WIA 1991 but shall also include any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater or surface water and which is part of a sustainable drainage system;

“DCC apparatus” means all apparatus or accessories vested in or belonging to DCC for the purpose of carrying on its statutory undertaking including reservoirs, water treatment works and waste water treatment works;

“clearance area” means the area of land:

- (a) within 3 metres either side of the centre line of any public sewer or public water main that is less than 300mm in diameter;
- (b) within 6 metres either side of a public sewer or public water main where the public sewer or public water main is 300mm in diameter or more; or
- (c) within 9 metres either side of the centre line of a rising main;

“DCC” means Dŵr Cymru Cyfyngedig, a limited company registered in Wales under Company No. 2366777 and having its registered office at Pentwyn Road, Nelson, Treharris, Mid Glamorgan CF46 6LY or its properly authorised agents or sub-contractors;

“draft specification” means a detailed plan, cross-section and description of the works to be prepared by the undertaker (including, without limitation, a method statement and risk assessment setting out the intention in respect of the works, construction methods and programmes, position of the affected DCC apparatus and intended works and a statement that to the best of the undertaker’s knowledge, and having used all reasonable care and skill to plan the works, the works shall not cause damage to the DCC apparatus);

“functions” has the same meaning as in section 219 WIA 1991 and includes powers and duties;

“in” in a context referring to DCC apparatus in land includes a reference to DCC apparatus under, over or upon land; and

“sustainable drainage system” means any structure designed to receive rainwater and other surface water which structure shall include any feature or aspect of design that is intended to receive or facilitate the receipt of rainwater except a public sewer or a natural watercourse;

“WIA 1991” means the Water Industry Act 1991 c.56 as amended;

“works” means any works forming part of the authorised development in, on, over or under any land purchased, held, or used under this Order that are near to, or will or may in any way affect any DCC apparatus together with all ancillary actions relating hereto; and

for the avoidance of doubt, all other terms are as defined in Part 1 of this Schedule or Article 2 of this Order.

**50.**—(1) Subject to sub-paragraph 50(2), regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any DCC apparatus or its accessories or override or extinguish any easement or other interest of DCC or acquire any land or other interest of DCC identified in the book of reference or create any new rights over the same otherwise than by agreement with DCC in accordance with the provisions of this Schedule.

(2) Sub-paragraph 50(1) shall not apply to the rights either conferred on, or obtainable by, the undertaker under this Order in relation to Plots 3\_ER, 4\_ER, 5\_ER and 6\_ER (as described in the book of reference) insofar as these may temporarily interfere with DCC's rights to access DCC apparatus or accessories but subject always to paragraphs 54 and 55 of this Part and to the undertaker giving DCC 28 days notice of such interference.

### **Precedence of the WIA 1991**

**51.**—(1) Regardless of any provision of this Order and this Schedule the undertaker shall comply fully with all provisions of the WIA 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DCC apparatus and nothing in this Order shall release the undertaker from the requirement to comply with the provisions of the WIA 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DCC apparatus, including without limitation:

- (a) sections 41-44 of the WIA 1991 in respect of water main requisitions;
- (b) section 45 of the WIA 1991 in respect of any connections to a water main;
- (c) sections 98-101 of the WIA 1991 in respect of sewer requisitions;
- (d) section 102 of the WIA 1991 in respect of the adoption of sewers and disposal works;
- (e) section 104 of the WIA 1991 in respect of the adoption of any sewers, drains or sewage disposal works as part of the development;
- (f) sections 106 to 109 of the WIA 1991 (inclusive) in respect of any connections to public sewers;
- (g) section 111 of the WIA 1991 in respect of the restrictions on use of public sewers;
- (h) sections 158 and 159 of the WIA 1991 in respect of statutory rights of access to DCC apparatus;
- (i) section 174 of the WIA 1991 in respect of offences of interference with works etc;
- (j) section 178 of the WIA 1991 in respect of obstruction of sewerage works etc;
- (k) section 185 of the WIA 1991 in respect of the removal, diversion or alteration of DCC apparatus.

(2) The arbitration provisions at article 39 or specified in this Schedule shall not apply where DCC uses a warrant of entry in accordance with the provisions of the WIA 1991.

### **Protection of DCC apparatus**

**52.**—(1) Not less than 28 days before starting the execution of any works that are within the clearance area or will, or could reasonably foreseeably affect, any DCC apparatus the removal or alteration of which has not been required by the undertaker under paragraph 51(1)(k), the undertaker shall submit to DCC written notice together with a draft specification.

(2) DCC shall examine the draft specification submitted under sub-paragraph 52(1) and give its written consent or proposed amendments (each not to be unreasonably withheld or delayed) to the draft specification (including the proposed commencement date and anticipated completion date) within 28 days from the date of receipt (and in the event of amendments the process in this sub-paragraph 52(2) shall be repeated where those amendments are not accepted). For the avoidance of doubt, DCC's proposed amendments may include such reasonable requirements for the alteration (including but not limited to the extension of DCC apparatus) or otherwise for the protection of DCC apparatus, or for securing access to it.

(3) Once approved under sub-paragraph 52(2), the draft specification shall become the specification and the works shall be executed only in accordance with the specification and such reasonable requirements as may be made in accordance with sub paragraph 52(2) and DCC shall be entitled to watch and inspect the execution of those works.

(4) Nothing in this paragraph 52 shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a draft specification instead of the draft specification previously submitted, and having done so the provisions of this paragraph 52 shall apply to and in respect of the new draft specification.

(5) The undertaker shall not be required to comply with sub-paragraph 52(1) in a case of emergency provided it has complied with paragraph 55 below save that the undertaker shall comply with sub-paragraphs 52(1) and (3) above in so far as is reasonably practicable in the circumstances.

(6) DCC may opt to carry out any temporary and/or protective works specified under sub-paragraph 52(2) to DCC apparatus, and if DCC opts to do so it shall:

- (a) agree the scope and timings of the works with the undertaker (and the undertaker shall not unreasonably withhold or delay its agreement to the same);
- (b) provide an invoice together with supporting evidence of the estimated costs of the works on the basis of which it shall agree with undertaker the reasonable costs of the works to be met by the undertaker;
- (c) following agreement and payment of the costs, DCC shall as soon as reasonably practicable carry out and complete the works; and
- (d) notify the undertaker immediately in writing upon completion of the temporary and/or protective works.

(7) Only those contractors that satisfy DCC's reasonable health & safety requirements are permitted to make openings into and/or connections with and/or carry out any works on or within any public sewer or drain vested in DCC unless otherwise agreed with DCC.

(8) Only DCC is permitted to make openings into and/or connections with and/or carry out any works on or within any public water main vested in DCC unless otherwise agreed with DCC.

(9) Where DCC apparatus will be affected by the works the undertaker must determine the exact location of DCC apparatus prior to any works being carried out by the undertaker and the undertaker should contact DCC where trial holes are required.

(10) Any affected DCC apparatus which is no longer required by DCC but is not removed shall be transferred to the undertaker by way of a deed of transfer from DCC at the undertaker's expense and on such terms as DCC reasonably requires.

### **Suspension of works**

**53.** DCC shall be entitled to instruct the undertaker to suspend the works if in DCC's reasonable opinion the actions of the undertaker, or those of its contractor(s) or subcontractor(s) in carrying out the works, have caused damage to any DCC apparatus and/or are likely to cause or result in damage to any DCC apparatus and/or have caused or are likely to cause damage to the environment arising as a result of damage to DCC apparatus. In the event of such instruction being given by DCC:

(1) the undertaker shall procure that it and its contractor(s) and subcontractor(s) shall forthwith suspend or cease the works having due regard to health and safety factors and shall discuss and agree with DCC the remedial actions required prior to resuming the works;

(2) the undertaker and DCC shall act reasonably and without delay in discussing and agreeing any remedial actions required prior to resuming the works;

(3) DCC shall submit to the undertaker within 3 days following the suspension, a written notice specifying the reasons for suspending the works;

(4) in the event that DCC fails to supply the written notice within 3 days of suspension DCC's instruction to suspend the works shall be void and the undertaker shall be entitled to recommence the works; and

(5) DCC shall commence, carry out and complete any remedial works pursuant to sub-paragraph 53(1), as soon as reasonably practicable and DCC shall give the undertaker notice immediately upon completion of such remedial works and on receipt of such notice the undertaker shall be entitled to resume the works.

(6) DCC shall be entitled to reclaim all reasonable costs of all remedial works undertaken in accordance with this paragraph 53.

**54.—**(1) In the event that either the undertaker or DCC (for the purpose of this paragraph 54 "the party" or together "the parties") wishes to take any action which would impact on the ability of the undertaker to carry out the development or DCC to carry out its statutory functions, the parties shall use reasonable endeavours to cooperate with one another in order to align work streams so to minimise or avoid disruption to the other party's works. In respect of the references to 'work' and 'works' in this sub-paragraph 54(1), to the extent that this refers to 'work' or 'works' to be undertaken by DCC, the definition of works in paragraph 49 of this Part does not apply.

(2) Subject to paragraph 55, differences or disputes arising between the undertaker and DCC under this Schedule shall, unless otherwise agreed in writing between the undertaker and DCC, be determined by arbitration in accordance with article 39 (arbitration) of the Order.

### **Emergency Works**

**55.—**(1) The undertaker is permitted to carry out emergency works provided that it first notifies DCC of the proposed emergency works. For the avoidance of doubt, in the event that DCC suffers any loss, cost or damage as a result of the emergency action taken by the undertaker without prior notification the indemnity in paragraph 57 shall apply.

(2) DCC shall at all times be permitted to carry out any emergency works in relation to its DCC apparatus within the Order Limits in accordance with Part II Schedule 6 WIA 1991.

(3) Emergency works required in order for DCC to fulfil its statutory functions under sub-paragraph 55(2) shall take precedence over works to be carried out by the undertaker and, in such circumstances, the undertaker shall reschedule its works accordingly.

(4) In respect of the references to 'work' and 'works' in this paragraph 55, to the extent that this is 'work' or 'works' to be undertaken by DCC, the definition of works in paragraph 49 of this Part does not apply.

### **Insurance**

**56.** The undertaker shall not commence any works under paragraph 52(1) to this Part unless and until the undertaker has procured acceptable insurance.

### **Damage to DCC apparatus**

**57.—**(1) Subject to sub-paragraphs 57(3), (4) (5) and (6), the undertaker shall indemnify and hold harmless DCC against all claims demands costs damages expenses penalties and losses which DCC may have or sustain or become liable for in consequence of works under paragraph 52(1) to this Part in respect of:

- (a) the commencement, carrying out, execution or retention of the works or any breach of this Part relating to the performance of the works and shall pay compensation for loss, damage or injury caused by the actions or default of the undertaker, its contractors, subcontractors, licencees, agents and invitees relating to the performance of the works; and
- (b) damage to the environment caused by the undertaker during any works including but not limited to pollution and/or contamination; and

(c) any breach of any stipulation or otherwise of any deeds of grant (or any renewal of any of the deeds of grant made on substantially the same terms provided that DCC has supplied the undertaker with a copy of the new document) arising from the works; and

(2) Subject to sub-paragraphs 57(3), (4) (5) and (6), the undertaker shall bear and pay the costs reasonably incurred by DCC in making good damage to DCC apparatus or restoring an interruption in the supply provided by DCC.

(3) Nothing in sub-paragraph 57(1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of DCC, its officers, servants, contractors or agents.

(4) DCC shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker. .

(5) Nothing in this Part shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and DCC in respect of any DCC apparatus laid or erected in land belonging to the undertaker on the date on which the Order is made.

(6) DCC must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 57 applies. If requested to do so by the undertaker, DCC shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 57 for claims reasonably incurred by DCC.

## PROCEDURE FOR DISCHARGE OF REQUIREMENTS

**Applications made under requirements**

1.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by an article or requirement (including agreement or approval in respect of part of an article or requirement) included in this Order the relevant planning authority must give notice to the undertaker of their decision on the application within a period of eight (8) weeks beginning with—

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 2; or
- (c) such longer period as may be agreed by the undertaker and the relevant planning authority in writing.

(2) Subject to sub-paragraph (3), in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where—

- (a) an application has been made to the relevant planning authority for any consent, agreement or approval required by an article or requirement included in this Order; and
- (b) the relevant planning authority does not determine such application within the period set out in sub-paragraph (1); and
- (c) such application is accompanied by a report that considers it likely that the subject matter of such application will give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved,

then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

(4) Where an application is made to the relevant planning authority as referred to in paragraph (1) of this schedule, such application must draw the relevant planning authority's attention to the procedure set out in paragraphs (1)-(3) of this schedule.

(5) Where an application is made to the relevant planning authority for any consent, agreement or approval required by requirement 4(3), 10(1) or 16(1) (including agreement or approval in respect of part of a requirement), the applicant must at the same time as making the application send a copy of the materials provided in support of the application to Brecon Beacons National Park Authority or Natural Resources Wales (as the case may be) and must draw Brecon Beacons National Park Authority's or Natural Resources Wales' (as the case may be) attention to the procedure set out in paragraphs (1)-(3) of this schedule and state that any comments must be provided to the relevant planning authority within 21 days if they are to be considered by the relevant planning authority.

(6) Where an application is made to the relevant planning authority for any consent, agreement or approval required by requirement 4(3), 10(1) or 16(1) (including agreement or approval in respect of part of a requirement), the relevant planning authority is not required to consider comments received from Brecon Beacons National Park Authority or Natural Resources Wales (as the case may be) more than 21 days after the date of the application.

(7) Where an application is made to the relevant planning authority for any consent, agreement or approval required by an article or requirement included in this Order and the relevant planning authority intends to consult Brecon Beacons National Park Authority or Natural Resources Wales in relation to that application the undertaker must as soon reasonable practicable comply with any

direction from the relevant planning authority to provide a copy of the materials provided in support of the application to each body specified in the direction.

### **Further information**

2.—(1) In relation to any part of the application to which this Schedule applies, the relevant planning authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that it considers such further information to be necessary it must, within twenty one (21) business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the relevant planning authority does not give such notification within this twenty one (21) day period it is deemed to have sufficient information to consider the application and thereafter is not entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph 2 in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 1(1)(b), paragraph 1(3) and paragraph 2.

### **Appeals**

3.—(1) 3.—(1) The undertaker may appeal in the event that—

- (a) the relevant planning authority refuses (including a deemed refusal pursuant to paragraph 1(3)) an application for any consent, agreement or approval required by an article or requirement included in this Order or grants it subject to conditions;
- (b) on receipt of a request for further information pursuant to paragraph 2 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (c) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is to be as follows—

- (a) The undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and any requirement consultee;
- (b) The Secretary of State must appoint a person as soon as reasonably practicable after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent;
- (c) The relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within twenty (20) business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) The appeal parties must make any counter-submissions to the appointed person within twenty (20) business days of receipt of written representations pursuant to sub-paragraph (c) above; and
- (e) The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within thirty (30) business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d).

The appointment of the person pursuant to sub-paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, within five (5) business days of his appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the undertaker to the appointed person, the relevant planning authority and any requirement consultee on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten (10) business days of the specified date but must otherwise be in accordance with the process and time limits set out in sub-paragraph (2)(c)-(e).

(5) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal, or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to him that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Schedule 1 of this Order as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person’s determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to Welsh Government Circular NAFWC 07/2003 Planning (and analogous) Appeals and Call-in Procedures or any circular or guidance which may from time to time replace it.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises Hirwaun Power Limited (referred to in this Order as the undertaker) to construct, operate and maintain a gas fired electricity generating station. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose. The Order also makes provision in connection with the maintenance of the new section of highway.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 36 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Rhondda Cynon Taf County Borough Council at Headquarters, The Pavilions, Cambrian Park, Clydach Vale, Tonypany CF40 2XX.