



Department  
of Energy &  
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## **PLANNING ACT 2008**

### **APPLICATION FOR THE HIRWAUN GENERATING STATION ORDER 2015<sup>1</sup>**

#### **1. Introduction**

1.1 I am directed by the Secretary of State for Energy and Climate Change ("the Secretary of State") to advise you that consideration has been given to:

- a) the report dated 23 April 2015 of the Examining Authority ("the ExA"), Mr Martin Broderick, who conducted an examination ("the Examination") into the application ("the Application") dated 21 March 2014 by Hirwaun Power Limited ("the Applicant") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act"); and

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<sup>1</sup> For the avoidance of doubt, the "Hirwaun Generating Station Order 2015" is the name used in the Order as made (rather than the name used in the Application - the "Hirwaun Power (Gas Fired Power Station) Order").



- b) representations received by the Secretary of State after the close of the Examination.
- 1.2 The Examination of the Application began on 24 July 2014 and was completed on 23 January 2015. The Examination was conducted on the basis of written evidence submitted to the ExA and was discussed at an open floor hearing held on 22 September 2014, two issue specific hearings held on 23 and 24 September 2014 and a compulsory acquisition hearing on 24 September 2014.
- 1.3 The Order, as applied for, would grant development consent for the construction and operation of a natural gas fired Simple Cycle Gas Turbine (SCGT) power plant with a generating capacity of no more than 299 MWe at Hirwaun Industrial Estate, Rhondda Cynon Taf, Wales ("the Development"). The Development would operate as a 'peaking' plant to generate electricity when there is a surge in demand or where there is a sudden drop in the power being generated from plants that are in constant operation.
- 1.4 Other major works for which permission was sought by the Applicant as part of the Application were (set out in the ExA's Report at paragraphs 2.16 – 2.21, p 10 - 11):
- a new 400kV underground electrical cable connection of approximately 686 metres in length (the "electrical connection") to export electricity from the Power Generation Plant into the National Electricity Transmission System at Rhigos Substation; and
  - a new underground gas pipeline connection of approximately 900 metres in length (the "gas connection") and a related above ground installation (AGI) for the gas pipeline at the point of connection to the National Gas Transmission System, as well as a new permanent access to the AGI.
- 1.5 However, the Secretary of State has removed the elements set out in paragraph 1.4 above, and related works, from the Order being made for the reasons set out in paragraphs 3.18 – 3.23 below.
- 1.6 Published alongside this letter is a copy of the ExA's Report at Annex A, the Order at Annex B and a note on the circumstances in which the Secretary of State can be challenged in Annex C. References in this letter to "the Report" are





to the ExA's Report at Annex A as amended by the Errata Sheet. The ExA's findings and conclusions are set out in sections 4 and 5 of the Report and the ExA's recommendation is at section 8.

## **2. Summary of the ExA's Report and Recommendations**

2.1 The Report included findings and conclusions on the following principal issues:

- a. Landscape and Visual Impact Assessment;
- b. Cultural Heritage;
- c. Ecological;
- d. Traffic and Transport;
- e. Noise and Vibration; and
- f. Socio Economic.

2.2 The ExA recommended that the Order be made in the form set out in Appendix D of the Report [ER 8.9, p 155].

## **3. Secretary of State's Decision on the Application**

3.1 The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting development consent for the proposals in the Application. The Order also grants compulsory acquisition powers in respect of the plots of land requested in the Application. This letter is a statement of reasons for the Secretary of State's decisions for the purposes of section 116 of the 2008 Act and the notice and statement required by regulation 23(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("the 2009 Regulations").

### Secretary of State's Consideration

3.2 The Secretary of State has considered the Report and all other material considerations, including representations received after the close of Examination. The Secretary of State's consideration of the Report is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the Report.

3.3 The Secretary of State has had regard to the Local Impact Reports ("LIR") submitted by Rhondda Cynon Taf County Borough Council ("RCT") and the Brecon Beacons National Park Authority ("BBNPA"), the relevant local plans,





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environmental information as defined in Regulation 2(1) of the 2009 Regulations and to all other matters which she considers to be important and relevant to her decision as required by section 104 of the 2008 Act. In making her decision, the Secretary of State has complied with all applicable legal duties on her and has not taken account of any matters which are not relevant to her decision.

- 3.4 Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendation of the ExA as set out in the Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of their conclusions and recommendation.

Need for the Proposed Development

- 3.5 After considering the ExA's overall conclusion [ER 4.307, p 84] that the benefits of the proposal would outweigh its impacts, and in particular his conclusions and recommendations in section 8 of the Report, the Secretary of State is satisfied that in the absence of any adverse effects which are unacceptable in planning terms, making the Order would be consistent with energy National Policy Statements (NPS) EN-1 (Overarching NPS for Energy) and EN-2 (NPS for Fossil Fuel Electricity Generating Infrastructure) which set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant.
- 3.6 To assess potential adverse impacts, the Secretary of State has also taken into account the United Kingdom's international obligations as set out in the Conservation of Habitats and Species Regulations 2010 (as amended) ("the Habitats Regulations") which transpose Council Directive 92/43/EC on the Conservation of Habitats and Species and of Wild Flora and Fauna ("the Habitats Directive") and parts of Council Directive 2009/147/EC on the Conservation of Wild Birds ("the Birds Directive") into UK law. The Habitats Directive provides for the designation of sites for the protection of habitats and species of European importance called Special Areas of Conservation ("SACs") and the Birds Directive for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species, called Special Protection Areas ("SPAs") – collectively known as "European sites".
- 3.7 The Secretary of State has also considered the impacts of the Development in relation to The Climate Change Strategy for Wales (October 2010), Wales' Energy Policy Statement 'A Low Carbon Revolution' (March 2010), The Wales Spatial Plan (2008), Planning Policy Wales (Seventh edition, July 2014) and Technical Advice Notes: 12 – Design (2009); 22 – Sustainable buildings (2010);





5 – Nature Conservation and Planning (2009); 11 – Noise (1997); 15 – Development and flood risk (2004); 18 – Transport (2007); and 23 – Economic Development (2014). The Secretary of State is satisfied that, taking all the above matters into account, the need for this Development has been established.

### Biodiversity and Habitats

3.8 The ExA considered each of the following ecological issues in Section 4 and 5 of the Report:

#### **(i) Implications for European Sites**

The ExA considered the potential impact of the project on three European sites:

- Blaen Cynon SAC;
- Coedydd Nedd a Mellte SAC; and
- Cwm Cadlan SAC.

The Secretary of State notes that although the ExA concluded that the Development alone is not likely to give rise to any significant effects alone or in combination with other developments on Coedydd Nedd a Mellte SAC and Cwm Cadlan SAC, the ExA was of the view that the evidence presented did not allow the conclusion that there would be no likely significant effects in respect of the Blaen Cynon SAC as a result of combined aerial emissions from the Development and other developments in the vicinity [ER 5.54 – 5.55, p 97].

To assess the effects of the Development in combination with other developments on Blaen Cynon SAC, the Secretary of State has considered the Habitats Regulation Assessment (HRA) prepared by the Applicant following a request from the ExA to the Applicant during the Issue Specific Hearing on Environmental Impact Assessment/HRA. The Secretary of State has concluded that there are no likely significant effects either alone or in combination with other plans and projects in relation to the Blaen Cynon SAC, which accords with the view of Natural Resources Wales (NRW), and therefore has concluded that an Appropriate Assessment is not required.

The Secretary of State also notes that the air quality assessment undertaken by the Applicant indicated that the impact of the project on the lowland raised





bog feature of Cors Bryn Y Gaer Site of Special Scientific Interest (SSSI) (part of the Blaen Cynon SAC) would be insignificant, and NRW advised that no mitigation was required as part of the Order.

**(ii) Monitoring of bats**

Bat species and their roosts are strictly protected under the EU Habitats Directive and the Wildlife and Countryside Act 1981. The Secretary of State notes the representations made by RCT during the Examination, and the comments made by NRW in their Statement of Common Ground, regarding the impact of the construction and operation of the Development on local bat populations [ER 4.165 – 4.166, p 59 – 60]. The ExA concluded that bat mitigation measures are secured via Requirement 10 and the Construction Environmental Management Plan (Requirement 12). In addition to these Requirements, the Applicant will be required to obtain a European Protected Species (EPS) derogation licence from NRW under the Conservation of Habitats and Species Regulations 2010 (as amended), which will secure the exact detail of bat mitigation. The Secretary of State notes that while the Applicant has only submitted a draft application for the EPS derogation licence, NRW has confirmed agreement in principle to a draft EPS derogation licence with the Applicant. The Secretary of State notes that while failure to obtain such a licence would effectively curtail the construction of the Development, she has not, however, been made aware of any absolute impediments to the grant of an EPS derogation licence.

3.9 The ExA concluded that concerns regarding biodiversity have been dealt with adequately by the Applicant and that the requirements of NPS EN-1 in this respect have been met [ER 4.170 – 4.171, p 60]. The Secretary of State agrees with the ExA's assessment and conclusion.

Transboundary Considerations

3.10 The Secretary of State notes that the ExA undertook, on behalf of the Secretary of State for Communities and Local Government, a screening exercise for transboundary impacts under regulation 24 of the 2009 Regulations. The ExA applied the precautionary approach set out in the Planning Inspectorate's "Advice Note 12: Transboundary Impacts Consultation" and took account of information provided by the Applicant before concluding that all transboundary biodiversity matters have been addressed. The Secretary of State agrees with this conclusion.





### Water Framework Directive

3.11 The Water Framework Directive (WFD) provides for the management of all inland surface waters, groundwater and coastal waters in order to prevent and reduce pollution, promote sustainable water use, protect the aquatic environment, improve the status of aquatic ecosystems and mitigate the effects of floods and droughts. The WFD also sets the objectives for all water bodies classified under it and creates a mechanism through which each signatory has to aim to bring its water bodies to acceptable standards. Signatories to the WFD are required to report to the European Commission on progress on a 6-yearly basis through River Basin Management Plans ("RBMPs"). The ExA concluded that the mitigation measures detailed in the draft Order should ensure that any potential impact during design, construction and operation of the Development are minimised [ER 4.305, p 83]. The Secretary of State agrees with the ExA's conclusion.

### Major Development in a National Park

3.12 The Secretary of State notes that although the Development is located wholly within the administrative boundary of RCT, the boundary of the Brecon Beacons National Park (BBNP), which is also a designated International Dark Sky Reserve, lies approximately 250m north of the Development at its closest point. Paragraph 5.9.12 of NPS EN-1 recognises the special status of National Parks in the following terms:

*"The duty to have regard to the purposes of nationally designated areas also applies when considering applications for projects outside the boundaries of these areas which may have impacts within them. The aim should be to avoid compromising the purposes of designation and such projects should be designed sensitively given the various siting, operational, and other relevant constraints".*

3.13 The ExA has therefore had due regard to the impacts of the proposal on the BBNP irrespective of the fact that the Development is not included within the National Park itself. The impacts considered included the visual impact on the BBNP and the impact of artificial lighting on the International Dark Sky Reserve. The BBNP noted that the visual impact of the Development is "negative but of minor magnitude". The ExA concluded that while there are impacts of the Development on the National Park in terms of ecology, landscape and visual impact, the measures proposed and incorporated in the draft Order are sufficient to mitigate those impacts [ER4.307, p 84]. The Secretary of State agrees with the ExA's conclusion.





### Carbon Capture Readiness (CCR)

- 3.14 As set out in NPS EN-1 and EN-2, all commercial scale fossil fuel generating stations with a generating capacity of 300MW or more have to be 'Carbon Capture Ready'. Applicants are required to demonstrate that their proposed development complies with guidance issued by the Secretary of State in November 2009<sup>2</sup> or any successor to it.
- 3.15 As the CCR requirements apply to power stations with a generating capacity of 300MW or more, the Secretary of State has concluded that the CCR requirements do not apply to this Development as it will operate at a gross rated electrical output of no more than 299MW. The Secretary of State is satisfied with the ExA's assessment of this particular issue, and is satisfied that the conclusions reached are in accordance with the requirements set out in the guidance.

### Combined Heat and Power (CHP)

- 3.16 NPS EN-1 requires that applications for thermal generation stations under the Planning Act 2008 should either include CHP, or evidence that opportunities for CHP have been explored where the proposal is for a generating station without CHP. The Applicant's Environmental Statement concluded that the application of CHP to the Development is neither economical or feasible given the intermittent and peaking modes of operation of the Development, and because no suitable heat users of applicable scale for the unpredictable heat that would be available from the operation of the Development have been identified. Furthermore, the Applicant has not identified any potential future requirements in the area for intermittent heat demands that the Development could potentially supply.
- 3.17 The Secretary of State has considered the information provided by the Applicant, and agrees with the ExA's conclusion that CHP issues have been addressed adequately and that the Applicant does not need to undertake further investigation of CHP for the Development.

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<sup>2</sup> Carbon Capture Readiness A guidance note for Section 36 Applications URN09D/810  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/43609/Carbon\\_capture\\_readiness\\_-\\_guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43609/Carbon_capture_readiness_-_guidance.pdf)





### Gas and Electrical Connections

- 3.18 The Secretary of State considers that, given the limited definition of “associated development” that can be consented under the 2008 Act in Wales (only surface works, boreholes or pipes associated with underground gas storage facilities), in order for her to have the power to grant development consent for (a) the gas connection (and related AGI); and/or (b) and the electrical connection they must be part of the generating station. The Secretary of State has considered the Applicant’s arguments as to why they consider the gas connection (and related AGI) and the electrical connection to be part of the generating station and should therefore be included in the Order. The Secretary of State has also noted that the ExA agreed with the Applicant on the basis that the generating station would not be able to generate or export electricity without the connections [ER 4.4.115, p 52 and 4.131, p 54].
- 3.19 Although the Secretary of State accepts that the gas connection (and related AGI) and the electrical connection are necessary for the Development, the Secretary of State does not agree that they are part of the generating station.
- 3.20 In forming this view, the Secretary of State has taken into account, among other things:
- the definition of “generating station”;
  - the Applicant’s response to the consultation letter issued by DECC on 8 June 2015 (“DECC Consultation”) (including the legal opinions and letter from RCT provided by the Applicant as part of its response);
  - the Welsh Government’s response to the DECC Consultation;
  - relevant case law (in particular, *R (on the application of Redcar and Cleveland Borough Council) v Secretary of State for Business, Enterprise and Regulatory Reform* [2008] EWHC 1847 (Admin)); and
  - relevant previous development consent decisions in Wales (while noting that whether development forms part of a generating station must be determined on a case by case basis).
- 3.21 The Secretary of State has noted the Welsh Government’s response to the DECC Consultation which confirms that they see no reason to disagree with the Secretary of State’s reasoning in relation to the exclusion of the gas and electrical connections in this particular case.
- 3.22 The Secretary of State has also considered the letter dated 24 June 2015 from RCT to the Applicant which the Applicant included in their response to the DECC Consultation. In this letter, RCT confirmed that it considers both the gas





and electrical connections to be part of the generating station. However, RCT also confirmed that should the electrical connection be excluded from the Order, it considers that, subject to holding the necessary generation licence, the electrical connection works would fall within the Applicant's permitted development rights. Similarly, RCT also confirmed that should the gas connection be excluded from the Order, it would require an express planning permission but that RCT sees no reason, without prejudice to any forthcoming decision by its officers on the matter, why an application for planning permission for the gas connection would not be approved given that the planning merits and environmental effects of the Development were considered, addressed and mitigated to RCT's satisfaction during the Examination of the Application.

- 3.23 Having carefully considered the responses to the DECC Consultation, and having taken into account the other reasons set out in paragraph 3.20 above, the Secretary of State has decided that the gas connection (and related AGI) and the electrical connection are not part of the generating station and are not of the limited type of associated development that can be consented under the 2008 Act in Wales and thus fall outside of the 2008 Act regime. The Secretary of State therefore considers that it is not appropriate to include the gas connection (and related AGI) and the electrical connection (and related works) in the Order.

#### Compulsory Acquisition

- 3.24 The Secretary of State has considered the compulsory acquisition ("CA") powers sought to acquire freehold rights, acquire new rights over land and to extinguish and/or override existing rights. The rights sought are required for the Development or are required to facilitate or are incidental to the Development. They include rights for the purpose of constructing the Development and maintenance thereafter, to protect the works, and to ensure access can be taken for construction, operation and maintenance.
- 3.25 The ExA set out his considerations of matters relating to CA in section 6 of the Report. The ExA noted that he was satisfied that all of the land is required for the Development to which the development consent relates or is required to facilitate the Development and that all reasonable alternatives to CA have been explored. The ExA was satisfied that the financial provisions to provide compensation for CA are adequate to meet the expected liabilities. The ExA concluded that the land to be taken is no more than is reasonably required and is proportionate and that, having regard to all the particular circumstances of





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this case, there is a compelling case in the public interest for the grant of the CA powers sought.

- 3.26 While the Secretary of State has decided that the gas connection (and related AGI) and electrical connection should not be included in the Order (see paragraph 3.23 above), the Secretary of State considers that the CA powers in relation to these elements may be included in the Order as on the basis that the requirements for the inclusion of CA powers in relation to these elements are met, in particular the requirement in the 2008 Act that the land is required to "facilitate" or is "incidental to" the Development. The Secretary of State has, however, made amendments to the Order to ensure that the CA powers in relation to the plots for the gas connection (and related AGI) and electrical connection are subject to receipt of the appropriate consent (see paragraph 7.1 below).
- 3.27 The Secretary of State notes that during the course of the Examination the majority of representations relating to CA had been withdrawn and that the Applicant reached agreement with certain parties affected by the CA of the gas connection (and related AGI) and electrical connection as detailed below on the CA of land and rights in question.
- 3.28 Relevant representations in relation to CA of land required were made by National Grid, Western Power Distribution, Dwr Cymru Cyfyngedig (Welsh Water) and The Coal Authority, and the Secretary of State notes that the Applicant has reached agreement with each of these parties on such CA. Towards the end of the examination period, the Applicant and landowners of A Morgans Farm submitted a joint statement confirming that the parties had agreed on the form of a legal agreement in relation to such CA, and that a conclusion was imminent.
- 3.29 Relevant representations in relation to CA of land required were also made by Ashtenne Industrial Fund (AIF) and Tower Regeneration Limited (TRL) and the Applicant went on to enter into negotiations with these parties on CA. In relation to both AIF and TRL, the ExA considered that the tests set out in guidance in relation to legitimacy, proportionality, reasonableness and necessity are met. In relation to AIF, the ExA (taking into account correspondence between AIF and the Applicant and the protective provisions included by the Applicant in the draft Order) recommended that the Secretary of State authorises CA of AIF interests. In relation to TRL, the ExA (taking into account correspondence between TRL and the Applicant, responses to ExA written questions and the





exchanges at the CA hearing and the fact that an agreement has been reached in principle) recommended that the Secretary of State authorises CA of TRL interests. The Secretary of State agrees with the ExA's analysis and conclusion in relation to AIF and TRL's interests.

- 3.30 The ExA Report noted that South Wales Electricity Limited ("SWEL"), Wales and West Utilities Limited ("WWU") and British Telecommunications plc ("BT") had not had any engagement with the Applicant on CA of land required and the protective provisions were not in an agreed version by the end of the Examination. The Secretary of State asked for an update on the status of engagement with SWEL, WWU and BT in the DECC Consultation. The Applicant's response confirmed that they had still received no response from SWEL and BT. The Applicant's response confirmed that although WWU had directed the Applicant to the minimum clearance distance in their safety digging practices (which would require inclusion in the protective provisions), WWU did not expressly comment on the protective provisions drafted by the Applicant. Although SWEL, WWU and BT have not commented on the protective provisions included in relation to them in the Order, the Secretary of State is satisfied that there is a compelling case in the public interest for the inclusion of CA powers in relation to SWEL, WWU and BT's land and that the protective provisions included protect the interests of SWEL, WWU and BT. The Secretary of State has included WWU's minimum clearance distance in its protective provisions in the Order as made.
- 3.31 The Secretary of State agrees with the ExA's conclusions that there is a compelling case in the public interest for the grant of CA, and that the process of examining the application (including the opportunities to submit representations, a series of written questions and the opportunities to be heard at hearings) 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 [ER 6.118, p 128].
- 3.32 In conclusion, the Secretary of State is satisfied with the ExA's analysis and agrees with his conclusion that the request for CA powers in relation to the generating station, the gas connection (and related AGI) and electrical connection meets the tests set out in statute and in guidance [ER 8.8, p 155].





## **Other Matters**

### View of the Local Authority

- 3.33 The Secretary of State notes that the issues raised by RCT [ER 4.9, p.32] in their Local Impact Report (LIR) have been addressed via agreed requirements in the Order, the Statement of Common Ground (SoCG) agreed between the RCT and the Applicant [ER 4.10, p. 32] and an agreement pursuant to section 106 of the Town and Country Planning Act 1990.
- 3.34 The Secretary of State also notes that the issues raised by BBNPA [ER 4.12, p. 32], which is a Relevant Authority as the boundary of the National Park adjoins the administrative boundary of RCT, have also been addressed via agreed requirements in the Order and agreed SoCG [ER 4.13, p. 32 – 33].

### Environmental Permit

- 3.35 The Secretary of State notes that in addition to the Order, the Development will require an Environmental Permit from NRW to control emissions to air and water from the operational Development. The Secretary of State also notes that while an application for this permit has yet to be submitted by the Applicant to NRW, during the Examination NRW confirmed that, although it was not able to provide any binding commitments, based on the information provided by the Applicant at that stage NRW saw no reason why the consent should not be granted [ER 4.103, p. 50]. The Secretary of State considers there are no reasons to believe that such permissions will not be granted in due course.

### Ordinary Watercourse Consent (OWC)

- 3.36 The Secretary of State noted that during the Examination period, the Applicant and RCT were unable to confirm whether an OWC in relation to Work No. 2G would be required due to survey limitations [ER 4.302, p. 83]. In response to the DECC Consultation which sought an update on this matter, the Applicant confirmed that as construction of the Development will not involve building over the culverted River Camnant or otherwise directly impact it, an OWC is no longer required. The Applicant also submitted as part of its response a letter to the Applicant from the RCT dated 24 June 2015 confirming that this was also RCT's view.





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Crown Consent

3.37 Section 135(2) of the 2008 Act requires consent from a relevant Crown Authority for any provision excluding land owned by the Crown to be included with an Order. The Secretary of State notes that the Welsh Government (as the appropriate “Crown Authority” under section 227(5)(a) of the 2008 Act) have consented by way of an email to the Applicant dated 20 April 2015 to the inclusion of provisions in the Order to take account of the requirements of section 135(2) of the 2008 Act)).

Safety

3.38 The Secretary of State has considered the summary provided by the ExA on the safety concerns raised in respect of the storage of hazardous substances on the Development site and safety concerns regarding the operation of the gas pipeline, and the Applicant's response to these concerns (ER 4.247 – 4.250, p. 73 - 73). The Secretary of State agrees with the Examining Authority's findings that safety issues have been addressed appropriately and meets the requirements specified in EN-1 (ER 4.252 p. 74).

**4. General Considerations**

Equality Act 2010

4.1 The Equality Act 2010 includes a public sector “general equality duty” which requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following “protected characteristics”: age, gender; gender reassignment; disability; marriage and civil partnerships; pregnancy and maternity; religion and belief; and race. The Secretary of State is satisfied that there is no evidence of any harm, lack of respect for equalities, or disregard to equality issues in relation to this Application.





#### Human Rights Act 1998

4.2 The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the Development and compulsory purchase powers. The Secretary of State notes that the ExA concludes that the proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to proportionate extent. The Secretary of State agrees with the ExA's rationale for reaching its conclusion, as set out in ER 6.115 - 6.118, p.128 provides a justifiable basis for taking the view that the grant of development consent would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

#### Section 40(1) of the Natural Environment and Rural Communities Act 2006

4.3 The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent. The Secretary of State is of the view that the Report considers biodiversity sufficiently to accord with this duty.

### **5. The Secretary of State's Consideration of Representations Received After the Close of the Examination**

5.1 In addition to the responses from the Applicant and the Welsh Government to the DECC Consultation, the Secretary of State also received correspondence submitted to the Planning Inspectorate by the Applicant and NRW following the close of the Examination regards status of the agreement pursuant to section 106 of the Town and Country Planning Act 1990. The Secretary of State considers that nothing in this post-Examination correspondence constitutes new evidence or raises a new issue which needs to be referred to parties before proceeding to a decision; nor do they lead the Secretary of State to differ from the ExA's conclusions on this Application.

### **6. Secretary of State's Conclusion and Decision**

6.1 For the reasons given in this letter, the Secretary of State agrees with the ExA that there is a compelling case for granting consent for the Development given





the national need for the proposed Development and the local economic benefits it would bring, and that this case is not outweighed by the potential adverse local impacts of the Development as mitigated by the proposed terms of the Order.

- 6.2 The Secretary of State has therefore decided to accept the ExA's recommendation at ER 7.16 to make the Order granting development consent on the basis of the draft Order recommended to her by the ExA (in Appendix 4 to the Report), but subject to the modifications outlined in paragraphs 7.1 to 7.2 below. She confirms that, in reaching this decision, she has had regard to the local impact report submitted by RCT and BBNPA and to all other matters which she considers important and relevant to her decision as required by section 104 of the 2008 Act. The Secretary of State confirms for the purposes of regulation 3(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 that she has taken into consideration the environmental information as defined in regulation 2(1) of those Regulations. In accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, she has also had regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992 when considering this Application.

## **7. Modifications to the Order**

- 7.1 For the reasons set out above, (see paragraphs [3.18 – 3.23]) the Secretary of State has decided to make modifications to the Order recommended to her by the ExA which include the following key modifications:
- removal of the gas connection (and related AGI) and electrical connection from Schedule 1 (Authorised Development);
  - Amendment of Part 3 (Streets) to remove Articles (and related Schedules) included in the draft Order regarding:
    - street works; and
    - temporary prohibition or restriction of the use of streets,in relation to the gas connection (and related AGI) and electrical connection.
  - Addition of Article 30 (Plots 1\_ER – 6\_ER and plots 1\_GR – 11a\_GR) to specify that the CA powers in relation to the plots for the gas connection (and related AGI) and electrical connection are subject to receipt of the appropriate consent.
  - Amendment of Schedule 2 (Requirements) to remove references relating to the gas connection (and related AGI) and electrical connection works.





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- Amendment of Schedule 3 (Streets subject to permanent alteration of layout) to remove references to alterations relating to the gas connection (and related AGI) and electrical connection works.
- Amendment of Schedule 4 (Access) to remove references to access relating to the gas connection (and related AGI) and electrical connection works.
- Amendment of Schedule 6 (Land of which temporary possession may be taken) to remove temporary possession of plots of land for the purpose of constructing the gas connection (and related AGI) and electrical connection.

Other amendments to ensure certainty of consent granted

7.2 The Order has been amended to ensure that it complies with current drafting practice, ensures certainty of consent granted and that it has its intended effect. In addition to the amendments made to the Order set out in paragraph [7.1] above, other amendments made to the Order include the following:

- Amendment of the definition of “maintain” in Article 2. This is consistent with previous Orders.
- Amendment of the grounds when the Secretary of State’s consent to transfer or lease the benefit of the Order is not required in Article 7. This has been amended so that the Secretary of State’s consent is needed unless the transferee or lessee is a licence holder under section 6 of the Electricity Act 1989 or section 7 of the Gas Act 1986. This is consistent with previous Orders.
- Amendment of the wording in relation to the capacity of the power station in Schedule 1 (Authorised Development) to remove the reference to a minimum capacity and simply refer to a maximum capacity of 299MWe. This is consistent with previous Orders.
- Amendment of Schedule 7 (Protective Provisions) Part 3 (For the protection of electricity, gas, water and sewerage undertakers) to refer to a 600mm minimum clearance distance (as required by WWU).
- Other minor drafting changes where necessary to ensure that the Order complies with current drafting practice, ensures certainty of consent granted and that the Order has its intended effect.

**8. Challenge to decision**

8.1 The circumstances in which the Secretary of State’s decision may be challenged are set out in the note attached at Annex C to this letter.





Department  
of Energy &  
Climate Change

### **9. Publicity for decision**

9.1 The Secretary of State's decision on this Application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment ) Regulations 2009.

Yours sincerely

Giles Scott,  
Head, National Infrastructure Consents and Coal Liabilities





## Annex C

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the former Infrastructure Planning Commission or the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks from the date when the Order is published. The Hirwaun Power Project Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<http://infrastructure.planningportal.gov.uk/projects/wales/hirwaun-power-station/>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge, you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London. WC2A 2LL (0207 947 6655).**



