

## **Adroddiad**

**gan Joanne Burston BSc (Hons), MA,  
MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 14.11.2019**

## **Report**

**by Joanne Burston BSc (Hons), MA,  
MRTPI**

**an Inspector appointed by the Welsh Ministers**

**Date: 14.11.2019**

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### **TOWN AND COUNTRY PLANNING ACT 1990**

#### **SECTION 62D**

#### **The Developments of National Significance (Wales) Regulations 2016**

#### **Application by Peak Gen Power 5 Limited**

#### **Land to the rear of unit 6a Coed Darcy Business Park, Llandarcy, Neath**

**Abbreviations used in this report:**

AA	Appropriate Assessment
AQS	Air Quality Strategy
BAT	Best Available Techniques
BPM	Best Practical Means
DAM	Development Advice Map
DNS	Development of National Significance
EIA	Environmental Impact Assessment
EPUK	Environmental Protection UK
ES	Environmental Statement
GGAT	Glamorgan-Gwent Archaeological Trust Limited
HRA	Habitats Regulations Assessment
IAQM	Institute of Air Quality Management
LDP	Local Development Plan
LPA	Local Planning Authority
LVAS	Landscape and Visual Amenity Statement
NNR	National Nature Reserve
NO <sub>x</sub>	Nitrogen Oxide
NRW	Natural Resources Wales
NPTCBC	Neath Port Talbot County Borough Council
PC	Process Contribution
PEC	Predicted Environmental Concentration
PPW	Planning Policy Wales (edition 10)
RAMSAR	The Convention on Wetlands, known as the RAMSAR Convention
SAB	SuDS Approval Body
SAC	Special Area of Conservation
SAM	Scheduled Ancient Monument
SCR	Selective Catalytic Reduction
SLA	Special Landscape Area

SMD	St Modwen Development Ltd.
SPA	Special Protection Area
SPG	Supplementary Planning Guidance
SSSI	Site of Special Scientific Interest
STOR	Short Term Operating Reserve
SuDS	Sustainable urban Drainage Scheme
S106	Section 106 agreement
TAN	Technical Advice Note
'The 1990 Act'	The Town and Country Planning Act 1990 (as amended)
'The 2015 Act'	The Planning (Wales) Act 2015
'The DNS Regulations'	The Developments of National Significance (Wales) Regulations 2016
'The EIA Regulations'	The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016
'The Habitats Regulations'	The Conservation of Habitats and Species Regulations 2010
'The Procedure Order'	The Developments of National Significance (Procedure) (Wales) Order 2016
'The Secondary Consents Regulations'	The Developments of National Significance (Specified Criteria and Secondary Consents (Wales) Regulations 2016
WFGA	Well-being of Future Generations Act (Wales) 2015
WG	Welsh Government
WMs	Welsh Ministers

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**DNS Application Ref: DNS/3213487**

**Site address: Land to the rear of unit 6a Coed Darcy Business Park, Llandarcy, Neath**

- The application, dated 11 June 2019, was made under section 62D of the Town and Country Planning Act 1990 (as amended by the Planning (Wales) Act 2015).
- The applicant is Peak Gen Power 5 Limited.
- The application was confirmed as valid on 15 July 2019.
- A site visit was carried out on 05 September 2019.
- The development proposed is described as "Part retrospective application for an existing generation operating reserve compound to support the National Grid comprising 10 no. generating containers, together with associated switchgear, site access, boundary treatments and ancillary plant and equipment with proposed installation of additional ancillary plant and equipment including the installation of Selective Catalytic Reduction units."

**Secondary Consent Applications:**

- No secondary consent applications are being made.

**Summary of Recommendation: That planning permission be granted subject to conditions.**

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**Procedural Matters**

1. Planning permission<sup>1</sup> was originally granted for the development by Neath Port Talbot County Borough Council (NPTCBC) on 21 January 2013. The planning permission was implemented, and the facility became operational. However, the development was completed without certain pre-commencement conditions being met. Development carried out without having complied with a pre-commencement condition would be unlawful and may be the subject of enforcement action. To remedy this situation the applicant is applying for retrospective planning permission under section 73A of the TCPA 1990.
2. Furthermore, this application seeks permission for additional ancillary equipment to be installed at the site in line with the new Environmental Permitting (England and Wales) (Amendment) Regulations 2018.
3. In accordance with Article 5 of The Developments of National Significance (Procedure) (Wales) Order 2016 (The Procedure Order), the Applicant notified the Planning Inspectorate Wales (PINS Wales) on behalf of the Welsh Ministers of the proposed development on 8 June 2018. The notification was accompanied by a request for a Screening Direction as to whether the project is EIA development within the meaning of Schedule 2 to the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 1999 (as amended) - (the Regulations). A screening direction was given by PINS Wales under the authority of the Cabinet Secretary for Energy, Planning and Rural Affairs. The direction given was that the proposal is not EIA development as the development is unlikely to result in any environmental effects

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<sup>1</sup> application reference no: P2012/1061

significant enough to warrant EIA. On the evidence before me I have no reason to take a different view.

4. On 26 March 2019, PINS Wales wrote to the Applicant with a Notice of Acceptance of a proposed application for a Development of National Significance (DNS) under Article 6 of 'The Procedure Order'. The submitted application was subject to appropriate pre-application consultation and publicity ending on 6 May 2019, and was accompanied by a Pre-Application Consultation Report, dated June 2019.
5. On confirmation of the validity of the application on 15 July 2019, PINS Wales undertook the specified consultation and publicity measures as required by The Procedure Order. Seven representations were received by the 19 August 2019 deadline. NPTCBC submitted its Local Impact Report (LIR) on 8 August 2019.

### **The Site and Surroundings**

6. The site comprises approximately 0.1 ha of land, which formed part of a former oil refinery site. The wider area is now being redeveloped as part of the Coed Darcy Regeneration Project, including: new homes; schools; community facilities; and employment space.
7. The site itself, excluding the access points, is roughly rectangular in shape and enclosed by a 3-metre-high wooden acoustic fence and is accessed via a track off the Darcy Business Park spine road. To the east is the M4 Motorway, to the north a double track railway line and to the west and south the existing business park. The general area in the vicinity of the site has been developed for commercial uses and is heavily influenced by the presence of large business units and associated infrastructure.
8. There are no designated ecological assets within the site. However, Crymlyn Bog Special Area of Conservation (SAC), Site of Special Scientific Interest (SSSI) and Ramsar Site lies to the west and south, although it is more than 1.1km from the site. There are also several areas of Ancient Woodland within the surrounding area including Ancient Semi Natural Woodland ranging in distance from circa 235 - 845m from the site.
9. The closest Scheduled Ancient Monument (SAM), Llandarcy Round Cairn, is more than 750m away from the site and there are intervening roads, residential development and commercial buildings. The nearest listed buildings are separated from the site by the M4 motorway and include a Grade II listed 'Bridge Over Tennant Canal E of Cwrt y Bettws Farm' and a 'Boiler stack of former Cardonnel Tinplate Works'. Both listed structures are more than 950m away from the site.

### **The Proposal**

10. The applicant is seeking part-retrospective planning permission for a circa 20MW electricity generation operating reserve facility to support the National Grid along with the proposed installation of additional ancillary plant and equipment. The location of the plant has been chosen as it is in close proximity to the existing Western Power Distribution electrical sub-station and distribution network.

11. The compound measures approximately 69 x 18 metres enclosed by a 2-metre-high palisade fence and 3.5-metre-high wooden acoustic fence. The existing equipment comprises ten 2MW generators which are housed in insulated container units, together with five fuel storage containers, two switchgear containers, five transformers and other ancillary equipment.
12. The existing equipment has the following dimensions:
  - i. Generator containers: 12.2m x 2.4m x 2.9m high;
  - ii. HV Switchgear container: 12.2m x 3.2m x 3.4m high;
  - iii. LV Switchgear container: 6.1m x 3.2m x 3.4m high;
  - iv. Fuel Storage: 6.1m x 2.5m x 2.6m high;
  - v. 11/33kV Transformer: 4.9m x 4.2m x 4.6m high; and
  - vi. 33kV switchgear housing: 4.0m x 4.0m x 3.4m high.
13. Planning permission is also sought for additional plant and ancillary equipment that is required to be installed on site under the new Environmental Permitting (England and Wales) (Amendment) Regulations 2018 and which will meet improved emission standards.
14. The additional equipment includes:
  - i. Selective Catalytic Reduction (SCR) units x 10, which would increase the highest point of the generator containers to 4.94 metres and includes a safety handrail; and
  - ii. AdBlue tank: 3.1m x 1.8m x 3.0m high

## **Assessment (The Applicant's Case)**

### *Introduction*

15. The application seeks permission for additional ancillary equipment to be installed in line with the new Environmental Permitting (England and Wales) (Amendment) Regulations 2018. Planning permission was originally granted for the development by NPTCBC on 21 January 2013 (application reference no: P2012/1061). The planning permission was implemented, and the facility was commissioned in 2015.
16. The development provides a facility to deliver grid 'balancing services' in a suitable location within proximity, and directly connected, to the local grid. Balancing Services Plants are facilities which are able to become fully operational in a very short period of time to provide extra power to the National Grid to help manage periods when demand is greater than that forecast by National Grid or due to unforeseen generation unavailability, i.e. during peak surges, temporary generation drops at other power stations or drops in wind/solar generation etc. Balancing Services Plants are intended to go from non-operational to fully operational rapidly to prevent blackouts and to operate until the main power station can increase their power generation or other larger power stations can be brought online. The position of the plant has been chosen as it is in close proximity to the existing Western Power Distribution electrical sub-station and distribution network.



17. The number of generators dictates the space requirements of the site; in this instance ten generators are required to feedback electrical power into the National Grid system with the site area required being approximately 0.1 hectares or 0.3 acres.
18. A running profile for the facility was recorded from the 22 October 2016 - 4 September 2018. The running profile demonstrates that the facility has operated on average for 145 hours per annum. The facility is in most frequent use between the hours of 16:00 and 20:00. Given the nature of the use, there are exceptional circumstances where the facility is required to be operated outside of the typical hours of operation. The running profile indicates that this has amounted to circa 4% over the period which data has been collected for.

### *Noise*

19. A Noise Assessment (undertaken by AECOM, Document A21), dated March 2019, confirms that the proposed Best Practical Means (BPM) and Best Available Technique (BAT) mitigations will provide noise management to ensure that the Project meets the revised noise standards and receptor locations agreed with NPTCBC.
20. The application site is surrounded by a large masterplan development which will eventually result in noise sensitive receptors being constructed closer to the development than those currently present. Both the existing and future receptor locations have been considered of equal significance. The masterplan development will also result in an increase in background sound levels at the receptors due to the increase in road traffic and other activities.
21. The DNS development itself consists of ten x 2MW generating units, each with its own exhaust flue, control room, switch room, storage locker and associated switchgear to Western Power Distribution's 33 kilovolt (KV) substation. The generators themselves are the dominant sources of sound on the application site.
22. Predictions of peaking plant sound levels at the receptor locations were made using the noise source measurement results<sup>2</sup>. These predictions identified potential high impacts and that further reductions would be required. Information on additional noise reduction measures was subsequently obtained from noise control equipment suppliers and the best reduction measures were as follows:
  - Further reduction in exhaust sound power by fitting higher performance attenuator than that used for the Bracknell units. Data was obtained from suppliers for the highest performance exhaust silencer that could be fitted without an unacceptable impact on engine performance. Reduced sound power 83 dB  $L_{WA}$ .
  - Reduction of radiator and canopy fan noise by replacement with more aerodynamic fan installations. These will be non-standard units in a bespoke installation. In addition, modifications to the compound to reduce reflections of sound in the direction of the nearest receptors. A package of control measures covering these areas has been prepared by a specialist noise control company

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<sup>2</sup> Detailed sound source measurements were undertaken on one of the existing units at Llandarcy and at the PeakGen Power 5 Limited site in Bracknell. The Bracknell unit was the same model as those at Llandarcy but had already been fitted with the SCR equipment proposed for the application site.

who have predicted a total reduction in sound power level of between 12 and 20 dB  $L_{WA}$ , giving a reduced sound power for casing and fans combined of 88 dB  $L_{WA}$ .

23. It is therefore considered that the application of the additional mitigation measures listed above represents BPM and BAT for noise control of the peaking plant.
24. The conclusion of the assessments<sup>3</sup> state no effect at Fford Coed Darcy and The Holiday Inn, a small increase in levels at the homes to the west and a slightly larger increase at the homes to the north. These assessments only apply to bedrooms with open windows in facades facing the peaking plant. The levels in rooms facing in other directions and when windows are closed will be lower. It is estimated that if the homes to the north and west are constructed to provide sufficient sound insulation to protect them from the existing residual sound levels then they will also be adequately protected from the peaking plant sound.
25. It is important to consider the nature of the expected typical operation of the peaking plant. The BS 4142 and BS 8233 assessment methods make no distinction between sources that operate every day and those which only operate occasionally when demand requires. This will have an impact on how the sound effects people particularly in the context that operation is most likely to occur during periods when other activities are at their highest. It is understood that operation of the peaking plant is more likely during the winter when there is less likelihood that residents will have their windows open.
26. Although it is not possible to say that the plant will never operate during a very quiet night-time period at some point, it is clear that it is very unlikely that such an occurrence would be regular. Therefore, frequent medium effects, which might lead to community annoyance, are unlikely.
27. In light of these observations it is considered that the low/medium impact predicted by the BS 4142 and BS 8233 methods overestimate the actual impact that the operation of the mitigated peaking plant will have, and the actual impacts will be low. The development is not predicted to change the TAN 11 Noise Exposure Categorisation of the proposed residential areas to the north and west, though this is a matter for consideration by those applying for detailed planning permission for those sites. Furthermore, the facility has been operational since 2015 and has no registered noise complaints to date.

#### *Air Quality*

28. The Air Quality Impact Assessment, dated December 2018, prepared by AECOM (Document A18) includes an assessment of the development against UK air quality objectives using the latest version of the Cambridge Environmental Research Consultants Limited (CERC) ADMS point source dispersion model ADMS5 version.
29. This model was used to assess the impacts at 26 discrete receptors representative of human exposure closest to the Project Site, at European designated ecological sites within 10km of the Project Site and at Nationally/Locally designated ecological sites within 2km of the Project Site.

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<sup>3</sup> Undertaken with reference to British Standard (BS) BS 8233 and BS 4142

30. As the facility could operate at any time during the day or night short-term effects have been assessed by modelling the facility running 24 hours per day all year to produce the worst-case short-term effects. However, it should be noted that, in practice, the annual operations will not exceed 390 hours in total.
31. When modelling the effects at locations representative of human receptors the annual mean Process Contributions (PCs) are predicted to exceed the screening criteria of 1% of the relevant AQS objective. However, the resultant Predicted Environmental Concentration (PEC) are predicted to be below the AQS objective and the impact of the scheme is considered to be negligible to slight adverse in accordance with the significance criteria put forwards by the Institute of Air Quality Management (IAQM) and Environmental Protection UK (EPUK). This level of change is not considered to be significant in accordance with the IAQM/EPUK guidance.
32. Short-term PCs are predicted to exceed 10% of the AQS objective at a majority of receptors while resultant PECs exceed the AQS objective at those receptors representing the closest receptors to the Project Site, namely other commercial operations on the Llandarcy Business Park and two unoccupied/derelict residential properties on the boundary of the Llandarcy Business Park. The AQS objectives are only applicable at locations where members of the public are anticipated to be present for a period of time consistent with the period of time applicable to the AQS objective.
33. While the modelling shows exceedances of the short-term AQS objectives at these receptors this is based on the assumption that the development operates 24 hours a day all year, with emissions coinciding with the worst meteorological conditions for pollutant dispersion, and that there are receptors present at these modelled receptor locations. Given that the application site will operate for less than 500 hours per year, it is unlikely to be operating during the worst meteorological conditions, and that receptors are likely to only be present at the adjacent locations during opening hours, it is considered very unlikely that the development will lead to an exceedance of the AQS objective or lead to a significant effect on human health at any of the receptors modelled.
34. The predicted change in the annual mean pollutant concentrations is not considered to be significant in terms of European and nationally designated ecological sites with the increase in pollutant concentrations representing less than 1% of the relevant Critical Level and Critical Loads for the protection of designated sites.
35. The PC is predicted to exceed 100% of the relevant daily NO<sub>x</sub> Critical Level at the closest ancient woodlands to the Project Site, however, exceedances of the short-term (daily/24hr) critical level are much less important for vegetation than exceedances of the long-term critical level. This is because the main role of NO<sub>x</sub> is as a source of nitrogen and vegetation is only affected by long-term changes in nitrogen deposition rather than brief (24hr) fluctuations.
36. As a result, short-term higher NO<sub>x</sub> concentrations will not materially affect nitrogen deposition, which the assessment has shown will be well within the relevant Critical Load at each site, based on a maximum of 500 hours of operation per year, and thus will not affect vegetation. Therefore, it is considered that exceedance of the short-term critical level will not result in adverse effects on the structure or botanical composition of the ancient woodlands.

37. Overall the impacts of the development upon both human and ecological receptors within the study area are considered to be not significant based on annual operations of less than 500 hours per year. Furthermore, PeakGen has proposed a further limit be imposed on the site within its Environmental Permit, limiting the site to a maximum of 390 hours per year so making any effect on air quality statistically unlikely. This is also confirmed in RPS' review of Air Quality Impact Assessment Report (Document A20) which states "*with this limit on operational hours, RPS agrees that the predicted effects are considered to be not significant*".

#### *Ecology*

38. A Technical Note relating to Ecology and Biodiversity, dated 8 October 2018, (Document A15) has been prepared by AECOM to supplement this application. The results from the surveys completed demonstrate that the application site currently consists of plant equipment on hard standing/gravel and is surrounded entirely by a close wooden fence. The statement prepared by AECOM states that the application site is of no ecological value and its continued operation will have not have any significant effects on ecological designations, habitats or species.
39. Therefore, it is concluded that a Phase 1 Habitat Survey is not considered necessary. It is assessed that the proposed development is in accordance with the criterion 4 of Policy RE1 of the Local Development Plan.

#### *Landscape / visual amenity*

40. A Technical Note relating to Landscape and Visual Amenity, dated 8 October 2018, (Document A17) has been prepared by AECOM to supplement this application. It states that "*The Application Site is located on the site of a former oil refinery which has been remediated and redeveloped for industrial, manufacturing, offices, and residential development. This expansive tract of brownfield land dominates the wider landscape with large areas of vacant, remediated land, interspersed with regenerating woodland and scrub alongside the ongoing development associated with the Coed Darcy masterplan. Rural farmland surrounds the former refinery, with rolling pasture and dense woodland pockets interspersed by narrow hedgerow bordered lanes. Distant views to the Brecon Beacon foothills are apparent to the north with Crymlyn Bog to the west. The Application Site is located to the south of a railway line, east of M4 Junction 43.*"
41. Planning permission reference P2012/1061 was completed without compliance with a condition relating to the submission of a landscaping scheme. Such a scheme was considered unnecessary given the surrounding context to the site and due to the fact that there is no space within the footprint of the application site to accommodate a landscape scheme.
42. Whilst the internal arrangement of the facility precludes any form of landscape scheme, the application site is positioned to the back of the existing units within the business park which partially screen views of the site from the wider area of regeneration to the south. It has also been orientated parallel and immediately adjacent to the band of woodland along the railway corridor which screens the development from views to the immediate north. From more elevated positions in surrounding areas to the north and south, including from the new residential properties around Heathland Way, the development appears as an extension to the

business park, successfully integrated into both the immediate landscape context and within wider views due to the similar scale, mass and use of materials that it exhibits.

43. The existing landscaping remains unaltered and no additional soft landscaping is proposed. The site is enclosed via 2-metre-high palisade fencing and 3-metre-high wooden acoustic fencing. It is therefore considered that additional landscaping for the purposes of visual amenity is not required at the application site. The facility does not have a detrimental impact on the site or its surrounds.

#### *Ground Conditions*

44. A Technical Note relating to Ground Conditions, dated 8 October 2018, (Document A16) has been prepared by AECOM to supplement this application. Planning permission reference P2012/1061 was completed without compliance with some of the planning conditions included within the permission. Consequently, this retrospective planning application seeks to regularise the position. The permission included 4 pre-commencement conditions (Nos. 17 to 20) that related to ground conditions and contamination. Although not formally discharged, the requirements of these conditions were fully complied with by Peak Gen prior to the development of the application site.
45. The Coed Darcy site was acquired by St. Modwen Development Ltd (SMD) from BP Oil Llandarcy Refinery Ltd. Following acquisition of the site, SMD entered into a Deed of Planning Obligations under Section 106 of the Town and Country Planning Act 1990 (the 1990 Act) for the whole site. The Section 106 agreement required SMD to undertake contamination assessment and remediation to certain standards with reporting and sign off by an assigned monitor. SMD commissioned the consultancy 'Atkins' to provide advice relating to the redevelopment of the Project Site,
46. The conclusion of the 'Atkins' Report was that Monitor Phase 26 (including but not limited to the Peak Gen area) was considered to have achieved the requirements of the Section 106 in place for Coed Darcy. Subsequently, a Remediation Certificate was issued by URS Corporation Ltd. (now part of AECOM).
47. It was noted in the URS certificate that should there be a significant change in the development proposal, the assessment would need to be revisited. This does not appear to be the case here as no further ground works are proposed.
48. AECOM consider that the planning conditions 17 -20 of planning permission P2012/1061 are covered by previous works and therefore, based on previous information and assessments undertaken, the development is compliant with these requirements concerning ground conditions and remediation. Further conditions are not required as part of this application.

#### *Cultural Heritage*

49. The closest Scheduled Ancient Monument (SAM), the Llandarcy Round Cairn (Record No 392), is more than 750m away from the site and there are intervening roads, residential development and commercial buildings. During pre-application

consultation Cadw<sup>4</sup> confirmed to PINS Wales that the scheme is unlikely to have any significant impact upon the SAM or its setting.

50. The nearest listed buildings are separated from the site by the M4 motorway and include a Grade II listed 'Bridge Over Tennant Canal E of Cwrt y Bettws Farm' (Record no 23073) and a 'Boiler stack of former Cardonnel Tinplate Works' (Record No. 23072); both listed buildings/structures are more than 950m away from the site.

#### *Highway Safety*

51. The planning application partly seeks retrospective planning permission as the development has already been constructed and is operational in part. In this respect, there would be limited vehicular movements except for maintenance. In terms of the installation of ancillary plant and equipment (including SCRs), the Construction Method Statement (document A14) demonstrates that construction traffic impacts can be acceptably managed.
52. Accordingly, it can be concluded that the development is acceptable in terms of highway and pedestrian safety, such that it accords with Policy SP20 of the LDP, as confirmed within the Statement of Common Ground (Document A25) with NPTCBC.

#### *Drainage and Surface Water*

53. A Technical Note relating to Drainage, dated 19 March 2019, (Document A22) has been prepared by AECOM to supplement this application. The Surface Water Strategy demonstrates:
- Surface water is predominantly managed through passive drainage by infiltration;
  - There are no significant changes to surface water flood risk pre and post development;
  - Wider site remediation provides positive benefits through the removal of contaminated land and therefore potential for existing pollutants to infiltrate into groundwater sources;
  - The implemented drainage is proportionate to the nature and scale of the development; and
  - The management and maintenance of drainage system serving the highway access is achievable and the system is subject to regular maintenance.
54. The application site has no piped surface water drainage system. The stone fill was added on top of the pre-existing compacted brownfield site, therefore increasing the infiltration capacity and storage of surface water. The majority of the compound surface is unpaved to allow surface water to percolate through the ground in the same way as pre-construction. The intention was to avoid any increase in surface run off. It is therefore considered that there is negligible potential for infiltration and hydraulic characteristics of the remediated site to be significantly altered by the proposed development.

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<sup>4</sup> The Welsh Government's historic environment service

55. The application site is not currently at risk of flooding from surface water sources. It is assumed that surface water flood maps at the time of the original application would have been the same. The development does not increase flood risk therefore the assessment of overland flow routes and access / egress routes for emergency purposes has not been considered. The development's drainage does not impact on third party drainage. Moreover, during construction operations there has been no alteration to any ditches, streams or culverts, either on or bordering the application site.
56. The proposed elements of the development solely comprise the installation of ancillary plant and equipment, rather than construction work relating to buildings or structures. NPTCBC, in their role as Sustainable urban Drainage Scheme (SuDS) Approval Body (SAB), has now confirmed to the applicant that SAB approval is not required (received 18 March 2019). Therefore, compliance relating to SuDS does not require further consideration.

*Compliance with the Well-being of Future Generations (Wales) Act 2015 (WFGA)*

57. The applicant (and agreed with NPTCBC in the Statement of Common Ground (document A25)) states that the development would improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under Section 3 of the WFGA, and is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives set out as required by Section 8 of the WFGA.
58. The Development accords with one or more of the well-being goals set out in the WFGA.

*Conclusions*

59. Having regard to the development it has been assessed and concluded that the proposal is acceptable (subject to conditions) in respect of the principle of development. In addition, the statements submitted to supplement the planning application conclude that the proposal is acceptable in respect of air quality, noise, ecology, landscape, transport, ground conditions and the principle of development.
60. Consequently, it is considered that the development complies with national planning policy and guidance and is in accordance with the LDP and all other material considerations. It can accordingly be concluded that the application should be granted planning permission subject to the imposition of reasonable conditions.

**Planning Policy**

61. At a national level, Planning Policy Wales (PPW) and Technical Advice Notes (TANs) set out WG's policies and principles on different aspects of planning. Those of relevance here include:
- PPW Edition 10 (December 2018)
  - TAN 5: Nature Conservation and Planning (2009)
  - TAN 11: Noise (1997)

- TAN 12: Design (2016)

62. At a local level, planning policy is set out in the Neath Port Talbot County Borough Council Local Development Plan (LDP), adopted in January 2016. The site is allocated in the LDP as a Strategic Regeneration Area (SRA) through policy SRA1. A number of LDP policies are particularly relevant:

*Strategic Policies*

- Policy SP1 Climate Change: seeks to address the causes and consequences of climate change.
- Policy SP2 Health: identifies measures to be taken in relation to high levels of poor long-term health and sickness in the area.
- Policy SP15 Biodiversity and Geodiversity: seeks to protect, conserve and enhance important habitats, species and sites of geological interest.
- Policy SP16 Environmental Protection: seeks to protect and where feasible improve air, water and ground quality and the environment generally.
- Policy SP18 Renewable and Low Carbon Energy: sets out that a proportionate contribution to meeting national renewable energy targets and energy efficiency targets will be made while balancing the impact of development on the environment and communities.
- Policy SP21 Built Environment and Historic Heritage: states that the built environment and historic heritage will, where appropriate, be conserved and enhanced.

*Topic Based Policies*

- Policy SC1 Settlement limits: defines proportionate development within settlement types.
- Policy EC1 Employment Allocations (EC1/3 Land within Coed Darcy SRA (4Ha B1)): allocates sites for employment uses.
- Policy EC3 Employment Area Uses: seeks to stimulate growth by facilitating a wider mix of uses on employment areas.
- Policy EN6 Important Biodiversity and Geodiversity Sites: states that development proposals will only be permitted where they conserve and where possible enhance the natural heritage importance of the site, or the development could not reasonably be located elsewhere, and the benefits of the development outweigh the natural heritage importance of the site.
- Policy EN8 Pollution and Land Stability: sets out that proposals which would create new problems or exacerbate existing problems will not be acceptable unless mitigation measures are included to reduce the risk of harm to public health, biodiversity and/or local amenity to an acceptable level.
- Policy RE2 Renewable and Low Carbon Energy in New Development: states that schemes that connect to existing sources of renewable energy, district heating



networks and incorporate on-site zero / low carbon technology will be encouraged.

- Policy TR2 Design and Access of New Development: states that new development will be required to demonstrate that it will have no adverse effect on the existing highway network and traffic, or congestion will not be increased to unacceptable levels.
- Policy BE1 Design: sets out that all development proposals will be expected to demonstrate high quality design which fully take into account the natural, historic and built environmental context and contributes to the creation of attractive, sustainable places.
- Policy RE1 Criteria for the Assessment of Renewable and Low Carbon Energy Development: this policy sets out criteria against which all proposals for renewable and low carbon energy development will be assessed.
- Policy SRA1 Coed Darcy Strategic Regeneration Area: States that an SRA is designated at Coed Darcy for the development of an urban village comprising 4,000 residential units (2,400 within the Plan period) and 41,200 sqm B1 business use.

#### *Relevant Supplementary Planning Guidance*

- Pollution (October 2016);
- Design (July 2017);
- Biodiversity and Geodiversity (May 2018); and
- Renewable and Local Carbon Energy (July 2017).

### **Consultation Responses**

#### *Wales and West Utilities (WWU) (Document Ref REP01)*

63. WWU have no objections to the proposal, however the presence of intermediate / high pressure gas main(s) in proximity to the application site apparatus may be at risk during construction works and therefore if planning permission is granted the applicant must contact WWU to discuss the matter in more detail.

#### *The Glamorgan-Gwent Archaeological Trust Limited (GGAT) (Document Ref REP02)*

64. Given the past use of the site it is unlikely that archaeological deposits would be encountered. Therefore, no recommendation is made for archaeological mitigation works.

#### *Coedfranc Town Council (Document Ref REP03)*

65. The Council has concerns regarding the noise the generators will produce and the size of the units.

#### *Natural Resources Wales (NRW) (Document Ref REP04)*

66. NRW has made 4 comments regarding this application:

- i. The operation will be regulated by NRW under the Environmental Permitting (England and Wales) (Amendment) Regulations 2018. Accordingly, the impact of noise and emissions to air will be reviewed as part of the permitting process.
- ii. A number of European and UK protected sites are identified within 2km of the application site. The Conservation and Habitats and Species Regulations 2010 (as amended) require the Competent Authority, before authorising a project likely to have a significant effect on a European site, to undertake an appropriate assessment of the implications for that site in view of that sites' conservation objectives. From the information submitted, NRW consider that the proposed development is unlikely to have a significant environmental effect on the identified sensitive receptors. Nevertheless, further information will be required during the assessment of the permitting application regarding other sensitive receptors i.e. ancient woodlands.

Furthermore, whilst NRW has concerns relating to Process Contributions to air quality, given the proposed annual operational hours, this would be a permit operational issue and will be considered by NRW under its assessment of the permit application.

- iii. NRW is satisfied that the risk to controlled waters has been addressed.
- iv. The general approach and principles within the Construction Method Statement, dated September 2018, appear reasonable.

*The Coal Authority (Document Ref REP05)*

67. The proposed development falls outside the defined Development High Risk Area, accordingly there is no requirement for the applicant to submit a Coal Mining Risk Assessment, or equivalent, in support of this application. Nevertheless, if any coal mining feature is encountered during development, this should be reported to the Coal Authority.

*Health and Safety Executive (Document Ref REP06)*

68. The site does not fall within any HSE public safety consultation zones associated with either 'Major Hazard Installations' or 'Major Accident Hazard Pipelines' and therefore the HSE does not advise against the proposal.

*Cadw (Document Ref REP07)*

69. Llandarcy Round Cairn (GM291) is located within 1km buffer of the application area but due to intervening buildings, vegetation and natural topography the application area is not inter-visible with the scheduled monument. Therefore, Cadw has no objections to the impact of the proposed development on the scheduled monument.

*NPTCBC Local Impact Report (LIR)(Document Ref REP08)*

70. NPTCBC's LIR presents its assessment on several matters, including landscape and visual impacts, highways, biodiversity, noise, heritage, land contamination, and the scheme's benefits. It also includes suggested planning conditions should permission be granted. The main points are summarised below.

### Visual & Landscape

71. Consideration should be given to the effects of the proposal on local character and visual amenity, having regard to its location within the Coed Darcy Regeneration Area. It is noted that the facility is operational, although the additional infrastructure/equipment proposed under this application would increase the highest point of the units by 1.1m. This would not unacceptably increase the impact of the development on the area now or as part of future development proposals.
72. It has been agreed in the SOCG that should retrospective planning permission be granted for the development and that a landscape scheme would not be required. Therefore, the Council considers that the Landscape & Visual Impact of the proposal would be neutral.

### Highways

73. As the development is largely constructed the highway impacts relate only to installation of the additional plant and equipment and the ongoing operation. A Construction Method Statement has been submitted in respect of the former and the Highways Authority has advised that they have no highway objection. No highway conditions are recommended by the Authority, and it is considered that the proposed development would have a neutral impact on the existing highway network or on highway or pedestrian safety generally.

### Air Quality

74. As part of pre-application discussions, an Air Quality Assessment (Document A18) was submitted. The Council commissioned RPS to independently review the dispersion modelling contained within that assessment. The RPS report (Document A20), on behalf of the Council, agrees that the Air Quality Impacts have been assessed correctly, including use of an appropriate model.
75. The impacts are unlikely to have a significant effect on surrounding human-health and ecological land-users provided that any permission granted includes conditions that limit:
  - The applicant to the use of ultra-low sulphur diesel, with a sulphur content not exceeding 0.001% of fuel; and
  - The number of hours of operation to 390 per annum.
76. Subject to the imposition of appropriate control, the air quality impacts will be neutral. However, in the absence of such restrictive conditions (i.e. the facility operating in a wholly uncontrolled manner), the impact of the development would be negative.

### Biodiversity

77. The application site itself has no ecological value but there is a need to ensure that the operation of the facility itself would not have any unacceptable impact on designated sites nearby. These include the Crymlyn Bog RAMSAR / SAC / SSSI located 1.1 km to the south of the site. Other designations include several areas of

Ancient Woodland within the surrounding area including Ancient Semi-Natural Woodland.

78. Based on the nature and scale of the development and the Air Quality assessment undertaken, subject to application of the recommended conditions it is considered that the impact of the development on nearby designated sites will be neutral. However, in the absence of such restrictive conditions (i.e. the facility operating in a wholly uncontrolled manner), the impact of the development on nearby designated sites (Ancient Woodland) is likely to be negative.

#### Noise

79. The application has been supported by a Noise Impact Assessment (Document A21) addressing the noise impacts of the development including additional plant and equipment. This has been reviewed by the Council's Environmental Health officer as part of pre-application discussions.
80. Subject to the imposition of appropriate controls, namely:
- restricting hours of operation outside the hours of 07.00 to 23.00 to a maximum of 50 hours in any calendar year;
  - acoustic fencing; and
  - noise rating levels at agreed receptors

it is considered that the operation of the site would not have an unacceptable effect on residential amenity, and the likely noise impacts will be neutral. In the absence of such restrictive conditions (i.e. the facility operating in a wholly uncontrolled manner), the impact of the development would be negative.

#### Heritage

81. The development is considered to have a neutral impact on heritage with no nearby designated assets being affected by the development.

#### Land Contamination

82. The application site forms part of the wider Coed Darcy Strategic Regeneration Area site which benefits from outline planning permission, on which there are a number of conditions relating to remediation, and validation of any potential land contamination. The site owners also have obligations under a legal agreement to remediate the site, for which there is an independent monitor.
83. The Council's Land Contamination Officer considers that the application site was remediated to a satisfactory level by St Modwen prior to the generation facility being developed. The development of the facility did not disturb the surface or geology of the ground with the exception of limited shallow trenching to accommodate electricity connection cables. The surface of the ground has been capped with gravel with the containers sitting on top of raised sleepers. As such, the facility has not had any impact upon ground conditions at the site.
84. The impact of the development in terms of land contamination is thus considered to be neutral.

### Scheme's Benefits

85. The scheme would generate circa 20MW of electrical power sufficient to power homes and businesses in times of short-term need. The development therefore ensures that there is provision for power within the local and wider community and this would have a positive impact.

### **Matters not in dispute between the main parties**

*Statement of Common Ground (SoCG) with NRW, dated 13 February 2019 (Document A24)*

86. For the purpose of the following SoCG, NRW and the applicant are jointly referred to as "the Parties". The Parties agree on the following:
- i. The site is not located within any designated landscape, heritage or ecological areas. However, Crymlyn Bog Special Area of Conservation (SAC) (Site code: UK0012885), Site of Special Scientific Interest (SSSI) (Code: 33WWP) and Ramsar Site (RAM code: UK14006) lies to the west and south but is more than 1.1km from the site.
  - ii. Modelling for Air Quality has not been reviewed by NRW, however NRW are satisfied this will be dealt with at the Environmental Permitting stage.
  - iii. The site falls within Flood Zone A, according to the Development Advice Map which supplements Technical Advice Note 15 and is published by Natural Resources Wales. Flood Zone A means the site is considered to be at little or no risk of fluvial or tidal/coastal flooding. Surface water drainage is a matter for the Lead Local Flood Authority (NPTCBC) and that the development does not require foul drainage.
  - iv. The development will not have an adverse impact on any designated landscape assets.
  - v. Contamination found on site has been dealt with to a satisfactory level
  - vi. Separate to the planning process, the development will additionally need to comply with the Environmental Permitting (England and Wales) (Amendment) Regulations 2018.

*SoCG with NPTCBC, dated 10 June 2019 (Document A25)*

87. For the purpose of the following SoCG, NPTCBC and the applicant are jointly referred to as "the Parties". The Parties agree on the following:
- i. The Policy Framework information against which the Development should be assessed includes: Planning Policy Wales – Edition 10; TAN 5: Nature Conservation and Planning; TAN 11: Noise; TAN 12: Design; TAN 18: Transport; Neath Port Talbot Local Development Plan 2011 - 2026 Policies SP1 – Climate Change, SP2 – Health, SP15 – Biodiversity and Geodiversity, SP16 – Environmental Protection, SP18 – Renewable and Low Carbon Energy, SP20 –

Transport Network, SP21 - Built Environment and Historic Heritage, SC1 - Settlement limits, EC1 - Employment Allocations (EC1/3 Land within Coed Darcy SRA (4Ha B1)), EC3 - Employment Area Uses, EN6 - Important Biodiversity and Geodiversity Sites, EN7 - Important Natural Features, EN8 - Pollution and Land Stability, RE1 - Criteria for the Assessment of Renewable and Low Carbon Energy Development, RE2 - Renewable and Low Carbon Energy in New Development, TR2 - Design and Access of New Development, BE1 - Design and SRA1 - Coed Darcy Strategic Regeneration Area; Supplementary Planning Guidance, Biodiversity and Geodiversity SPG (May 2018), Pollution SPG (October 2016), and Design SPG (July 2017). The principle of development, having regard to this policy context is acceptable.

- ii. None of the secondary consents set out in the Schedule to the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 would be required for the development proposed.
- iii. The low/medium impact predicted by the BS 4142 and BS 8233 methods overestimate the actual impact that the operation of the mitigated peaking plant will have, and the actual impacts will be low. With the Best Practicable Means (BPM) mitigations in place, taking into consideration the particular context of the operation of the Project Site and the nature of the surrounding area the impact of noise from the development will be low or very low. Therefore, subject to conditions, including the need to establish noise levels at specified receptors, and a complaints investigation procedure, the operation of the Site is unlikely to have an unacceptable effect on residential amenity.
- iv. As part of pre-application discussions, NPTCBC commissioned RPS to review the Air Quality Impact Assessment prepared by AECOM (December 2018). The RPS report AGREES that the Air Quality Impacts have been assessed correctly, including use of an appropriate model. Although there is some disagreement of the mass emission for dust, (para 3.11 of RPS Report) RPS agrees with the AQ report's conclusions that the development is unlikely to have a significant effect on human health and ecology, subject to conditions. The RPS review assumes that agreement is reached with NRW that the impacts of the daily NO<sub>x</sub> at the two ancient woodlands is not significant.
- v. The findings of the submitted Landscape and Visual Amenity Statement are accurate. A landscape scheme has not been implemented as it was considered unnecessary given the surrounding context to the site and the visual screening provided by the close board wooden fence which surrounds the site, and also due to the fact that there is no space within the footprint of the application site to accommodate a landscape scheme. Accordingly, should retrospective planning permission be granted for the development in the future, a landscape scheme should not be required. Further, landscaping for the purposes of visual amenity is not required at the site and the facility does not have a detrimental impact on the site or its surrounds.
- vi. The application site was remediated to a satisfactory level by St Modwen prior to the generation facility being developed. The development of the facility did not disturb the surface or geology of the ground with the exception of limited shallow trenching to accommodate electricity connection cables. The surface of the ground

has been capped with gravel with the containers sitting on top of raised sleepers. As such, the facility has not had any impact upon ground conditions at the site.

- vii. Separate to the planning process, the development will additionally need to comply with the Environmental Permitting (England and Wales) (Amendment) Regulations 2018.
- viii. The development is acceptable in all other respects subject to imposition of conditions which accord with the CIL Regulations and the guidance within the Welsh Government Circular 016/2014: The Use of Planning Conditions for Development Management.
- ix. The development would improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under Section 3 of the Well-Being of Future Generations (Wales) Act 2015, and is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives set out as required by Section 8 of the Well-Being of Future Generations (Wales) Act 2015.
- x. Following consideration of the proposed development and potential impacts arising from the development, there are not considered to be any matters which would require obligations under Section 106 (the 1990 Act). Also, given that the development does not involve the construction of a building or other structure, the scheme does not require SAB approval.
- xi. Seven draft conditions have been agreed (as set out in section 3 of the SoCG between the applicant and NPTCBC).

## **Main Issues**

88. In light of the above, I consider the main issues to be the effect of the development and the installation of the proposed additional ancillary plant on:
- i. the character and appearance of the surrounding area both in terms of landscape and visual impacts;
  - ii. neighbouring human receptors, with particular regard to noise and air quality;
  - iii. ancient woodlands, with particular reference to air quality; and
  - iv. Whether the development would preserve or enhance heritage assets.
89. If I were minded to recommend that planning permission be granted on the basis of the above considerations, I would then have to go on to consider, following an Appropriate Assessment (AA) under the Habitats Regulations<sup>5</sup>:

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<sup>5</sup> As the competent authority it falls on the Welsh Ministers to undertake an AA but to assist in that process I have set out my assessment of the factors that need to be taken into account.

- i. whether the proposed development would adversely affect the integrity of the Crymlyn Bog European site, having regard to the conservation objectives of that site; and, if it would have an adverse effect; and
- ii. whether, there being no alternative solutions, the development must be carried out for imperative reasons of overriding public interest<sup>6</sup>.

### *Character and appearance*

90. The compound is sited on a former oil refinery site which is now undergoing regeneration as set out in LDP Policy SRA1. Immediately to the south is the existing Darcy Business Centre and to the north mature trees and hedgerows. These provide a fair degree of localised screening.
91. Given the context of the application area and the wider regeneration area, the impact on the character and appearance of the area is, in my opinion, negligible. As already mentioned, a large area is allocated for eventual development and, in the context of this fact and the existing setting of the site, the development does not result in a significant impact on the landscape character of the surrounding area. The existing compound and proposed additional structures are typical of modern industrial buildings and would not introduce features that are not already found in the surrounding area.
92. Nevertheless, the additional SCR works will increase the highest point of the generator structures by some 1.1 metres, from 3.8 to 4.94 metres. The SCR will be visible above the perimeter fence, particularly in views from the residential properties to the south west. However, I do not consider that the visual impact would be unacceptable. The proposed additional works would not be of a scale or character that would result in an overbearing visual impact. In particular the SCR units have the appearance of flues commonly seen on modern industrial buildings in urban and semi-urban areas, where many residents have views of them. In essence the situation is no different here.
93. The change from the current appearance of the site to the proposed development would be a minor one as far as the local residents affected are concerned, given the separation distances involved, and it would not be of a nature that would be considered out of the ordinary in general circumstances. In terms of impact on users of the business park, views of the application area are limited by the existing buildings which effectively turn their back on the development, and by mature vegetation. Whilst walking around the business park only fleeting views of the application site are visible and in such views the development appeared harmonious with those of the existing business park.
94. In terms of its wider visual impact, I consider that the proposed development would have no significant direct effect on existing residential properties further to the north and north-east. Its impact from the M4 to the east would be negligible. At present the view of the existing and proposed development is largely screened by the mature vegetation which adjoins the northern and eastern side of the appeal site.
95. The applicant accepts that a landscaping scheme was not submitted to ameliorate the council's concerns over the visual impact of the original scheme. However, the Council

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<sup>6</sup> Regulation 64 of the Habitats Regs.



now accepts that such a scheme is unnecessary. From my findings above I agree that acceptable screening is provided by the existing perimeter fencing and by the mature vegetation, such that a landscaping scheme would not be necessary in this case.

96. I therefore find that the existing and proposed works would not have an unacceptable impact on the character and appearance of the area. Therefore, I conclude that the proposed development does not conflict with the relevant provisions of the development plan in terms of its landscape and visual impact.

#### Noise

97. The primary source of noise from the application site is caused by the ten engine driven generators. However, ambient sound levels in the area are dominated by the M4 motorway and other road / rail traffic.
98. The submitted Noise Assessment (NA), dated 18 March 2019, indicates operational noise effects at four noise monitoring locations<sup>7</sup> and assessed this using BS4142:2014 *'Methods for Rating and Assessing Industrial and Commercial Sound'* and BS 8233:2014 *'Guidance on sound insulation and noise reduction for buildings'*. The NA included an assessment of the noise emanating from the existing operations and those for another PeakGen site which has SCR equipment fitted.
99. It is important to acknowledge that BS 4142 and BS 8233 assessment methods make no distinction between sources that operate every day and those which only operate occasionally when demand requires. This development is only in operation when extreme stress is placed on the power grid and is not in use constantly.
100. The plant operations have been assessed using a 'worst case scenario'. This resulted in an unacceptable high noise impact occurring at all four of the monitoring locations. Accordingly, mitigation measures have been investigated including:
- Further reduction in exhaust sound power by fitting higher performance attenuators.
  - Reduction of radiator and canopy fan noise by replacement with more aerodynamic fan installations.
101. A further assessment of the noise impact using these mitigation measures, which could be controlled by a planning condition, still resulted in the BS 8233:2014 guidelines being exceeded. However, the main reason for these exceedances was the existing residual sound in the area, mainly from the M4 corridor, rather than the plant's operation<sup>8</sup>. As established in TAN 11<sup>9</sup>, given the existing noise from the M4 corridor the design of the proposed residential properties to the north would need to

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<sup>7</sup> Locations agreed by NPTCBC

<sup>8</sup> Whilst the guidelines are exceeded there is no contribution from the 'peaking' of the plant.

<sup>9</sup> Annex A *"When assessing a proposal for residential development near a source of noise, local planning authorities should determine into which of the four noise exposure categories (NECs) the proposed site falls, taking account of both day and night-time noise levels. Local planning authorities should then have regard to the advice in the appropriate NEC"*

incorporate means of controlling the ingress of noise. Once in place these measures would also reduce the entry of sound from the balancing plant.

102. Moreover, it is much more likely that plant operation will be required at times of elevated system demand, which generally occur during the morning rush hour and early evening periods. These periods also have highest background sound levels and the sensitivity of the general population to noise is likely to be at its lowest. Furthermore, conditions restricting operational hours, maximum annual hours of operation and noise rating levels at agreed receptors would also reduce the noise impacts from the facility.
103. NPTCBC is satisfied that the proposal would not have a significantly adverse impact on local residential amenity; I agree that with mitigation measures in place the impact would be low, and operations would not change the TAN 11 Noise Exposure Categorisation of the wider area. I acknowledge the concerns of Coedfranc Town Council specifically in respect of potential impacts from noise when the development is fully operational. However, there is no substantive evidence before me that operational impacts, with mitigation in place, would be of a magnitude to represent a significant adverse effect. Furthermore, this is a matter that could be subject to further regulation under separate environmental controls.
104. Consequently, the proposal would not result in unacceptable harm to local amenity in terms of noise pollution, and would therefore be in accordance with the requirements of policies BE1 and EN8 of the LDP.

#### *Air quality*

105. The potential for air quality impacts on human health and ecological receptors has been fully considered, however here I will concentrate on the human receptors.
106. The submitted Air Quality Assessment (dated December 2018) is based on the plant operating at its maximum of 500 hours per annum. Thus, this represents a 'worst case' annual scenario. Operating at this level the dispersion modelling has identified the potential for the nitrogen dioxide (NO<sub>2</sub>) 1-hour Air Quality Strategy (AQS) objective of 200 µg/m<sup>3</sup> to be exceeded at adjacent commercial buildings on the Llandarcy Business Park.
107. Turning to short term impacts, the facility could operate at any time during the day or night. Therefore, the assessment modelled the development running 24 hours per day all year to produce the worst-case short-term effects. Short-term PCs are predicted to exceed 10% of the AQS objective at a majority of receptors while resultant PECs exceed the AQS objective at those receptors representing the closest receptors to the facility, namely other commercial operations on the Llandarcy Business Park and two unoccupied/derelict residential properties on the boundary of the Llandarcy Business Park.
108. However, the AQS objectives are only applicable at locations where members of the public are anticipated to be present for a period of time consistent with the period of time applicable to the AQS objective. While the modelling shows exceedances of the short-term AQS objectives at these receptors this is based on the assumption that the Project operates 24 hours a day all year, with emissions coinciding with the worst meteorological conditions for pollutant dispersion, and that there are receptors present at these modelled receptor locations.

109. As a result of these exceedances the applicant has proposed that the annual operating hours are limited to 390 and that ultra-low sulphur diesel fuel is used<sup>10</sup>. In this context, I have no reason to take a contrary view to NPTCBC who raised no concerns in terms of air quality or emissions from the proposed development, in terms of human health, subject to planning conditions to ensure the stated mitigation measures are put in place. As a further safeguard, the applicant proposes that the Environmental Permit for the site includes a limit on annual operations to 390 hours as based on this number of operational hours the site is not statistically likely to exceed the AQS objective.
110. Overall the impacts of the development are considered to be not significant based on annual operations of 390 hours per year. Accordingly, the proposal would not result in any unacceptable harm to local amenity in terms of air quality, and would therefore be in accordance with the requirements of policies SP2, SP16 and EN8 of the LDP.

#### *Ancient Woodlands*

111. Several areas of Ancient Semi Natural Woodland are located between 200 – 900 metres of the application site. The Air Quality Assessment (Document A18) and subsequent Memo "*Advice concerning short-term NO<sub>x</sub> exceedances at ancient woodland, PeakGen Llandarcy*", dated 18 December 2018, (Document A19) state that the overall impacts of the development on ancient woodlands are considered to be not significant based on annual operations of less than 500 hours per year. However, there are two ancient woodland sites for which the daily NO<sub>x</sub> PC will exceed the '100% of the critical level' criterion, based on the assumption that the facility operates 24 hours a day all year.
112. I note the applicant's comment that exceedances of the short-term (daily/24hr) critical level are much less important for vegetation than exceedances of the long-term critical level. Nevertheless, a significant negative affect on ancient woodland cannot be ruled out without operation limitations.
113. Accordingly, I agree with NPTCBC that planning conditions would be required to control the use of ultra-low sulphur diesel and hours of operation. Furthermore, such matters can also be addressed via the Environmental Permit. With such controls in place the development is unlikely to have a significant effect on the nearby ancient woodlands and thus comply with LDP Policies SP15, EN6 and EN7.

#### *Heritage*

114. In relation to the listed buildings the statutory provision of the Planning (Listed Buildings and Conservation Areas) Act 1990 Section 66(1) says that '*In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority, or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses*'.

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<sup>10</sup> The emissions predicted using this fuel are potentially lower than that required under the Medium Combustion Plant Directive (MCPD) emission limits.

115. In relation to the Scheduled Ancient Monuments (SAM) the provisions of the Ancient Monuments and Archaeological Areas Act 1979 provides no statutory protection to the setting of a SAM.
116. Cadw states in its consultation response that the development will have no impact on the identified SAM or its setting. This comment is also repeated by NPTCBC and The Glamorgan-Gwent Archaeological Trust.
117. With no evidence to the contrary, and particularly given the separation distances between the heritage assets and the development, I conclude that the proposed development would not conflict with LDP Policy SP21.

### **Other Matters**

118. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the WFGA. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objectives of driving sustainable growth and building resilient communities.

### **Summary of conclusions**

119. In summary the proposed development would be suitably located and would be an appropriate development that would bring economic and social benefits; in addition it would have no adverse impact on the character and appearance of the area, heritage assets, or neighbouring sensitive human receptors. It would meet the requirements of development plan policies and national planning policy in regard to these foregoing matters and would reflect the principles of sustainable development as advocated in the WBFG Act.
120. Given this conclusion I now go on to consider, following an Appropriate Assessment (AA) under the Habitats Regulations:
  - i. whether the proposed development would adversely affect the integrity of the Crymlyn Bog European site, having regard to the conservation objectives of that site; and, if it would have an adverse effect; and
  - ii. whether, there being no alternative solutions, the development must be carried out for imperative reasons of overriding public interest<sup>11</sup>.

### *European Sites*

121. The appeal site lies within a 2km radius of the Crymlyn Bog RAMSAR and SAC European Nature Conservation Sites (European sites). In relation to these European sites, change in air quality associated with the development may lead to an increase in pollutant contributions thus altering the Critical Level and Critical Loads within the sites. In accordance with the Conservation of Species and Habitats Regulations 2017 (Habitats Regulations), as the competent authority it falls on the Welsh Ministers to

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<sup>11</sup> Regulation 64 of the Habitats Regs.

undertake an AA but to assist in that process I have set out my assessment of the factors that need to be taken into account.

122. If the proposed development is not directly connected with or necessary to site management, as is the case here, the decision-taker must determine whether the proposal is likely to have a significant effect on a European site, alone or in combination<sup>12</sup>. An appropriate assessment is required where there is a probability or a risk that the plan or project will have significant effects in terms of the conservation objectives for which the site was classified.
123. The Crymlyn Bog is the largest lowland fen in Wales and one of the most important wetland sites in Europe. Very few other sites are known to support a comparable complexity and diversity of vegetation. Habitats that are a primary reason for the selection of this European site includes: Calcareous fens; Transition mires and quaking bogs; and Alluvial forests. The conservation objectives state that atmospheric pollution is one of the factors affecting the quality of the habitat and should be under appropriate control.
124. Based on the submitted Air Quality Assessments NRW has commented<sup>13</sup> that *"the proposed development is unlikely to have a significant environmental effect on the sensitive receptors"*. However, this is based on a number of mitigation measures. In some circumstances, the decision-taker must consider the way in which it is proposed to carry out the project and whether conditions or other restrictions would help to ensure that site integrity was not adversely affected. In practice, this means identifying the potential risks and putting in place a legally enforceable framework with the aim of preventing the risks from materialising.
125. The identified potential risks include a change in the annual mean pollutant concentrations e.g. exceeding 1% of the relevant Critical Level and Critical Loads. In particular NRW states that the following could have a significant effect:
  - i. Predicted 24-hour NO<sub>x</sub> Concentration, with Comparison against Critical Level Criteria;
  - ii. Predicted annual mean SO<sub>2</sub> concentration, with Comparison against Critical Level Criteria – SO<sub>2</sub> Emissions Based on Medium Combustion Plant Directive (MCPD) Emission Limits;
  - iii. Predicted Nutrient Nitrogen Deposition Rates, with Comparison against Critical Load Criteria;
  - iv. Predicted Acid Deposition Rates, with Comparison against Critical Load Criteria – Acid Deposition Calculated Based on MCPD SO<sub>2</sub> Emissions Limits; and
  - v. Predicted Acid Deposition Rates, with Comparison against Critical Load Criteria – Acid Deposition Calculated Based on SO<sub>2</sub> Emissions when using Ultra Low Sulphur Diesel

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<sup>12</sup> Such as the wider SRA as set out in the LDP.

<sup>13</sup> REP04

126. I consider that there is the potential for impacts on the nearby European Sites. As such I conclude that there would be likely significant effects arising from this development in the absence of mitigation and avoidance measures and an appropriate assessment is necessary.

Appropriate Assessment (AA)

127. As set out in the Air Quality section above the assessment represents the worst-case scenario. In practice the facility operates less than 500 hours per annum and the applicant has committed to the use of Ultra-low Sulphur fuel. The use of planning conditions to control these factors would ensure that the adverse effect on air quality can be sufficiently reduced such that the integrity of the European site is not adversely affected from this facility or in combination with the wider SRA. In such circumstances planning permission may be granted subject to the necessary conditions being attached. In doing so I do not need to consider step 'ii' of alternative solutions or public interest.
128. It should also be noted that this development requires an environmental permit in addition to planning permission. A decision on this consent is also subject to the assessment provisions of the Habitats Regulations, and Regulation 67(2) provides that a competent authority is not required to assess any implications of a plan or project that would be more appropriately assessed by another competent authority.
129. Therefore, the fact that a particular impact, in this case the air quality, on a protected site will be controlled by a separate consent does not negate the requirement for the Welsh Ministers to assess whether a proposal is likely to have a significant effect and whether it is necessary to undertake AA. However, if with the benefit of information before them they are satisfied that a particular impact is more appropriately assessed by another competent authority, such as NRW, they are not required to consider whether it is necessary to undertake AA in relation to that particular impact.

AA Conclusion

130. I have taken into account all the available evidence and have adopted the precautionary principle in carrying out this assessment. I conclude that it is beyond reasonable scientific doubt that this development and proposed additional ancillary plant, either alone or in combination with other projects, would not have an adverse effect on the integrity of a European Site, namely the Crymlyn Bog RAMSAR and SAC. This conclusion is predicated on the circumstances of the case based on the site's unique context and situation and on the basis of securing those elements of the identified mitigation and avoidance measures that I have found to be reasonable and necessary.

**Conditions and Obligations**

131. The development does not give rise to any significant adverse effects that would warrant off-site mitigation to be secured via a planning obligation. As a result, NPTCBC has not suggested that any obligation would be necessary, nor have I drawn any other conclusions in this regard.
132. A set of suggested conditions was submitted by NPTCBC in its LIR. I have had regard to the suggested conditions and whether they meet the tests outlined in WG Circular

016/2014 '*The Use of Conditions for Development Management*'. Where appropriate I have amended the suggested conditions for improved clarity and included others I consider necessary. The recommended suite of conditions is included as Annex A to this report.

133. I accept that a number of conditions may be duplicated in the Environmental Permit. Nevertheless, the applicant has not yet applied for the Permit and therefore I cannot be sure that conditions will be applied to make the development acceptable in planning terms. Accordingly, it is necessary and reasonable to include them here. Furthermore, the applicant is aware of this situation and agrees to the conditions being imposed<sup>14</sup>.

### **Recommendation**

134. That planning permission be granted, subject to the conditions attached at Annex A.

*Joanne Burston*

**INSPECTOR**

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<sup>14</sup> As set out in REP09.

## Documents/Plans Submitted with the Application

### Documents

DOC 1	Core Document Schedule
DOC 2	Covering letter
A1	Application Form
A13	Planning, Design and Access Statement
A14	Construction Method Statement
A15	Technical Note: Ecology Statement
A16	Technical Note: Ground Conditions Statement
A17	Technical Note: Landscape and Visual Amenity Statement
A18	Air Quality Impact Assessment
A19	MEMO: Advice concerning short term NO <sub>x</sub> exceedances at ancient woodland
A20	Review of Air Quality Impact Report (RPS)
A21	Noise Assessment
A22	Technical Note: Drainage Statement
A23	Pre-application Consultation Report
A24	Statement of Common Ground with NRW
A25	Statement of Common Ground with NPTCBC

### Plans

A2 – Drawing number 9000, Rev A	Site Location Plan
A3 – Drawing No. LL-SP-09, Rev A	Layout with Elevations with SCR
A4 – Drawing No. PG-GA-01, Rev A	SCR Installation
A5 – Drawing No. 033351, Rev 003	31,000 litre (brimful) bunded clean oil storage tank
A6 – Drawing No. 033351, Rev 003	31,000 litre (brimful) bunded clean oil storage tank
A7 – Drawing No. ELL_STO808N01A	Elevations



A8 – Drawing No. WPS3143-GA-001007, Rev 00	4000kVA Wilson PDT Standard loss CU/CU distribution transformer
A9 – Drawing No. A2 24891 GA , Rev A	Switch Room details
A10 - Drawing No. LL-SP-09, Rev B	Proposed layout and elevations with SCR
A11 – Drawing No. PG-GA-02, Rev B	Container with SCR as proposed
A12 – Drawing No. 035266, Rev 007	15,000 litre (brimful) bunded storage tank

### **Documents Submitted Since the Application was Accepted as Valid**

REP01	Consultation Response Wales and West Utilities
REP02	Consultation Response Glamorgan-Gwent Archaeological Trust
REP03	Consultation Response Coedfranc Town Council
REP04	Consultation Response Natural Resources Wales
REP05	Consultation Response The Coal Authority
REP06	Consultation Response Health and Safety Executive
REP07	Consultation Response Cadw
REP08	Local Impact Report NPTCBC
REP09	Email dated 17 September 2019

## Annex A – Schedule of Conditions

Conditions to be attached to planning permission for part retrospective application for an existing generation operating reserve compound to support the National Grid comprising 10 no. generating containers, together with associated switchgear, site access, boundary treatments and ancillary plant and equipment with proposed installation of additional ancillary plant and equipment including the installation of Selective Catalytic Reduction units:

1. The installation of the additional ancillary plant and equipment hereby permitted shall be begun before the expiration of five years from the date of this permission.

### Reason

To comply with the requirements of Section 91 of the Town and Country Planning Act 1990.

2. The development shall be carried out in accordance with the following approved plans:

Drawing number 9000, Rev A	Site Location Plan
Drawing No. PG-GA-01, Rev A	SCR Installation
Drawing No. 033351, Rev 003	31,000 litre (brimful) bunded clean oil storage tank
Drawing No. 033351, Rev 003	31,000 litre (brimful) bunded clean oil storage tank
Drawing No. ELL_STO808N01A	Elevations
Drawing No. WPS3143-GA-001007, Rev 00	4000kVA Wilson PDT Standard loss CU/CU distribution transformer
Drawing No. A2 24891 GA , Rev A	Switch Room details
Drawing No. LL-SP-09, Rev B	Proposed layout and elevations with SCR
Drawing No. PG-GA-02, Rev B	Container with SCR as proposed
Drawing No. 035266, Rev 007	15,000 litre (brimful) bunded storage tank

### Reason

To ensure that the development is carried out in accordance with the approved documents, plans and drawings submitted with the application.

3. The installation of the proposed SCR units and associated components shall be undertaken in accordance with the approved Construction Method Statement.

Reason

In the interests of highway safety and pedestrian safety in accordance with policies SP20 and TR2 of the NPTCBC Local Development Plan (2016).

4. Operation of the STOR generators / facility shall not exceed a total of 390 hours in any calendar year. An up to date register of such operations – which shall comprise details of the date and hours of operation that have occurred shall be kept by the operator and made available for inspection by the local planning authority upon request, with an annual summary (January – December) provided to the Local Planning Authority no later than 31 January in the following year.

Reason

In the interests of amenity of adjoining properties in accordance with policies BE1, SP2, SP16 and EN8 of the NPTCBC Local Development Plan (2016).

5. Operation of the STOR generators / facility outside the hours of 07.00 to 23.00 shall not exceed a total 50 hours in any calendar year. An up to date register of such night-time operation – which shall comprise details of the date and hours of operation that have occurred outside of the hours of 07.00 and 23.00 hours - shall be kept by the operator and made available for inspection by the local planning authority upon request, with an annual summary of night-time operations (January – December) provided to the Local Planning Authority no later than 31st January in the following year.

Reason

In the interests of amenity of adjoining properties in accordance with policies BE1, SP2, SP16 and EN8 of the NPTCBC Local Development Plan (2016).

6. This permission benefits for a maximum generating capacity of 20MW, and the specification of generator and number of generators as set out within the application documentation.

Reason

In the interest of amenity, since the application has only assessed the air quality and noise impact of the current generators in accordance with policies BE1, SP2, SP16 and EN8 of the NPTCBC Local Development Plan (2016).

7. The acoustic fence shall be retained, as installed, and maintained in such a manner to ensure that there are no gaps in the structure in accordance with the approved plan LL-SP-09 Rev B for the lifetime of the operational use of the development for electricity generation.

Reason

In the interests of amenity of adjoining properties in accordance with policies BE1, SP2, SP16 and EN8 of the NPTCBC Local Development Plan (2016).

8. The facility shall only be operated with the use of Ultralow Sulphur fuel which has a maximum sulphur content of 10ppm.

Reason

To ensure air quality impacts are acceptable in the interest of amenity in accordance with policies SP2, SP16 and EN8 of the NPTCBC Local Development Plan (2016)

9. The noise rating level emitted from the approved peaking plant shall not be greater than the existing background noise levels (at the time of measurement) at the identified receptors as set out in the table below. The Operator shall, at their expense, employ an independent consultant to update the background noise measurements and assess the level of noise emissions from the Development at the identified receptors following a formal written request from the LPA. Measurements and assessments shall be made in accordance with "*BS 4142:2014 Method for rating and assessing industrial and commercial sound*".

<b>Location of Noise Sensitive Receptors (Grid Reference – X,Y)</b>	
NSR1	Ffordd Coed Darcy (271671, 195855)
NSR2	Holiday Inn (272044, 195949)
NSR3	Proposed residential development (north) (271926, 196262)
NSR4	Proposed residential development (west) (271654, 196069)

Reason

To protect the amenity of the locality, especially for people living and/or working nearby in accordance with policies BE1, SP2, SP16 and EN8 of the NPTCBC Local Development Plan (2016).

**- END -**