

The Planning Inspectorate Wales  
Crown Buildings  
Cathays Park  
Cardiff  
CF10 3NQ

Our Ref: 28845/A3/LH/BL

8<sup>th</sup> June 2018

Dear Sir / Madam,

**THE TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) (WALES) REGULATIONS 2017 – REQUEST FOR A SCREENING DIRECTION**

**PROPOSED DEVELOPMENT OF NATIONAL SIGNIFCANCE: EMERGENCY BACKUP SHORT TERM OPERATING RESERVE COMPOUND TO SUPPORT THE NATIONAL GRID WITH ASSOCIATED SWITCHGEAR, ACCESS, BOUNDARY TREATMENTS AND ANCILLARY EQUIPMENT**

**LAND TO THE REAR OF UNIT 6A COED DARCY BUSINESS PARK, LLANDARCY, NEATH**

We refer to the above and, on behalf of our client Peak Gen Power 5 Limited, write to formally request a screening opinion under Regulation 31(1) of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 ('the 2017 Regulations'), as to whether the above development is 'EIA development' within the meaning of the 2017 Regulations.

The development for which planning permission is sought is not EIA development as it does not fall within the descriptions of development or the applicable thresholds and criteria set out in either Schedule 1 or Schedule 2 of the 2017 regulations. However, as the development falls within the definition of a 'Development of National Significance' (DNS) under section 4 of the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016, for the purposes of s62(D) of the Planning (Wales) Act 2015 ("the Wales Act"), it is necessary to secure a screening direction to confirm its status as 'non-EIA development' prior to the formal notification of the proposed application to the Welsh Ministers. Under Section 8 of the 'Notice of Proposed Application for Permission for a Development of National Significance (Wales)' form, applicants are required to demonstrate that an Environmental Statement is not required to accompany an application by submitting a screening opinion, irrespective of whether the application is for 'non-EIA development'. This screening request has therefore been submitted purely to satisfy this procedural requirement. If the application was being made to the Local Planning Authority, it would not be necessary to seek a screening opinion as it constitutes 'non-EIA' development.

As required by regulation 31(2) of the 2017 Regulations and to enable your full consideration of this request, please find below a description of the development and the site, a description of the aspects

of the environment likely to be significantly affected by the development and a description of any likely significant effects as well as a plan identifying the land (please see **Appendix 1**).

### **The Development for which Planning Permission is sought**

Peak Gen Power 5 Limited is seeking planning permission for a circa 20MW Short Term Operating Reserve (STOR) facility. The development comprises ten x 2MW generators which are housed in insulated container units, together with five fuel storage containers, two switchgear containers, five transformers, an AdBlue tank, and other ancillary equipment.

As the scheme comprises an electricity generating station with an installed generating capacity of between 10 and 50 MW, it falls within the definition of a 'Development of National Significance' (DNS) under section 4 of the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016, for the purposes of s62(D) of the Planning (Wales) Act 2015 ("the Wales Act").

Planning permission was originally granted for the development by Neath Port Talbot Council on 21 January 2013 (application reference no: P2012/1061). A copy of the decision notice is included in **Appendix 2**. The planning permission was implemented, and the facility became operational in 2013. However, the development was completed without full compliance with the planning conditions included within the permission. Section 62D(7) of the Wales Act states that

*(7) An application is within this subsection if it is an application for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted."*

The DNS (Wales) Regulations 2016 ("the Regulations") provide further detail in relation to s62D(7) under s51 which states:

*"51. For the purposes of section 62D(6) of the 1990 Act (developments of national significance: applications to be made to Welsh Ministers), an application within section 62D(7) of that Act is to be treated as a nationally significant development application only if the application —*

- a) relates to development of national significance as provided for in section 62D(3) and (4) of that Act;*
- b) is made pursuant to section 73 of that Act (determination of applications to develop land without compliance with conditions previously attached); and*
- c) relates to a time limit imposed by or under section 91 of that Act (general condition limiting duration of planning permission)."*

Accordingly, and notwithstanding the fact that the development was completed prior to the DNS regime being brought into force, the regulations require an application to be made under s73A of the TCPA 1990 (as applied with modifications by article 3(1)(I) of the Developments of National Significance (Application of Enactments) (Wales) Order 2016). A planning application will therefore be made under Section 73A of the TCPA 1990 to the Welsh Ministers seeking planning permission for development

carried out before the date of the application without compliance with some conditions subject to which planning permission was granted.

A screening opinion is therefore sought from the Welsh Ministers in advance of the application being made.

In line with the requirements of regulation 31(4), a copy of this request and the documents which accompany it has been sent to Neath Port Talbot County Borough Council as the relevant planning authority.

## **The Site & its Context**

The site is located within the administrative boundary of Neath Port Talbot County Borough Council and is situated on Land behind Unit 6A, Coed Darcy Business Park, Llandarcy. The area of the site is 0.12 hectares.

The site is located to the south of a railway line, east of M4 Junction 43 and within a former oil refinery site, which largely lies to the west and south of the site and is currently being redeveloped by St Modwen as part of its Coed Darcy regeneration project. The redevelopment is being carried out in line with the Strategic Regeneration Area ('SRA') allocation in the Neath Port Talbot Local Development Plan (2011-2026) ('LDP'). The allocation relates to a strategic urban village comprising residential development (4,000 units), B1 business (41,200 sqm), up to 3,000 sqm of retail floorspace, other commercial development, education and community facilities and associated infrastructure. The application site is located within the commercial area of the SRA.

It should be noted that the application site was remediated by St Modwen prior to the STOR 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.

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.

The closest Scheduled Ancient Monument (SAM), Llandarcy Round Cairn (Record No 392), 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' (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.

There are also several areas of Ancient Woodland within the surrounding area including Ancient Semi Natural Woodland. These are located:

- adjacent to the M4 (Unique ID: 12259), circa 235m away from the site with the M4 intervening;

- adjacent to the B4290 (Unique ID: 18273), circa 645m from the site with the M4 intervening;
- adjacent to the A465 (Unique ID: 12260), circa 390m from the site with various roads and commercial properties intervening; and
- further north-west on either side of the railway line (Unique IDs: 12261/12262/12263), circa 845m from the site.

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.

## **Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017**

### ***Schedule 1***

The proposed development does not fall within 'Schedule 1' of the 2017 Regulations.

### ***Schedule 2***

'Schedule 2 development' means development, other than exempt development, of a description mentioned in Column 1 of the table in Schedule 2 of the 2017 Regulations where:

- a) any part of that development is to be carried out in a sensitive area; or
- b) any applicable threshold or criterion in the corresponding part of Column 2 of that table is respectively met or exceeded in relation to that development.

### ***Sensitive Area***

The site is not located within, or partly within, a sensitive area as defined by Regulation 2(1) of the 2017 Regulations.

### ***Applicable Threshold and Criterion***

The proposed development falls within the description of development, "*Industrial installations for the production of electricity, steam and hot water (unless included in Schedule 1)*" at paragraph 3(a), Column 1 of the table in Schedule 2 of the 2017 Regulations. The threshold set out in Column 2 of the table is as follows:

- "*The area of the development exceeds 0.5 hectare.*"

The area of the development does not exceed 0.5 hectare; the site area is 0.12 hectare.

As the proposal is not located within a 'sensitive area' as defined by Regulation 2(1) and does not meet or exceed the applicable threshold and criteria in Column 2 of the table in Schedule 2 of the 2017 Regulations, the proposal does not constitute 'Schedule 2 development' within the meaning of the 2017 Regulations.

## Non-EIA Development

Even though the development is 'non-EIA' development and falls outside the scope of the 2017 Regulations, we comment below on the likelihood of 'significant environmental effects' in order to meet the requirements of regulation 32(2) of the 2017 Regulations.

At the time of the original 2012 planning application, the development was not considered to be EIA development and an Environmental Statement was therefore not required. The technical information which accompanied the original planning application included an Air Quality Report (January 2011) produced by Amec (please see **Appendix 3**) and a Noise Assessment (18 October 2011) produced by Ian Sharland Limited (please see **Appendix 4**) both concluded that 'significant environmental effects' are unlikely to arise, and EIA is not required for the proposed development.

The Countryside Council for Wales in their consultation response dated 3 December 2012 made no objection to the proposal, stating *"...aerial emissions from this proposal are not likely to give rise to significant effects on the Crymlyn Bog SAC and Ramsar site."* (please see **Appendix 5**).

Neath Port Talbot Council also issued an opinion as to whether an Appropriate Assessment was required under the Conservation of Habitats and Species Regulations 2010 (please see **Appendix 6**). This opinion concluded that the proposed development, either by itself or in combination with any other development/project, would not likely have a significant effect on the Crymlyn Bog SAC and Crymlyn Bog RAMSAR sites. In light of this, the Local Planning Authority did not consider that an Appropriate Assessment was required.

## Conclusion

As set out above, the development for which planning permission will be retrospectively sought is neither Schedule 1 nor Schedule 2 development and therefore falls outside the scope of the 2017 EIA Regulations.

This request for a screening direction from Welsh Ministers is therefore made from a purely procedural perspective to confirm that the development is 'non-EIA' in advance of an application being made under s73A of the TCPA 1990 (as applied with modifications by article 3(1)(I) of the Developments of National Significance (Application of Enactments) (Wales) Order 2016). The approach has been informed by pre-application discussions with both the Planning Division at Welsh Government and the Planning Inspectorate.

Notwithstanding the above, and subject to further dialogue with Neath Port Talbot County Borough Council, it is anticipated that the application will be supported by updated technical information on air quality and noise impacts. These assessments are considered sufficient to suitably consider and control the impact of the proposed development.

We trust that you have sufficient information to consider this screening request and we look forward to receiving the Welsh Ministers' screening direction within the prescribed period

following receipt of this letter. In the meantime, if you require any additional information, please do not hesitate to contact me.

Yours faithfully,



**Ben Lewis MRTPI**  
**Director – Infrastructure & Energy**  
**For and behalf of Barton Willmore LLP**