

## REPORT OF THE HEAD OF DEVELOPMENT MANAGEMENT

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### **SUBJECT: COMMUNITY PROJECT PROPOSAL RELATING TO PROPOSED COMBINED HEAT AND POWER PLANT, SOUTH HOOK LNG, HERBRANDSTON**

#### **Purpose of Report**

This report presents, for Members to consider and approve, the response to a community project proposal in relation to the proposal for a combined heat and power plant adjacent to the South Hook LNG terminal.

#### **Background**

The development proposal relates to a new combined heat and power plant to be located on land immediately adjacent to and within the perimeter of the South Hook LNG terminal and within the National Park boundary. As the project is a Nationally Significant Infrastructure Project (NSIP) under the Planning Act 2008 the decision-maker is the Secretary of State for energy and Climate Change, a UK Minister.

Under the 2008 Act an application is made for a Development Consent Order (DCO) (which can cover a number of consenting regimes although in this case the DCO is largely concerned with the grant of planning permission) and once an application is accepted for examination the Planning Inspectorate (PINs) will appoint an Examining Authority (in this case a single Inspector) to examine the application and receive representations. The process is mainly conducted by written submissions with targeted oral hearings. The Examining Authority reports and makes a recommendation to the Secretary of State for Energy and Climate Change who will make the final decision. The Examination is due to close on the 23<sup>rd</sup> April 2014 and officers have appeared at the examination to give evidence in relation to specific issues and on the content of the draft DCO and its requirements (conditions).

The Authority's role in the Examination is that of a statutory consultee and it is under a duty to submit a "Local Impact Report" to the Examining Authority. As members will recall the Authority's Local Impact Report ("LIR") and Written Representation were agreed at the Development Management meeting on 20th November 2013.

The Local Impact Report and Written Representation included recommendations in respect of the need for the applicant to enter into a Section 106 agreement (referred to in the context of a 2008 Act application as a "development consent obligation") addressing identified impacts in relation to housing and transport (both impacts relating to the construction phase). The LIR and Written Representation recommended the following:

## ***Transportation Matters***

- Improvement from the new roundabout south of Tiers Cross to just north of the Robeston West Junction.
- Road improvement from Tiers Cross (south end where Bulford Road improvement ends) to Robeston West junction.
- Bus Lay-bys and uncontrolled crossing-island at Meadow View - a school transport risk assessment has concluded that it is unsafe to drop pupils off on the opposite side of the road and the impact upon safety will be exacerbated due to the increased traffic generation through the construction phase.
- Thornton Cross Visibility Improvement - There is substandard visibility at the Thornton junction which requires remedial works in order to mitigate the impact of the construction traffic.
- Shared Use Path - A SUP will be required from Tiers Cross to Neeston Junction (C3001). This would connect to the Milford to Herbrandston SUP, providing mitigation for the impact of the development on vulnerable road users and provide a long term sustainable access for staff and others who may be impacted by the development. There is a potential opportunity to use a dismantled railway running on the east side of the highway adjacent to Murco.
- Signage and marking improvements – the existing lining and signing provision along the route need to be audited and suitable improvements provided.

These works were identified as being directly related to the need generated by the development and its associated construction traffic. The cost of these works would need to be funded by the applicant either by way of a section 278 agreement under the Highways Act or a development consent obligation under section 106 of the Planning Act.

## ***Housing Matters***

Four options were considered to address identified impacts on local housing supply during the construction phase of the development:

- A commitment to providing funding for the accommodation of housing any homeless arising from displacement
- The construction of a workers camp in the Milford Haven area which would need to be coming on stream by mid 2014 to accommodate 30% of the travelling workforce.
- Assistance through funding affordable housing delivery in the Milford Haven area by providing an affordable housing contribution which is equivalent to setting up a workers camp, again coming on stream by mid 2014.

- The construction of a workers camp in the Milford Haven area that can serve a dual purpose as affordable housing provision in the long term, again coming on stream by mid 2014.

The fourth option was the preferred option. Since submitting the LIR it is understood that the construction phase is unlikely to be commencing until early 2015 and as such the provision of any of the above options would have a later commencement date. The adoption of any of these options would require a development consent obligation under section 106 of the Town and Country Planning Act 1990.

Pembrokeshire County Council (PCC) has also made the same requests in respect of transportation and housing in its LIR.

### **Progress of the Examination**

The applicant has responded to the evidence and arguments for a development consent obligation to address the identified transport and housing impacts in both writing and at the Issue Specific Hearings.

The applicant submits that they have demonstrated that the project will have no permanent adverse impact on the local road system and local affordable housing market and no unacceptable temporary impact. The applicant does not therefore support the asserted concerns outlined in the LIR to justify the expenditure of some £6.2 million on road improvements and affordable housing investment and will not therefore enter into a development consent obligation which they consider would fail the tests for requesting a planning obligation set out in national guidance.

Neither the Authority nor PCC have changed their position in the light of the applicant's submissions. Accordingly it is now a matter for the Examining Authority and in due course the Secretary of State, to determine whether approval of the DCO should be subject to a development consent obligation in the terms sought by the Authority and PCC.

### **The Community Project Proposal**

Whilst the applicant does not accept the argument that there are material planning considerations relating to the impact on highways and affordable housing that require a development consent obligation to be entered into to enable consent to be granted, the applicant has nonetheless recognised that these issues are of concern to the Authority (and PCC) and wishes to make a contribution to the economic health and well being of the local area.

Consequently the applicant has submitted a "community project" proposal for consideration by the Authority and PCC outside the Examination process and the Heads of Terms for this proposal are attached at Appendix A. The funding offered can be summarised as:

- The contribution of £400,000 to projects under the control of PCC and PCNPA during the construction phase of the CHP Plant. At least £200,000 of this shall be attributed to projects under the control of PCNPA.

- The projects concerned must be for affordable housing or transport in the local area of the CHP Plant or such other purposes as may be agreed by the Parties. Projects can include services such as the commissioning of reports or studies and the hiring of staff or consultants as long as they are for the approved purposes.
- The funding commitment will only commence once the Developer has fully committed to the CHP Project through the issue of a notice to proceed for the construction.

The intent of the proposal is to resolve concerns raised by PCNPA (and PCC) in the LIR's (and as detailed above). In the event that the Examining Authority requires the applicant to enter into a development consent obligation and there is an overlap with the community project proposal the applicant states that there will be a need to revisit the latter to resolve any such overlap.

In addition to the above, the applicant has stated that there is an intent for an overall programme of community funding which includes both the £400,000 forming the community project proposal which is the subject of this report, and an additional £100,000 to those communities most affected by the project.

The applicant also intends to have a community benefits programme for the operations phase of the facility (anticipated to be 25 years) with an annual contribution of £200,000. This contribution would be discretionary and be benchmarked against similar local schemes.

The applicant therefore expects that a total community benefit of approximately £5,500,000 over the lifetime of the project would be provided but this is not a firm commitment, although the applicant states that this intent has been given both verbally and in writing and they intend to meet this very public obligation.

It must be emphasised however, that members' deliberations can only be with regard to the £400,000 that is being offered through the Community Project proposal and for which the Heads of Terms have been tabled and not the expressions of intent in relation to further community benefit expenditure.

## **Officers Appraisal**

### ***Considerations of the Projects on Offer***

The applicants have clearly stated that they do not agree that the impacts identified in relation to housing and transport will occur and as such the works required to address these specific impacts have not formed part of the community projects proposal. The proposal instead offers a more generic approach to "approved purposes" which are defined as affordable housing or transport in the local area of the CHP plant or such other purposes as may be agreed by the Parties. The projects can include services such as commissioning of reports or studies and the hiring of staff and consultants as long as they are for the approved purposes. These projects will be negotiated and agreed in advance.

Whilst funding towards these purposes is welcomed in principle, there is concern that this particular proposal provides no identification of such projects, nor addresses the issues raised in the LIR and which provides clear guidance on where funding should be spent to address the identified impacts. In the absence of such direction it is extremely difficult to fully understand the community benefit that is on offer. In the absence of such, it is not considered that the proposal provides any funding that would be persuasive to justify acceptance in lieu of the Section 106 obligations that PCNPA and PCC have clearly identified both in terms of need and where the funding should be spent.

### ***Financial Considerations of the Community Projects Proposal***

Notwithstanding this position, the impacts that have been identified have been costed by the Highways Authority to provide a comparative figure for considering the community projects offer that has been tabled. In respect of transport, the works involve the improvement of the highway route from the Bulford Road junction to the site as detailed above, and the global estimate for these works is in the region of £2,200,000. This figure would include land purchase, accommodation works and utility works.

In respect of housing, as Option 4 described above is the Authority's preferred option, most of the discussions with the applicants have centred on this option. This option would require provision to accommodate 57 workers and using the housing need figures for the areas surrounding the development in relation to the size of properties required and the build costs based on the Acceptable Cost Guidance produced by the Welsh Government this would be in the region of £4,166,000 to deliver.

In terms of the other options presented in the LIR, costings have been carried out by the Housing Officer at Pembrokeshire County Council and been estimated, in the case of Option 1 at approximately £527,900. This figure is based on funding for the accommodation of housing of any homeless arising from displacement and is based on the Local Housing Allowance rates in the area. Options 2 and 3 relate to the cost of building a workers camp and it is anticipated as this relates to *actual* delivery of housing rather than funding for any displacement that this would fall between the costings of Option 1 and 4.

As such the total cost of the identified impacts on both highways and housing arising from the construction phase is estimated at between £2,727,900 and £6,366,000.

The offer of £400,000 is therefore considered to fall considerably short of the estimated cost of addressing the impacts in the LIR and is not persuasive in agreeing the community projects scheme in financial terms and would make little contribution in your officer's view to addressing the impacts that have been identified.

### ***Considerations of the Mechanisms of the Community Projects Proposal***

In addition, the Heads of Terms relate to projects that are under the control of PCC and PCNPA during the construction phase of the CHP plant. PCNPA does not administer projects relating to housing and transport and therefore the allocation of £200,000 as specified would be extremely difficult for PCNPA to deliver as it is not

the responsible authority for these purposes. Furthermore, the proposal allows discretion by the developer to agree projects and to determine how the funds are spent on the projects which provides uncertainty as to the funding on offer. PCC has expressed concern that this could hinder progressing capital programmes that span more than one year's contribution.

The Heads of Terms also do not take account of the fact that other third parties (for example housing associations) may be involved which adds a further dimension to deliverability.

### ***Legal considerations***

Legal advice has been sought on the community project offer. The solicitor has advised that the offer has to be considered on its own terms outside the DCO process.

As noted already, the Authority is a statutory consultee in the DCO process. However, its status is due to its role as local planning authority and its statutory purposes as a National Park Authority. The views expressed in the LIR and the Written Representations and the case presented at the Examination for development consent obligation relating to housing and transportation, reflect these functions and duties.

Neither the Authority nor PCC accept the arguments of the applicants that there is no planning requirement for the obligations being sought and it is now for the decision-maker to determine the arguments as the Examination is now closed to further arguments.

The offer of a programme of community benefits, however, is well-established for renewable energy schemes (a category which includes electricity generation by CHP). Although the UK National Policy Statements (EN-1) and on Energy and on Fossil Fuel Electricity Generating Infrastructure (EN-2), which are the main national planning policies in this case, are silent on the subject there is guidance from the Welsh Government in TAN-8 Planning for Renewable Energy, which is also material planning consideration in the Examination of this application.

TAN 8 states (at paragraph 2.16) that developers may offer benefits not directly related to the planning process and that while local planning authorities should, where reasonably practicable, facilitate and encourage such proposals, they cannot enable permission to be given to a proposal that is otherwise unacceptable in planning terms. By the same token these considerations should not influence the Authority to modify its planning position in the Examination.

Accordingly, the Authority can enter into discussions with the applicants to facilitate community benefits, but the offer of community benefits cannot influence the Authority's stated position taken for planning reasons (or any consideration of modifying that position) in relation to the Examination and the case presented for a development consent obligation covering affordable housing and highways. While these discussions could take place now so long as the basis was clearly understood by the parties, there would be a clearer separation and perhaps less risk of confusion

if the discussions on community benefits were pursued once the position with regard to the representations seeking a development consent order has been clarified.

Agreeing or facilitating a community benefits package outside the planning process and collaborating with PCC for that purpose, would fall within the Authority's duties under section 11A of the National Parks and Access to the Countryside Act 1948 seek in fulfilling the purposes of the National Park to foster the economic and social well-being of local communities within the National Park and for that purpose to co-operate with local authorities and public bodies whose functions include the promotion of economic or social development within the area of the National Park.

## **Conclusions**

In conclusion, it is not considered that the community projects proposal that has been submitted provides an acceptable offer to address the impacts that have been identified in the LIR, nor provides a comparative financial offer that could be used for such purposes. The mechanisms for delivery are also unclear, particularly as the PCNPA is not the housing or highway authority for such projects. As such, it is not considered that the proposal should be accepted in lieu of the Section 106 obligation that has been requested in response to the direct impacts identified as arising from the construction phase of this development.

However, the pursuit of the community project proposal outside the DCO process is welcomed once the outcome of the Examination is known on the requirement (or not) for such an obligation.

## **Recommendations**

That members agree the following:

1. To maintain the position adopted by the Authority in relation to the housing and highways impacts of the scheme as set out in the Authority's Local Impact Report and its Written Representation.
2. To pursue the offer of a community project package outside the DCO planning process once the result is known of the Authority's representations on housing and highway impacts.

## **Background Documents**

Project documents:

<http://infrastructure.planningportal.gov.uk/projects/wales/south-hook-combined-heat-power-station/?ipcsection=app>

Illustration of process:

<http://infrastructure.planningportal.gov.uk/wp-content/uploads/2013/03/Application-process-diagram2.png>

PCNPA LIR and Written Representation responses and submission of written record of oral submissions dated 12<sup>th</sup> March 2014

Responses from other relevant authorities – PCC Highways/Housing

Letter from applicant and Heads of Terms for a Community Project Funding Agreement dated 4<sup>th</sup> April 2014

*(For further information please contact Vicki Hirst, Head of Development Management)*