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STATUTORY INSTRUMENTS

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**2014 No. 2846**

**INFRASTRUCTURE PLANNING**

**The South Hook Combined Heat and Power Plant Order 2014**

*Made* - - - - 22nd October 2014

*Coming into force* - - 23rd October 2014

An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(1).

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the Planning Act 2008(2) (“the 2008 Act”), and the Infrastructure Planning (Examination Procedure) Rules 2010(3).

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.

The Secretary of State, having considered the report and recommendation of the single appointed person, and decided the application, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals.

The Secretary of State, in exercise of the powers conferred by sections 114, 115 and 120 of the 2008 Act, makes the following Order—

**Citation and commencement**

1. This Order may be cited as the South Hook Combined Heat and Power Plant Order 2014 and shall come into force on the day after the day on which it is made.

**Interpretation**

2. (1) In this Order—  
“the 1961 Act” means the Land Compensation Act 1961(4);

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(1) S.I. 2009/2264 as amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635) and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc) (Amendment) Regulations 2013 (S.I. 2013/522). There are other amendments to the Regulations which are not relevant to this Order.  
(2) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c.20), and by sections 22 to 27 of the Growth and Infrastructure Act 2013 (c.27), see S.I. 2013/1124 for transitional provisions.  
(3) S.I. 2010/103, as amended by S.I. 2012/635.  
(4) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.

“the 1980 Act” means the Highways Act 1980(5);

“the 1990 Act” means the Town and Country Planning Act 1990(6);

“the 1991 Act” means the New Roads and Street Works Act 1991(7);

“the 2008 Act” means the Planning Act 2008;

“authorised development” means the development described in Schedule 1 (authorised development) which is development within the meaning of section 32 of the 2008 Act;

“building” includes any structure or erection or any part of a building, structure or erection;

“CCS proposal” means a proposal for the capture, transport and storage of the target carbon dioxide, which identifies the proposed capture technology, transport route and storage location;

“current CCS proposal” means—

- (a) the CCS proposal set out in the Feasibility Study and assessed as technically feasible by the Secretary of State, or
- (b) if a revised CCS proposal has been identified under Article 14(7), the proposal which has been most recently so identified;

“commissioning” means the process of assuring that all systems and components of the authorised development are installed, tested, and operable in accordance with the design and operational requirements of the undertaker;

“design principles statement” means the design principles statement with reference number 1.22 (28th February 2014) and certified as the design principles statement by the Secretary of State for the purposes of this Order;

“draft CCP” means the draft code of construction practice with reference number 1.23 submitted with the application and certified as the draft CCP by the Secretary of State for the purposes of this Order;

“draft landscaping plan” means the draft landscaping plan with reference number 2.13 and certified as the draft landscaping plan by the Secretary of State for the purposes of this Order;

“the Environmental Permitting Regulations” means the Environmental Permitting (England and Wales) Regulations 2010(8) as may be amended from time to time;

“environmental statement” means the environmental statement in three volumes and a non-technical summary with reference numbers 1.3.1 to 1.3.4 submitted with the application and certified as the environmental statement by the Secretary of State for the purposes of this Order;

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- (5) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
  - (6) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
  - (7) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
  - (8) S.I. 2010/675. There are amendments to this Regulation which are not relevant to this Order.

“Feasibility Study” means the document entitled Carbon Capture Readiness Assessment with reference number 1.21 submitted with the application and certified as the Feasibility Study by the Secretary of State for the purposes of this Order;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“key buildings” means the key buildings and structures set out in the works plan (part B);

“the limits of deviation” means the limits of deviation for the electrical sub-station (HV switchgear indoor gas insulated building and compound) and the stack shown on the works plan (part B);

“Natural Resources Wales” means the Natural Resources Body for Wales;

“the Order limits” means the limits shown on the works plan (part A) within which the authorised development may be carried out;

“permanent works” means the authorised development within Work Nos. 1A, 2, 3A, 4, 5, 6, 7A and 10A and identified as permanent works in Schedule 1 (authorised development);

“the proposed site layout plan” means the proposed site layout plan with reference number 1.13C submitted with the application and certified as the proposed site layout plan by the Secretary of State for the purposes of this Order;

“relevant planning authority” means Pembrokeshire Coast National Park Authority in relation to land in its area and Pembrokeshire County Council in relation to land in its area and “the relevant planning authorities” means both of them;

“requirements” means those matters set out in Schedule 2 (requirements);

“the section drawing plan” means the section drawing plan with reference number 1.9 (Rev C) and certified as the section drawing plan by the Secretary of State for the purposes of this Order;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“temporary works” means the authorised development within Work Nos. 1B, 3B, 7B, 8, 9, 10B and 11 and identified as temporary works in Schedule 1 (authorised development);

“transport assessment” means the transport assessment with reference number 1.19A submitted with the application and certified as the transport assessment by the Secretary of State for the purposes of this Order;

“undertaker” means South Hook CHP Limited (company number 8109296) or such alternative person as has the benefit of this Order under section 156(1) of the 2008 Act; and

“the works plans” means works plan (part A) with reference number 1.10A and works plan (part B) with reference number 1.10B (Rev B) and certified as the works plans by the Secretary of State for the purposes of this Order, and references in this Order to “works plan (part A)” or “works plan (part B)” must be construed accordingly.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate.

### **Development consent etc. granted by the Order**

3. (1) Subject to the provisions of this Order and to the requirements the undertaker is granted development consent for the authorised development to be carried out within the Order limits, and Schedule 1 (authorised development) and Schedule 2 (requirements) have effect for that purpose.

(2) Each numbered work comprised in the authorised development must be constructed within the correspondingly numbered area shown on the works plan (part A).

(3) Subject to paragraph (4), in constructing or maintaining the key buildings shown and identified on the works plan (part B), the undertaker may—

- (a) deviate laterally from the building outlines shown for those key buildings shown and identified on the works plan (part B) to any such extent inwards as may be necessary, convenient or expedient; and
- (b) deviate vertically from the building levels shown for those key buildings on the sections shown and identified on the section drawing plan to any such extent downwards as may be necessary, convenient or expedient.

(4) The works comprised in the electrical sub-station (HV switchgear indoor gas insulated building and compound) and the stack may be constructed within the limits of deviation subject to the relevant dimensions for these works set out in the design principles statement and as set out below—

- (a) for key building 4 (the electrical sub-station (HV switchgear indoor gas insulated building and compound))—
  - (i) the limits of deviation dimensions are a length of 140m (approximate east/west axis), and width of 50m (approximate north/south axis);
  - (ii) the key building dimensions are a height up to 7m, length up to 79m, and width up to 47m;
- (b) for key building 9 (the stack)—
  - (i) the limits of deviation dimensions are a length of 23m (approximate east/west axis), and width of 8m (approximate north/south axis);
  - (ii) the key building dimensions are a height up to 85m, and diameter up to 8m.

#### **Procedure in relation to certain approvals etc. under requirements**

4. (1) Where an application is made to a relevant planning authority for any consent, agreement or approval required by a requirement, the following provisions apply, insofar as they are not inconsistent with orders, rules or regulations made under the 2008 Act, in respect of that application as they would apply if the consent, agreement or approval so required was required by a condition imposed on a grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of the application of section 262 of the 1990 Act (meaning of “statutory undertaker”) to appeals pursuant to this article, the undertaker is deemed to be a holder of a licence under section 6 of the Electricity Act 1989<sup>(9)</sup>.

(3) For the avoidance of doubt, the right of appeal conferred by paragraph (1) above pursuant to sections 78 and 79 of the 1990 Act is by notice to the Secretary of State.

#### **Maintenance of authorised development**

5. The undertaker may at any time maintain the authorised development, except to the extent that this Order, including the requirements or an agreement made under this Order, provides otherwise.

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(9) 1989 c.29. Section 6 was amended by s.30 of the Utilities Act 2000 (c.27), and s.6(10) amended by s.89(3) of the Energy Act 2004 (c.20). There are other amendments to this section that are not relevant to this Order.

### **Operation of generating station**

6. (1) The undertaker is hereby authorised to operate the generating station comprised in the authorised development for the purpose of generating electricity and heat, including as a combined heat and power plant through the provision of heat to the existing South Hook LNG Terminal together with the generation of electricity.

(2) This article does not relieve the undertaker of any obligation to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of a generating station.

### **Consent to transfer benefit of Order**

7. (1) Without prejudice to section 156 of the 2008 Act, the undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed,

(2) Where a transfer or grant has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), shall include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) must be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

### **Defence to proceedings in respect of statutory nuisance**

8. (1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(10)</sup> (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974<sup>(11)</sup>; or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use

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<sup>(10)</sup> 1990 c.43. There are amendments to this Act which are not relevant to this Order.

<sup>(11)</sup> 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

- of the authorised development which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the relevant planning authority; or
- (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Access to works**

9. The undertaker may, for the purposes of the authorised development, and after the details of the proposed access works have been submitted to and approved by the relevant planning authorities, form and lay out such means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

### **Discharge of water**

10. (1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991(12) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise a groundwater activity or water discharge activity within the meaning of the Environmental Permitting Regulations.

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, Natural Resources Wales, a harbour authority within the meaning

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(12) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

- of section 57 of the Harbours Act 1964<sup>(13)</sup> (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation;
- (b) “watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;
  - (c) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting Regulations have the same meaning as in those Regulations; and
  - (d) other expressions, excluding watercourse, used both in this article and the Water Resources Act 1991<sup>(14)</sup> but not the Environmental Permitting Regulations have the same meaning as in that Act.

### **Authority to survey and investigate and remediate the land**

**11.** (1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits and—

- (a) survey or investigate or remediate the land, subject where applicable, in the case of remedial investigations and works to requirement 9 (contaminated land and groundwater), in the case of archaeological investigations and works to requirement 10 (archaeology) and in the case of ecological investigations and works to requirement 11 (ecological management plan);
  - (b) without prejudice to the generality of sub-paragraph (a), make trial pits or bore holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and groundwater, remove soil or water samples and conduct any geotechnical, chemical or other testing on such samples;
  - (c) without prejudice to the generality of sub-paragraph (a), carry out any remedial works the undertaker thinks fit in connection with the authorised development;
  - (d) without prejudice to the generality of sub-paragraph (a), carry out archaeological or ecological investigations on such land; and
  - (e) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial pits or bore holes.
- (2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of the undertaker—
- (a) must, if so required upon entering the land, produce written evidence of their authority to do so; and
  - (b) may take with them such vehicles and equipment as are necessary to carry out the survey, investigation, or remediation or to make the trial pits or bore holes.
- (4) No trial pits or bore holes shall be made under this article—
- (a) in land located within the highway boundary without the consent of the highway authority; or
  - (b) in a private street without the consent of the street authority, but such consent must not be unreasonably withheld.

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<sup>(13)</sup> 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.

<sup>(14)</sup> 1991 c.57. 1991 c.57. Section 85(1) was amended by paragraphs 21(1) and (2) of Part 1 of Schedule 21 to S.I. 2007/3538.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

### **Application of landlord and tenant law**

**12.** (1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

### **Operational land for purposes of the 1990 Act**

**13.** Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act) from the date at which the undertaker obtains a generation licence under section 6 of the Electricity Act 1989.

### **Carbon Capture Readiness**

**14.** (1) The following definitions apply for the purposes of this article—

- (a) “capture equipment” means the plant and equipment required to capture the target carbon dioxide and identified as such in the current CCS proposal;
- (b) “designated site” means the land identified in the Feasibility Study as the area where the undertaker proposes to locate the capture equipment;
- (c) “CCR report” means the report to be provided to the Secretary of State by the undertaker pursuant to paragraph (3) below;
- (d) “target carbon dioxide” means as much of the carbon dioxide emitted by the authorised development when it is operating at full capacity as it is reasonably practicable to capture for the purposes of permanent storage, having regard to the state of the art in carbon capture and storage technology.

(2) Until such time as the authorised development is decommissioned, the undertaker must not, without the written consent of the Secretary of State—



- (a) dispose of any interest in land which includes the designated site; or
  - (b) do any other thing, or allow any other thing to be done or to occur, which may reasonably be expected to diminish the undertaker's ability, within two years of such act or occurrence, to install and operate the capture equipment on the designated site.
- (3) The undertaker must make a report (the "CCR report") to the Secretary of State—
- (a) on or before the date on which three months have passed from completion of commissioning;
  - (b) within one month of the second anniversary, and each subsequent even-numbered anniversary, of that date.
- (4) The CCR report must provide evidence that the undertaker has complied with paragraph (2)—
- (a) in the case of the first CCR report, since this Order was made;
  - (b) in the case of any subsequent CCR report, since the making of the previous report,
- and explain how it expects to continue to comply with paragraph (2) over the next two years.
- (5) The CCR report must state whether the undertaker considers that some or all of the technology referred to in the current CCS proposal will not work, and explain the reasons for any such conclusion.
- (6) The CCR report must identify any other impediment of which the undertaker is aware, as a result of which it considers that any aspect of what is proposed in the current CCS proposal is likely or certain not to be technically feasible.
- (7) CCR reports which identify such an impediment must state, with reasons, whether the undertaker considers it technically feasible to overcome the impediment by adopting a revised CCS proposal, and, if so, include such proposal.
- (8) The CCR report must state, with reasons, whether the undertaker has decided to seek any additional regulatory clearances, or to modify any existing regulatory clearances, in respect of its current CCS proposal in the period referred to in paragraph (4) as appropriate.
- (9) This article shall cease to have effect if the capture equipment is installed or the authorised development is decommissioned.

### **Certification of plans etc**

15. (1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State dated and referenced copies of—

- (a) the works plans (part A and part B);
- (b) the section drawing plan;
- (c) the proposed site layout plan;
- (d) the draft landscaping plan;
- (e) any other plans or documents referred to in this Order, including—
  - (i) the Feasibility Study;
  - (ii) the environmental statement;
  - (iii) the design principles statement;
  - (iv) the draft CCP;
  - (v) the transport assessment;

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(3) The undertaker shall submit to the relevant planning authorities copies of any plans or documents certified by the Secretary of State under paragraph (1).

**Arbitration**

**16.** (1) Any difference under any provision of this Order, unless otherwise provided for, must be referred to and finally settled under the rules of arbitration of the International Chamber of Commerce by arbitrators appointed in accordance with those rules of arbitration.

(2) The arbitration must be held in Cardiff (unless otherwise agreed by the parties to the proceedings) and the arbitration proceedings must be conducted, and the award rendered, in the English language.

(3) Where reasonably requested by any party to the proceedings, simultaneous translation of the proceedings will be provided in Welsh and the award translated into the Welsh language.

(4) The resulting arbitral award shall be final and binding without right of appeal, and judgment upon such award may be entered in any court having jurisdiction thereof.

Signed by authority of the Secretary of State for Energy and Climate Change

22nd October 2014

*Giles Scott*  
Head of National Infrastructure Consents  
Department of Energy and Climate Change

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

A nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act comprising the following components contained in the Work Nos. identified in the works plan (part A) and the key buildings and structures as identified in the works plan (part B) and referred to in the design principles statement (and identified as such below in relation to Work No. 1A)—

**PERMANENT WORKS IN AREA OF PEMBROKESHIRE COAST NATIONAL PARK AUTHORITY**

**Work No. 1A.** An electricity generating station with a nominal electrical output capacity of up to 500MWe including:

- (a) Gas/steam turbine generator building (building/structure 1) containing gas turbine generator set and steam turbine generator set;
- (b) Administration office and control room (building/structure 2);
- (c) Workshop and maintenance/warehouse building (building/structure 3);
- (d) Electrical sub-station (HV switchgear indoor gas insulated building and compound) (building/structure 4) and electricity transformer;
- (e) Heat recovery steam generator building (building/structure 5) containing heat recovery steam generator set;
- (f) Standby direct air-cooled fin-fan coolers (building/structure 6);
- (g) Raw/fire water storage tank (building/structure 7), pump house, pipework and hydrants;
- (h) Demineralised water storage tank (building/structure 8), demineralised water treatment plant, and pipework;
- (i) Stack (building/structure 9) for discharge of flue gas;
- (j) Roof structures (building/structure 10);
- (k) Fuel gas lines from (1) existing connection to the Gas National Transmission System and (2) from South Hook LNG Terminal, and gas receiving station;
- (l) Electrical supply power lines;
- (m) Water treatment equipment;
- (n) Electrical export line to electrical sub-station;
- (o) Pumps;
- (p) Hot and return water lines, and support structure (where lines not buried);
- (q) Security fencing, gates and kiosk(s);
- (r) Ground grading, levelling and landscaping works;
- (s) Process waste water treatment plant and pipes to process waste water discharge point.

**Work No. 3A.** Land reserved for future carbon capture/infrastructure and secure access corridor including:

- (t) Ground grading and levelling.

**Work No. 4.** Infrastructure and secure access corridor including:

- (u) Gas supply line (including gas pressure reduction) to gas turbine generator set;
- (v) Utilities (water, electrical power, etc.);
- (w) Security fencing, gates and kiosk(s);

- (x) Planting of hedgerows or the provision of other landscape features approved pursuant to requirement 6 (provision, implementation and maintenance of landscaping).

**Work No. 5.** Integration of hot water circulating system into the existing South Hook LNG Terminal submerged combustion vaporisers (SCVs) including—

- (y) Modifications to existing SCVs;
- (z) Hot water feed line from steam turbine generator set to the SCV manifold, and support structure (where line not buried);
- (aa) SCV water feed lines to each modified SCV, and support structure (where lines not buried);
- (bb) Cold water return line from SCVs to recirculation sump, and support structure (where line not buried);
- (cc) Gas supply line (including gas pressure reduction) to gas turbine generator set, power supply lines, and utilities;
- (dd) Control and measurement systems.

**Work No. 6.** Return water infrastructure/process waste water tie-in point including:

- (ee) Covered cold water recirculation sump for retention of water return from SCVs;
- (ff) Pumps and pump header system;
- (gg) Cold water return line from recirculation sump to steam turbine generator set, and support structure (where line not buried);
- (hh) Tie-in to existing South Hook LNG Terminal process waste water discharge line;
- (ii) Monitoring equipment relating to process waste water.

**Work No. 7A.** Provision of landscaping mitigation including:

- (jj) Planting of hedgerows or the provision of other landscape features approved pursuant to requirement 6 (provision, implementation and maintenance of landscaping).

## **PERMANENT WORKS IN AREA OF PEMBROKESHIRE COAST NATIONAL PARK AUTHORITY AND PEMBROKESHIRE COUNTY COUNCIL**

**Work No. 2.** Surface water attenuation basin and drainage tie-in point including—

- (kk) Ground grading and levelling;
- (ll) Partitioned attenuation basin for surface water;
- (mm) Tie-in to existing South Hook LNG Terminal surface water drainage discharge line;
- (nn) Monitoring equipment relating to surface water.

**Work No. 10A.** Open storage of excavated materials.

## **TEMPORARY WORKS IN AREA OF PEMBROKESHIRE COAST NATIONAL PARK AUTHORITY**

**Work No. 1B.** Demolition and preparatory works including—

- (oo) Demolition of existing buildings and structures;
- (pp) Isolation of abandoned utilities;
- (qq) Security fencing, gates and kiosks(s);
- (rr) Temporary welfare facilities and foul drainage storage tank.

**Work No. 3B.** Area of land reserved for future carbon capture including—

- (ss) Temporary construction storage;

(tt) Temporary rainwater attenuation basin.

**Work No. 7B.** Temporary contractors' car park and temporary project office area including—

- (uu) Construction of temporary car park;
- (vv) Temporary offices, canteen, welfare, and related support facilities;
- (ww) Repair and/or replacement of fencing and gates.

**Work No. 8.** Open and covered storage, construction warehouse, workshops and stores including—

- (xx) Open storage of construction materials and equipment;
- (yy) Warehouses for storage of construction materials and equipment;
- (zz) Workshops for repair, maintenance, assembly and testing of equipment.

#### **TEMPORARY WORKS IN AREA OF PEMBROKESHIRE COAST NATIONAL PARK AUTHORITY AND PEMBROKESHIRE COUNTY COUNCIL**

**Work No. 9.** Temporary construction offices including—

- (aaa) Temporary offices, canteen, welfare, and related support facilities;
- (bbb) Temporary foul drainage storage tank.

**Work No. 10B.** Open storage of excavated materials including—

- (ccc) Storage of excavated materials during construction.

#### **TEMPORARY WORKS IN AREA OF PEMBROKESHIRE COUNTY COUNCIL**

**Work No. 11.** Open storage of excavated materials including—

- (ddd) Storage of excavated materials during construction.

In connection with all such works and as part of the authorised development and to the extent that they do not otherwise form part of any such work, further development whether or not shown on the plans referred to in this Order including:

- (eee) habitat creation;
- (fff) water supply works, foul drainage provision, process waste water management systems, surface water management systems, and culverting;
- (ggg) internal site roads and vehicle parking facilities;
- (hhh) bunds, liners, embankments, swales, landscaping and boundary treatments and fencing;
- (iii) the demolition of buildings and structures within the Order limits;
- (jjj) the provision of footpaths; and
- (kkk) lighting columns and lighting.

SCHEDULE 2

Article 3

REQUIREMENTS

CONTENTS

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Explanatory Note

## **Interpretation**

### **1. In this Schedule—**

“Bat Conservation Trust Guidelines” means the Bats and the Built Environment Series “Bats and Lighting in the UK” dated May 2009;

“commence” means begin to carry out a material operation, and any derivative of “commence” shall be construed accordingly;

“nature conservation area” means the area identified as the nature conservation area in the proposed site layout plan;

“permitted preliminary works” means:

- (a) surveys and geotechnical surveys;
- (b) investigations for the purpose of assessing ground or groundwater conditions;
- (c) archaeological investigations;
- (d) remedial measures approved pursuant to requirement 9 (contaminated land and groundwater);
- (e) erection of signage;
- (f) erection of temporary fencing;
- (g) provision of temporary access and security gates for the development site;
- (h) installation and diversion of utility services;
- (i) site clearance, demolition of existing structures and removal of foundations;

- (j) the laying of foundations,
- (k) provision of wheel cleansing facilities required pursuant to requirement 14 (Construction Traffic Management Plan);
- (l) preparation of laydown areas and provision for temporary facilities (including parking areas and offices) necessary for (a) to (k) above.

#### **Time limits**

2. The authorised development must commence within 5 years of the date of this Order.

#### **Commencement of authorised development**

3. Notice of the intended commencement of the authorised development must be given to the relevant planning authorities where practicable prior to such commencement and in any event within 7 days from the date that the authorised development is commenced.

#### **Commencement and completion of commissioning**

4. (1) Notice of the intended commencement of commissioning must be given to the relevant planning authorities where practicable prior to such commencement and in any event within seven (7) days from the date that commissioning is commenced.

(2) Notice of the intended completion of commissioning must be given to the relevant planning authorities where practicable prior to such completion and in any event within 7 days from the date that commissioning is completed.

#### **Detailed design approval**

5. (1) Except for the permitted preliminary works, no authorised development shall commence until written details of the layout, scale and external appearance of the authorised development have been submitted to, and approved by, the relevant planning authorities.

(2) The details submitted for approval by Pembrokeshire Coast National Park Authority in respect of the key buildings must incorporate the principles and parameters set out in the design principles statement. Such details shall include appropriately scaled plans and sectional drawings indicating existing and proposed finished floor levels, and representations of 3-dimensional images.

(3) The authorised development must be carried out in accordance with the details approved pursuant to paragraphs (1) and (2) above.

(4) Development within the Order limits, other than that authorised by reason of this Order, of buildings, plant or any other structures (or part thereof) must not be undertaken such that it results in the erection of buildings, plant or any other structures (or part thereof) above 5 metres in height (as measured from the highest part of the adjacent ground level), without prior approval of the relevant planning authorities.

#### **Provision, implementation and maintenance of landscaping**

6. (1) Except for the permitted preliminary works, no authorised development shall commence until a written landscaping scheme has, after consultation with Natural Resources Wales, been submitted to and approved by the relevant planning authorities. The landscaping scheme must follow the principles set out in the draft landscaping plan and must reflect details of all proposed hard and soft landscaping works including—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;

- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) vehicular and pedestrian access, parking and circulation areas;
- (f) minor structures, such as refuse or other storage units, signs and lighting;
- (g) proposed and existing functional services above and below ground, including drainage, power and communications cables and pipelines, manholes and supports;
- (h) details of existing trees to be retained, with measures for their protection during the construction period; and
- (i) implementation timetables for all landscaping works.

(2) All landscaping works must be carried out in accordance with the landscaping scheme approved under paragraph (1) and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(3) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

#### **Fencing and other means of enclosure**

7. (1) All proposed permanent fences, walls or other means of enclosure must be constructed as identified in the written details referred to in requirement 5 (detailed design approval) unless otherwise agreed in writing by the relevant planning authorities prior to the completion of commissioning.

(2) All construction areas must remain securely fenced at all times during construction of the authorised development.

(3) Any fencing or means of enclosure not covered by paragraph (1) must be removed from the site within 6 months of the completion of commissioning.

#### **Drainage and aerial emissions**

8. (1) No authorised development shall commence until written details of the surface water, foul water and process waste water drainage systems (including means of pollution control) have, after consultation with Natural Resources Wales and Dwr Cymru (Welsh Water), been submitted to and approved by the relevant planning authorities.

(2) The written details must reflect the drainage proposals set out in sections 4.3.21 to 4.3.31 of volume 1 of the environmental statement and in particular must stipulate that any process waste water discharges from the authorised development into the Milford Haven Waterway must operate through the existing infrastructure in place for the South Hook LNG Terminal that is co-located at or near the site.

(3) The surface water, foul water and process waste water drainage systems must be constructed and operated in accordance with the approved details.

(4) The contribution of the process waste water discharge along with the aerial emissions from the authorised development, in combination with the process waste water discharges and aerial emissions from the South Hook LNG Terminal—

- (a) must not increase overall nitrate loads into the Pembrokeshire Marine SAC from the levels permitted by Environmental Permitting Regulations Permit Number XP3538LD for the South Hook LNG Terminal as varied by Variation Number XP3535ME; and



- (b) must ensure no adverse effect on the integrity of the Pembrokeshire Marine SAC as a result of other contaminants emitted or discharged by the authorised development.

### **Contaminated land and groundwater**

9. (1) No authorised development shall commence until a written scheme to deal with the contamination of any land, including groundwater, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment (as determined pursuant to Part 2A of the Environmental Protection Act 1990<sup>(15)</sup>) has, after consultation with Natural Resources Wales, been submitted to and approved by the relevant planning authorities.

(2) The approved scheme must include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authorities, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site and its stability.

(3) Remediation must be carried out in accordance with the approved scheme.

### **Archaeology**

10. (1) No authorised development comprised in Work No. 4 or Work No. 7A shall commence until a written scheme for the investigation of areas of archaeological interest (as, in the case of Work No. 4, further detailed in section 13.7 of volume 1 of the environmental statement) has been submitted to and approved by the relevant planning authority.

(2) The scheme must identify areas where field work and/or a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works or watching brief carried out under the scheme must be by a suitably qualified person or body approved by the relevant planning authority.

(4) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

### **Ecological management plan**

11. (1) No authorised development shall commence until a written ecological management plan reflecting the survey results and, where necessary, ecological mitigation and enhancement measures (as further detailed in sections 9 and 10 of volume 1 of the environmental statement) has, after consultation with Natural Resources Wales, been submitted to and approved by the relevant planning authorities.

(2) The ecological management plan must include an implementation timetable and must be carried out as approved.

### **Code of Construction Practice**

12. (1) No authorised development shall commence until a Code of Construction Practice (“CCP”) has been submitted to and approved by the relevant planning authorities. The CCP must reflect the proposals set out in the draft CCP.

(2) All construction works must be undertaken in accordance with the approved CCP, or with such changes to that document as agreed by the relevant planning authorities.

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<sup>(15)</sup> 1990 c.43. The definition of contaminated land was amended by the Water Act 2003 c. 37 Pt 3 s.86(2) (April 6, 2012 as SI 2012/284). There are amendments to this Act which are not relevant to this Order.

### **Construction Environmental Management Plan**

13. (1) No authorised development shall commence until a Construction Environmental Management Plan (“CEMP”) has, after consultation with Natural Resources Wales, been submitted to and approved by the relevant planning authorities. The CEMP must reflect the proposals set out in the draft CEMP set out at appendix 4.2 of volume 3 of the environmental statement including:

- (a) traffic and access;
- (b) air quality and dust;
- (c) ecology and nature conservation;
- (d) water protection and management;
- (e) noise management;
- (f) waste and materials management; and
- (g) a complaints procedure.

(2) All construction works must be undertaken in accordance with the approved CEMP, or with such changes to that document as agreed by the relevant planning authorities.

### **Construction Traffic Management Plan**

14. (1) No authorised development shall commence until a written Construction Traffic Management Plan (“CTMP”) has been submitted to and approved by the relevant planning authorities. The CTMP must reflect the proposals set out in the draft CTMP set out at appendix E of the transport assessment including:

- (a) a travel plan for the construction workforce;
- (b) parking of vehicles of site workers and visitors;
- (c) loading and unloading of plant and materials;
- (d) facilities for wheel cleansing to ensure road cleanliness;
- (e) routing to and from the site;
- (f) routing within the site;
- (g) site signage and notices; and
- (h) exceptional loads.

(2) Notices must be erected and maintained throughout the period of construction at every construction site entrance and exit, indicating to drivers the route agreed by the relevant planning authorities for traffic entering and leaving the site.

(3) All construction works must be undertaken in accordance with the approved CTMP, or with such changes to that document as agreed by the relevant planning authorities.

### **Local Liaison Committee**

15. (1) No authorised development shall commence until the undertaker has established a committee to liaise with local residents and organisations about matters relating to the authorised development (a “local liaison committee”) which may, at the discretion of the undertaker, be combined with the functions and activities of the existing community liaison committee that is in operation for the activities of the South Hook LNG Terminal that is co-located at or near the site. The local liaison committee must be made up of representatives of the undertaker and main contractors for the authorised development. The undertaker must invite the relevant planning authorities, Natural Resources Wales, local councils and other relevant interest groups, as may be agreed with the relevant planning authority, to nominate representatives to join the local liaison committee. The undertaker must provide a full secretariat service and supply an appropriate venue. The local liaison committee

must meet at least once every 3 months during the construction of the authorised development and at least once a year during the operation of the authorised development, unless otherwise agreed in writing by the majority of the members of the local liaison committee.

(2) Except in an emergency, the undertaker must give 2 working days' prior written notice to the local liaison committee and the relevant planning authorities in advance of carrying out steam purging. Notification of the activity, the reasons for the activity and its expected duration must also be posted on the undertaker's internet web site. So far as reasonably practicable, steam purging must be commenced so as to predominantly take place between Mondays and Saturdays and not commence nor, so far as is reasonably practicable, continue on any Sunday or public holiday in Wales.

### **External lighting**

**16.** (1) No authorised development shall commence until a lighting plan of the external lighting to be installed and used at the site during the construction period and operation of the authorised development has, after consultation with Natural Resources Wales, been submitted to and approved by the relevant planning authorities.

(2) The lighting plan must include measures to prevent light spillage and as further detailed in sections 4.3.38 to 4.3.40 of volume 1 of the environmental statement and must further include measures (including sufficient screening of directional lighting) to ensure light from the authorised development does not spill onto the access and egress points of the South Hook Fort bat roosting areas and is in accordance with the Bat Conservation Trust Guidelines in respect of light spillage on the foraging and commuting areas within the nature conservation area.

(3) Any approved lighting plan must subsequently be implemented and retained for the duration of the construction, commissioning and use of the authorised development, unless otherwise agreed in writing by the relevant planning authorities.

### **Construction hours**

**17.** (1) Construction work including deliveries to the site (but which for the purpose of this requirement shall not include the arrival or departure of personnel on the site, on-site briefings or meetings, the use of welfare facilities and non-intrusive activities) must only take place between—

- (a) 0700 and 1900 on weekdays; or
- (b) 0700 and 1300 on Saturdays,

but must not take place on a day which is a public holiday.

(2) In paragraph (1) above, "non-intrusive activities" means internal activities such as electrical installation and fit out works that do not require the use of mechanical plant or equipment such as would create any discernible light, noise or vibration outside of the Order limits.

### **Accumulations and deposits**

**18.** (1) No authorised development comprised in Work No. 10A shall commence until a written scheme for the management of any accumulations or deposits whose effects may be harmful or visible or otherwise noticeable from outside the Order limits has been submitted to and approved by the relevant planning authority.

(2) The approved scheme for the management of accumulations and deposits must be implemented before and maintained during the construction, operation and decommissioning of the authorised development.

### **Travel plan**

19. The authorised development shall not commence operation until a travel plan, which must include details of the expected means of travel to and from the authorised development and any parking to be provided, has been submitted to and approved by the relevant planning authorities. The travel plan must reflect the proposals set out in the draft travel plan set out at appendix F of the transport assessment. The approved plan must be implemented within one month of the completion of commissioning and must continue to be implemented for as long as the authorised development can be used.

### **European protected species**

20. No authorised development shall commence until, after consultation with Natural Resources Wales, a scheme of protection and mitigation measures in respect of those bats which have been identified as present within the Order Limits has been submitted to and been approved by the relevant planning authorities; and the authorised development must be carried out in accordance with the approved scheme.

### **Restoration of land used temporarily for construction**

21. Any land used for temporary works and on which subsequent permanent works have not taken place must be reinstated to its condition as at the start of the temporary use, unless otherwise approved by the relevant planning authorities, within 6 months of the completion of commissioning.

### **Safety**

22. No authorised development shall commence until the undertaker has submitted to the Secretary of State an assessment of the extent and severity of known hazards at the generating station with the potential to impact on local populations or major hazard installations, including fire or explosion following loss of containment of natural gas, accompanied by evidence of independent validation of the suitability and sufficiency of the assessment, and the Secretary of State has notified approval of the assessment.

### **Carbon capture and storage**

23. In the event the undertaker installs carbon capture and storage equipment within the Order limits then the undertaker shall, subject to any applicable statutory obligations and consenting requirements, install such equipment, where technically feasible and so far as is reasonably practicable, in accordance with the current CCS proposal and the principles set out in the design principles statement.

### **Decommissioning**

24. (1) Unless otherwise agreed in writing by the relevant planning authorities, within 12 months of the authorised development ceasing to be used for the purposes of electricity and heat generation on a permanent basis, a scheme for the demolition and removal of the authorised development from the site must be submitted to and approved by the relevant planning authorities. The scheme must, amongst other matters, specify that any land used for the permanent works must be reinstated to its condition as at the completion of the permitted preliminary works (but requiring the removal of any structural foundations constructed in the course of such permitted preliminary works), or such alternative condition at the request of the undertaker as the relevant planning authorities may approve. In the event that the authorised development temporarily ceases operations and the duration of that temporary cessation of operations is likely to exceed a period in excess of twelve months, the

undertaker must notify the relevant planning authorities of the purpose of the temporary cessation of operations and its likely duration.

(2) The demolition and removal of the authorised development must be implemented in accordance with the approved scheme, unless otherwise agreed in writing by the relevant planning authorities.

#### **Requirement for written approval**

25. Where under any of the above requirements the approval or agreement of a relevant planning authority or another person is required, that approval or agreement must be given in writing.

#### **Amendments to approved details**

26. (1) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by a relevant planning authority, the approved details must be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.

(2) Where the words “unless otherwise approved by the relevant planning authority”, “unless otherwise agreed in writing by the relevant planning authorities” or “with such changes to that document as agreed by the relevant planning authorities” appear in these requirements, any such approval or agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of that authority that the subject matter of the approval or agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

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### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order grants development consent for and authorises South Hook CHP Limited to construct, operate and maintain a combined heat and power plant located near Herbrandston in Pembrokeshire. The Order also requires South Hook CHP Limited to set aside a designated carbon capture readiness site. The Order imposes requirements in connection with the development for which it grants development consent.

A copy of the plans and other documents referred to in this Order and certified in accordance with article 15 (certification of plans, etc) of this Order may be inspected free of charge during working hours at the offices of Pembrokeshire Coast National Park Authority, Llanion Park, Pembroke Dock, Pembrokeshire, SA72 6DY and Pembrokeshire County Council, County Hall, Haverfordwest, Pembrokeshire, SA61 1TP.