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**Your reference**

EN010049

**Our reference**

AES/AES/343641/1  
UKM/61508491.1

4 June 2014

**Attention: Katherine Chapman**

Dear Sirs

**TIDAL LAGOON (SWANSEA BAY) PLC ("TLSB")  
APPLICATION FOR THE PROPOSED TIDAL LAGOON SWANSEA BAY  
GENERATING STATION ORDER (THE "APPLICATION")  
PINS REFERENCE NUMBER: EN010049**

Further to our letter to you of 3 June 2014 in response to the Rule 6 letter issued by Mr Amos on 15 May 2014, please find six hard copies of the following enclosed with this letter:

1. TLSB's submission in response to section 51 advice issued to TLSB on 6 March 2014; and
2. Documentation in support of TLSB's submission in response to section 51 advice, as set out in the attached schedule, comprised in two folders (one at A4 and one at A3).

We should be grateful if you would confirm safe receipt of this letter and enclosures.

Yours faithfully

**DLA PIPER UK LLP**

Encs.

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**PLANNING ACT 2008 ("PA 2008")**

**THE PROPOSED TIDAL LAGOON SWANSEA BAY (GENERATING STATION)  
ORDER (THE "ORDER")**

**PINS REFERENCE NUMBER: EN010049**

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**SCHEDULE**

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<b>Annexe</b>	<b>Content</b>
1	Table of heights and dimensions in the draft DCO and the Statement of Reasons (1A paragraph 1)
2	Table of heights and dimensions of all elements of the Project as included in the ES and the draft DCO (1D paragraph 10) [ <i>to follow</i> ]
3	Notices under s42(1)(d) of proposed application served in respect of properties on Bevans Row (1E paragraph 15)
4	Copy of representation made by the Coal Authority on 30 July 2013 (1E paragraph 16)
5	Revised figures supporting the main text of the ES (2 paragraph 18) [ <i>see separate A3 folder</i> ]
6	Revised Book of Reference (3A paragraph 20)
7	Revised Land Plan 7A (3A paragraph 20)
8	Submission in respect of location of turbine and sluice gate housing structure (4B paragraph 27)
9	Submission in respect of location of ultra violet water treatment facility (4B paragraph 25)
10	Submission in respect of construction of temporary cofferdam (4B paragraph 26)

**PLANNING ACT 2008 ("PA 2008")**

**THE PROPOSED TIDAL LAGOON SWANSEA BAY (GENERATING STATION)  
ORDER (THE "ORDER")**

**PINS REFERENCE NUMBER: EN010049**

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**SUBMISSION**

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**Introduction**

- A. This submission relates to the application made to the Secretary of State on 7 February 2014 under Section 37 of the 2008 Act (the "Application") by Tidal Lagoon (Swansea Bay) plc ("TLSB") for development consent for a nationally significant infrastructure project. This submission relates to, and addresses matters in, Section 51 advice issued by the Planning Inspectorate following acceptance of the Application for examination on 6 March 2014 (the "Section 51 Advice"). It also contains certain applications to the Examining Authority.
- B. Whilst TLSB has proceeded on the basis that it is not possible for an applicant to submit additional information in respect of an application prior to commencement of examination of the Application, TLSB has taken the opportunity to respond in the following terms to the Section 51 Advice. It is doing so in order to provide clarification to the Examining Authority in respect of those specific points raised. Importantly, this submission does not represent new information not previously in the public domain.
- C. This submission deals with each item in the order that it appears in the Section 51 Advice, but with paragraph numbers being applied for clarity and ease of reference. (Please see attached copy of the Section 51 Advice for details.) This submission is supported by those documents listed on the attached schedule.
- 1. Consistency of project description with the application documents**
- A Consistency of building heights and dimensions: DCO & Statement of Reasons*

1. Annexed to this submission (at Annexe 1) is a table, which shows the heights and other dimensions of buildings and other structures contained in the draft development consent order ("DCO") (doc ref 3.1) and the Statement of Reasons (doc ref 4.1). The apparent inconsistencies between the dimensions given for the same buildings in separate application documents is due to those dimensions being given in terms of either Chart Datum (CD)/Ordnance Datum (OD) or finished floor levels (FFL) in different documents.
2. The annexed table gives heights and dimensions in all formats so far as appropriate for the structure or element in question. The Examining Authority will see that any inconsistencies or changes between the measurements shown in the table at Annexe 1 and the dimensions given in the relevant Application documents are due to the effect of rounding up or down.

***B Consistency within DCO: limits of deviation***

3. The Examining Authority is asked to note that there is an inconsistency, in respect of limits of deviation given in the draft DCO (doc ref 3.1). The inconsistency is between the general limit of deviation given in article 3(5)(b)(i) of the draft DCO and specific levels of deviation given for specific buildings at Part 2 of Schedule 1 to the draft DCO.
4. In the draft DCO, Schedule 1 Part 2 takes precedence over article 3(5)(b)(i). It is proposed that this will be clarified by a suitable amendment in the next iteration of the draft DCO to be submitted during the course of the examination.
5. For the purposes of clarity, the amendment to the draft DCO will provide that the upward limit of deviation authorised by the DCO will be a default of 3 metres, except where specified limits apply (as given in part 2 of Schedule 1).

***C Consistency of building heights and dimensions: DCO & Environmental Statement***

***(I)***

6. Differences in dimensions given in the draft DCO (doc ref 3.1) and the Environmental Statement ("ES") (doc ref 6.2) are the result of appropriate approximation of measurements in one document but not another - for example, the length of the turbine and sluice gate housing structure is given separately as "410m" (in the ES) or "approximately 400m" (in the draft DCO).

7. Of the two documents, the draft DCO contains the approximate lengths because it also contains a power to deviate. The draft DCO can be amended in the next iteration to be submitted during examination to reflect the more specific dimensions, although a power to deviate would still be required.
8. Further, TLSB confirms that any differences between specific and approximate dimensions given in separate application documents in this manner have no effect on the findings and conclusions of the environmental impact assessment of the Project as reported in the ES.

**(II)**

9. So far as the height of the seawall(s) impounding the tidal lagoon is concerned, during construction, the structure that will become the seawall will be surcharged to achieve the finished level of the seawall. This process allows for settlement of the structure, in such specific construction circumstances, and is a standard engineering practice in such processes.
10. All measurements given in the draft DCO are for authorised works in their final, and generally operational, form. They do not include or reflect measurements during stages of construction, for instance, a structure's height does not include craneage and movable plant that is not a permanent fixture. However TLSB can confirm in any event that the planned surcharge on the seawall structure during construction will not be greater than 2 metres above the anticipated finished height of the seawall and so accords with the proposed ability to deviate in any event.

**D      *Actions before examination***

**(I)**

11. As requested in the Section 51 Advice, TLSB proposes to submit a table of the heights and dimensions of all elements of the Project (insofar as it is appropriate to do so - i.e. in some cases dimensions are not appropriate) as included in paragraphs 4.2.0.8-4.2.0.9 and 4.3.1.11-4.3.1.12 of the ES (doc ref 6.2) and of the list of works comprised in part 1 of Schedule 1 to the draft DCO (doc ref 3.1). It is proposed that this tabular presentation should be submitted to the Examining Authority at the preliminary meeting, or as otherwise directed by the Examining Authority (see Annexe 2).

**(II)**

12. TLSB confirms that all relevant and specific heights and dimensions, and deviations therefrom, as authorised by the draft DCO have been taken into account in the environmental impact assessment for the Project. There are no particular sensitivities in respect of these deviations which are appropriate and relevant to logically apposite topics (e.g. visual impact).
13. Please see paragraph 9 above, in respect of the interrelation between the maximum finished height of the seawall and its construction.

**(III)**

14. It is not entirely accurate to refer to an "uppermost limit" of the seawall, but, instead, reference should be made to its highest point. Whilst the highest point will be consistent along its length, the height of the structure will be different at different periods of the construction period: a surcharged mound will be created, which will then settle; further material will be added and positioned, before the seawall reaches its final form. Consequently, the highest point of the seawall structure will be different at different times but, crucially, always within the authorised limit of deviation.

***E Consistency between Book of Reference and Consultation Report***

15. The Section 51 Advice, and the accompanying section 55 checklist provided by the Planning Inspectorate, identify certain parties listed in the Book of Reference (doc ref 4.3) as having an interest in land, for whom there is no evidence in the Consultation Report (doc ref 5.1) that they were served with notice of intention to make an application for development consent under section 42(1)(d) PA 2008.
16. Of those parties identified, the majority relate to properties situated on Bevans Row, who were included in Part 2 of the Book of Reference on a precautionary basis. TLSB confirms that these persons were notified of the proposed application appropriately as persons with an interest in land, in accordance with PA 2008. (Copies of the relevant notices are at Annexe 3.)
17. The two remaining persons identified by the Planning Inspectorate in this respect are British Telecom plc and the Coal Authority. TLSB confirms that these bodies were not notified under s42(1)(d) as having an interest in land affected by the Project. However, both parties

were consulted separately as part of the pre-application consultation exercise, as prescribed bodies under s42(1)(a) PA 2008, in response to which the Coal Authority made representations to TLSB, including with reference to certain land interests. A copy of that representation is at Annexe 4.

18. In addition, both the Coal Authority and British Telecom plc were notified of the Application, in their capacities as both prescribed bodies and landowners, in accordance with section 56 PA 2008. We consider that, on the basis of the above, neither party has been prejudiced by the initial omission of a notice under s42(1)(d).

## **2. Environmental Statement (ES): figures**

19. The Section 51 Advice requests that the figures supporting the main text of the ES (doc ref 6.2) be submitted in the same manner as the ES Figures contained in Volume 2 of the ES (doc ref 6.3). The reformatted figures are annexed to this submission at Annexe 5 (but contained in a separate bundle). The original format and manner of inclusion in the ES was adopted at the request of certain consultees, in order to present figures alongside relevant text for ease of referral.

## **3. Amendments to the Book of Reference**

### ***A The Book of Reference***

20. Identified errata and omissions in the Book of Reference (doc ref 4.3) have been corrected and inserted accordingly. TLSB asks the Examining Authority to note that this exercise was undertaken and completed prior to commencement of notification of acceptance under section 56 PA 2008.

21. A revised Book of Reference has been produced and is submitted to the Examining Authority for acceptance at the preliminary meeting. This may be found at Annexe 6 to this submission. Where the Land Plans (doc ref 2.1) required amendment, a revised version of the single amended sheet has also been prepared for examination and is attached at Annexe 7. (The Examining Authority is asked to note that the only amendment required to the Land Plans concerns Sheet 7, now labelled Sheet 7A, which had previously not shown land parcel no 07010 hatched appropriately to denote Crown Land. Parcel no 07010 **was** included in the Book of Reference as being Crown Land.)

**B**      ***Crown Land and foreshore***

22. The Section 51 Advice requested clarification as to why plots numbered 02042 and 03027 are not listed in the Book of Reference as Crown Land, despite being foreshore. Both these plots lie above mean high water and, therefore, are not part of the foreshore *qua* Crown Estate. Consequently, they are not included with those plots in which the Crown has an interest in the Book of Reference. Also, the referencing exercise has not identified a Crown interest.

**4.      DCO clarification**

**A**      ***Grid references in the draft DCO***

23. Grid references were not initially included in the descriptions of certain works listed in Part 1 of Schedule 1 to the draft DCO (doc ref 3.1) where they were not necessary to identify the location of that work. This was in circumstances where the work's location was identifiable by other means, such as it running between two other works located by grid reference (e.g. Work No. 5e), or by reference to the location of an existing administrative boundary (e.g. Work No. 5b).

24. However, on the basis of comments in this regard in the Section 51 Advice, TLSB will include grid references for all commencement and termination (where appropriate) of all works in the next iteration of the draft DCO to be submitted during examination. This will not change the nature or description of the works themselves.

**B**      ***Options in the draft DCO***

**(I)**

25. TLSB sought the power within the DCO to authorise both UV treatment works (Work No. 8) and an outfall extension (Work No. 3) on the basis that these two solutions to environmental effects were not considered to be mutually exclusive options. However, for reasons explained elsewhere (see submission at Annexe 9), TLSB is electing to pursue only the outfall extension. TLSB hereby applies to vary the Application accordingly, by the exclusion of Work No. 8, subject to the submission of suitable replacement plans and appropriate amendments to the draft DCO.

## (II)

26. In respect of the temporary cofferdam (Work No. 2b), the work is proposed to be constructed in the same given location, irrespective of the manner of its construction. Consequently, this does not represent optionality, merely the assessment of alternative construction methodologies. This ensures that a reasonable worst case for construction impacts has been subject to environmental impact assessment. In any event, for reasons discussed elsewhere (see submission at Annexe 10) TLSB proposes to construct the temporary cofferdam by means of the sediment berm/Geotubes® and rock armour construction methodology. TLSB does not consider that this entails a change to the Application.

## (III)

27. The Section 51 Advice refers to optionality in terms of turbine siting and suggests the draft DCO should be amended to take account of such optionality. In this case, the development proposed is described by reference to a plan identifying the locations for construction of the turbine and sluice gate housing structure (Work No. 2a), meaning that the optionality is addressed by the plan and not the wording of the draft DCO. However, and in any event, for reasons explained elsewhere (see submission at Annexe 8), TLSB has elected to pursue the option of locating the turbine and sluice gate housing structure at "Location A" (as shown in figure 4.13 of the ES (doc. ref. 6.2)). Such an election removes an element of optionality from the Application. TLSB hereby applies to vary the Application accordingly, by the removal of Option B for Work No. 2a, subject to the submission of suitable replacement plans and appropriate amendments to the draft DCO (so far as necessary).

28. Other potential elections reducing or removing optionality, which would result in election between possible alternatives provided for in the Application documents, relate to:

28.1. the route of the grid connection, either along Fabian Way or through Crymlyn Burrows SSSI (comprised in Work No. 5c); and

28.2. the crossing of the River Neath, either by means of existing ducts (Work No. 5f) or by use of horizontal directional drilling for a new crossing (Work No. 5e).

29. Whilst these preferences are yet to be confirmed, should stakeholders wish to focus their attention in making representations, it would be appropriate to do so in respect of a grid connection route which travels along Fabian Way, and avoids Crymlyn Burrows SSSI and

continues to cross the River Neath by means of directional drilling. It is understood that respondents may wish to reserve their position. As and when elections are made, TLSB would anticipate making submissions in due course, and with the leave of the Examining Authority.

## **5 Reference to Dam/Reservoir**

30. TLSB confirms its understanding that its application for development consent for the Project was made under section 15, and not section 27, of PA 2008, as stated in the Application Form (doc ref 1.1). Regulation 6(6) has been interpreted alongside paragraph 15 of Schedule 1 to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 in the context of “Dams and **other installations designed for the holding back or permanent storage of water**” (emphasis added).
31. The tidal lagoon comprised in the Project forms an installation that creates a body of impounded water analogous to that impounded by a dam or reservoir. Therefore, the structure, in fulfilling its purpose as a generating station, provides the same externality of recreational amenity as a dam or reservoir. Consequently, a statement of recreational amenity for the purposes of Regulation 6(6) was considered appropriate on a precautionary basis in the context of this application.
32. We confirm that it is not TLSB's contention that the Project is a dam or reservoir, nor is it seeking development consent to construct one. For the purposes of examination, TLSB confirms that the Statement of Recreational Amenity (doc ref 7.3) could have been submitted as one of the "Other Documents" in volume 8, under Regulation 5(2)(q) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009.

## **6 Applications in this Submission**

33. For the assistance and ease of reference of the Examining Authority, the applications made in this submission are set out below:
  - 33.1. that the Examining Authority accepts the submission of:
    - 33.1.1. the table of heights and dimensions of buildings given in the draft DCO and the Statement of Reasons (Annexe 1);
    - 33.1.2. the table of heights and dimensions of all elements of the Project (Annexe 2);

33.1.3. reformatted figures supporting the main text of the ES (Annexe 5);

33.1.4. revised Book of Reference (Annexe 6);

33.1.5. revised Land Plan 7A of 18; and

33.2. that the Examining Authority accepts the following amendments to the Application, in each case subject to submission of amended application documents in due course:

33.2.1. the exclusion of Work No. 8 (UV Treatment Works);

33.2.2. noting the election of TLSB to promote an engineering solution for temporary cofferdam construction (Work No. 2b) using sediment berm/Geotubes® with rock armour; and

33.2.3. the exclusion of Option B for the location of the turbine and sluice gate housing structure contained in Work No. 2a.

**DLA Piper UK LLP**

**4 June 2014**



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Sent by email

Your Ref:

Our Ref: EN010049

Date: 6 March 2014

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Dear Mr Herbert

## **Planning Act 2008 (as amended) – Section 55**

### **Application by Tidal Lagoon (Swansea Bay) plc for an Order Granting Development Consent for the Tidal Lagoon Swansea Bay**

#### **Section 51 advice following the issue of the s55 acceptance decision**

The Secretary of State made the decision on 6 March 2014 that the application for the proposed Tidal Lagoon Swansea Bay project has satisfied the acceptance tests under s55 of the Planning Act 2008 (PA2008). In the course of the acceptance checks, the Planning Inspectorate has identified a number of matters that may pose a risk to the examination process and which we therefore advise you, as the applicant, to address prior to the start of examination. This letter contains advice to you provided under s51 of the PA 2008 about the steps you should now take.

Since it is not possible for any additional material to be accepted until the examination has started, where it is suggested in this letter that supplementary information is to be provided, you are advised to submit it at the Preliminary Meeting unless otherwise advised. In the meantime you should keep the case team informed about your progress with work to address these points.

#### **1. Consistency of project description within the application documents**

In reviewing the application documents we have noted that there appears to be a lack of consistency in some aspects of the project description between and within certain application documents. This applies, for example, to the referencing of building heights and dimensions.

We advise you to address these inconsistencies before the start of examination. In particular, we request that you look at where clarity and consistency can be provided both within and between documents so as to ensure that what consent is being sought for is clearer, and it is clear what has been assessed in the environmental impact

assessment (EIA) as presented in the Environmental Statement (ES).

#### **A** Consistency between DCO and Statement of Reasons

It is noted that, in relation to the maximum height of the offshore building for example, the Development Consent Order (DCO) limits this to 29m above ordnance datum (34m chart datum), with 3m upward limit of deviation, whereas in paragraph 6.24 of the Statement of Reasons (SoR), the height is stated to be 21m. Similarly, with regards to the onshore building, the DCO limits this to 20m above ordnance datum, with 1m upward limit of deviation, whereas in paragraph 6.40 of the SoR the height is stated to be 13.5m.

#### **B** Consistency within the DCO

It has also been noted that article 3(5)(b)(i) in the DCO allows the undertaker, in constructing or maintaining the scheduled works, to deviate up to 3m upwards which appears to be contrary to Part 2 of Schedule 1, which provides for smaller upwards limits of deviation in relation to all the buildings in that part, save for the offshore building, including the seawall.

#### **C** Consistency between the DCO and Environmental Statement

Furthermore, a number of inconsistencies have been identified between the heights and dimensions of components stated in the draft DCO (Doc 3.1) in comparison to the ES (Doc 6.2). Examples include:-

- (i) • Table 4.1 of the ES (Doc 6.2) states that the length of the turbine and sluice gate housing structure would be 410m in length and 67.5m in width, whilst in Work No. 2 of the draft DCO (Doc 3.1) it is given as approximately 400m in length and 70m in width.
- (ii) • In Part 2 of Schedule 1 of the draft DCO (Building Heights) (Doc 3.1), the maximum height of the seawall is stated as being 14m Chart Datum (+upwards deviation of 2m) and in the ES this is stated as being 13.5m Chart Datum (to the height of the rock armour on the seawall), but that during construction material will be placed at a higher level to allow for settlement (Paragraph 4.3.1.11, Doc 6.2).

**D** We advise you to take the following steps prior to the start of examination:

- (i) • Clarify the height and dimensions of all elements of the development as set out in Part 1 of Schedule 1 of the draft DCO (Doc 3.1) and paragraphs 4.2.0.8-4.2.0.9 and 4.3.11 and 4.3.12 of the ES (Doc 6.2). It would be useful if this information was presented in tabular format.
- (ii) • Confirm which heights and dimensions, including the upwards and downwards limits of deviation as set out in the draft DCO (Doc 3.1) have been taken into account in carrying out the EIA and in preparation of the ES. Confirm that the height at which construction material will be placed will not exceed the maximum height of the seawall as stated in Schedule 1 Part 2 draft DCO (Doc 3.1).
- (iii) • Confirm which element of the seawall forms the upward limit of deviation with reference to the worst case assessment presented in the ES.

**E** Consistency between the Book of Reference and Consultation Report (s42)

We refer you to the section 55 acceptance checklist, which at section 3.3(p) identifies persons listed in the Book of Reference for whom evidence of consultation under s42 has not been located. Specific reference is made to plot 01070.

Please can you confirm the position in relation to the identified parties.

**2. Environmental Statement (ES) – Figures**

Figures supporting the main text of the ES Volume 1 (Doc 6.2) are presented within the main text itself or within ES Volume 2: Figures (Doc 6.3). The majority of the figures presented within the main text of the ES (Doc 6.2) are illustrative, not to scale, and due to their small size the annotations on these are difficult to read.

To ensure that all parties are able to read and understand the information shown on all of the figures, you are advised to resubmit the plans within Volume 1 of the ES (Doc 6.2) in the same manner as those presented in Volume 2 of the ES (Doc 6.3).

**3. Amendments to the Book of Reference**

**A** It is noted that persons listed within Part 3 of the Book of Reference do not appear to be included in Part 1. A person entitled to enjoy easements or other private rights over land which the applicant proposes to extinguish, suspend or interfere with identified in Part 3 should also be recorded in Part 1 as a person within categories 1 or 2 as set out in section 57 of the PA 2008, as is advised in paragraph 8 of Annex D of the DCLG Guidance on Compulsory Acquisition under the PA 2008.

The Inspectorate strongly advises that you amend the Book of Reference (BoR) to include persons listed within Part 3 in Part 1 in advance of your notification of compliance with s56 of the PA 2008. This is of critical importance to ensure that the notification of the accepted application is compliant with the provisions of s56.

**B** Also, the Inspectorate requests that you note the following observations:

- Plots relating to the seabed of Swansea Bay are included in Part 4 in respect of Crown Land.
- Plots 02042 and 03027, listed in Part 5 in respect of open space, are not also included in Part 4 nor is the Crown identified as having any interest in these plots despite these plots relating to the foreshore over which the Crown generally has interests.

**4. DCO clarification**

Grid co-ordinates

**A** We note the omission in the DCO, Part 1, of co-ordinates for Works No.s 2, 4, 5b, 5g and 6. We would advise that you provide clarification on this point.

## B Options in the draft DCO

- (I) It is noted that some works are included in the draft DCO that would not be built should other options be taken. The draft DCO is not written in a way which sets these works out as options. An example of this are Works numbers 3 and 8, since it would appear that both these works would not be required in the final project but are both listed in the draft DCO.
- (II) Two options are also identified in relation to the temporary cofferdam, as described in paragraph 6.23 of the SoR, however these options are not described as such in Work 2b in the draft DCO.
- (III) The Inspectorate suggests that where options are being sought, the DCO should be drafted to reflect this (including the location of the turbines).

### **5. Reference to Dam/Reservoir**

Section 22 of the submitted application form makes reference to the submission of additional documents under Regulation 6(6) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 (the APFP Regulations). Thus implying that the application is for a Dam or Reservoir and therefore accompanied by a statement setting out what if any recreational amenities are provided. Such a document is provided as part of the application at Doc 7.3.

However, it is also noted that in section 4 of the application form, in setting out why this application is or should be treated as an application for development for which development consent is required, reference is only made to s.14(1)(a) and s.15(3), and not to s.27. This accords with the authorised development as defined in the DCO, and as set out in Part 1 of Schedule 1 of the DCO. It should be noted that s.27 of PA 2008 is not yet in force.

The Inspectorate has assumed that this is an oversight and that the DCO is not applying for consent to build a dam or reservoir. Hence, it would appear that there was no need for submission of a statement under Regulation 6(6) and that any additional document considered necessary should have been submitted under Regulation 5(2)(q) of the APFP Regulations. We would advise that you clarify this position to avoid any confusion amongst parties going into examination.

I trust that you find this advice helpful.

Yours sincerely

*Katherine Chapman*

Katherine Chapman  
Case Manager