

Planning Act 2008; Infrastructure Planning (Examination Procedure) Rules 2010

Application by Tidal Lagoon (Swansea Bay) Plc for an Order granting Development Consent for the Tidal Lagoon Swansea Bay (the application)

Hearing Agenda: Issue Specific and Compulsory Acquisition Hearings

This document sets out agendas for the Issue Specific Hearing (ISH) commencing on Tuesday 21 October 2014 and Compulsory Acquisition (CA) Hearing commencing on Thursday 23 October 2014. If business is not concluded in the time scheduled the hearings may be adjourned to another time and date.

Participation in hearings

- All interested parties/affected persons are invited¹ to attend the hearings. The Examining Authority (ExA) would **particularly welcome** the presence of the following:
 - **Applicant**
 - **Natural Resources Wales (NRW)**
 - **Welsh Government** (particularly Development Consent Order (DCO) including LA boundary matters and navigational session)
 - **The Local Authorities**
 - **Port of Neath**
 - **Associated British Ports (ABP)**
 - **Trinity House**
 - **Maritime and Coastguard Agency**
 - **Natural England (NE)** (Habitat Regulations Assessment (HRA) matters unless correspondence made available)
 - **Crown Estate / other Crown Authorities** (CA Hearing)
 - **Any Statutory Undertaker which has made but not withdrawn a representation** (CA Hearing)

- Each interested party/affected person is entitled to make oral representations at the hearings² (subject to the ExA's power to control the hearings).

Conduct and management of hearings

- The Planning Act 2008 (PA2008) provides that the ExA will probe, test and assess evidence through direct questioning of persons making oral representations at hearings. Except where identified in these agendas, **questioning will be led by the ExA**, who will ensure participants

¹ Guidance for the examination of applications for development consent for Nationally Significant Infrastructure Projects, DCLG, 2010

² S91 & S93 Planning Act 2008 (PA2008)

have a fair chance to put their case and benefit from their entitlement to make oral representations³.

- These **agendas are indicative** and may be amended by the ExA. The ExA will identify the matters to be considered at the start of each hearing⁴.
- Oral representations (including those made in response to questions) must be based on the relevant or written representations made by the person by whom (or on whose behalf) the oral representations are made⁵. However, where an agenda item includes new matters, such as new amendments to the draft Development Consent Order (DCO), oral representations on **new evidence may be made but six written copies** should be brought to the hearing, for the benefit of the ExA and others taking part in the hearing.
- **Where an agenda item refers to an amendment to the draft DCO, this is without prejudice to the ExA's recommendation and the Secretary of State's decision on whether or not an Order should be made.**

³ S91 & 93 PA2008. Entitlement to participate is subject to the ExA's powers of control over the hearing.

⁴ Rule 14(2) The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR)

⁵ Rule 14(3) EPR

Issue Specific Hearing

Venue: Brangwyn Hall, The Guildhall, Swansea SA1 4PE

Date: Tuesday 21 – Wednesday 22 October 2014

Time: Room open from 9.30am

Business commences at 10:00am on all hearing days. Breaks will be taken at convenient times during the hearing as directed from the chair, including at approximately 1.00pm for an hour each day.

AGENDA

Day one

1. Welcome and Introductions
2. **Use / Landscape / Human Interaction and Safety**
 - 2.1 Use: intended purpose of the proposed lagoon and size
 - 2.2 Height of artificial tidal range within the lagoon/extent of any wave motion and landscape and safety impacts of/accretion of significant levels of mud/silt.
 - 2.3 Access: whether there would be public access free of charge to:
 - (a) the lagoon
 - (b) the beach
 - (c) the park
 - (d) the public realm
 - (e) the sea walls
 - (f) the offshore building
3. **Coastal Processes**

Recapitulation of Q3.20 and Q3.23 of Examining Authority's Questions dated 16 June [extent of understanding of coastal processes (Q3.20), and value of further modelling (Q3.23)].
4. **Habitat Regulations Assessment and European Sites**
 - 4.1 Summary of current position and extent of remaining issue of concern to NRW in relation to Kenfig Special Area of Conservation (SAC) and dredge disposal (including whether the scheme for dredge arisings in new Requirement 38 should control additional volumes of arisings from the dredged channels).
 - 4.2 Whether Natural England (NE) is content with the Applicant's assessment of no adverse effect on site integrity of Lundy Island SAC. The agreement of NE is referred to in Table 2.1 of the Applicant's Updated HRA Report however the ExA requires correspondence from NE confirming this matter.

- 5. Natural Resources Wales Corporate View**

NRW's corporate view in response to Q2.4 of ExA's Questions dated 16 June 2014, to which the initial answer given was "Natural Resources Wales will come to a judgment on the merits of the project and its fit with the overall statement of purpose, within the context of our Written Representations and future engagement with the Examination process."
- 6. Adaptive Management**
 - 6.1 NRW's interim statement on Adaptive Management presented for Deadline IV of October 2014.
 - 6.2 Is the Adaptive Environmental Management Plan (AEMP) suitably expressed to address the needs for monitoring and appropriate responsive management at (a) Kenfig SAC, (b) Crymlyn Burrows Site of Special Scientific Interest (SSSI), (c) Blackpill SSSI and (d) Swansea and Aberavon Beaches.
- 7. Water Framework Directive (WFD)**

Updated WFD Assessment (October 2014) submitted for Deadline IV and in particular the case for a derogation under Article 4.7.
- 8. Eels**

Position in relation to Regulation 17 of the Eels (England and Wales) Regulations 2009 relating to screening or for an exemption to such requirement.
- 9. Fish**
 - 9.1 The use of acoustic fish deterrents: an update on their use.
 - 9.2 Whether there would be aeration of the lagoon to the extent that it would be standing water.
- 10. Marine Mammals**

Update on the current position regarding marine mammal mitigation and monitoring including:

 - 10.1 Use of potential biological removal thresholds.
 - 10.2 Use of 'trash screens' either side of the turbines and whether these would be suitable for minimising risk of collision for other species.
 - 10.3 Co-operation of external bodies (including Royal Society for the Protection of Cruelty to Animals (RSPCA) for dealing with stranded/injured animals.
 - 10.4 Mitigation for noise impacts upon marine mammals during both construction and operation.
 - 10.5 Avoidance of the harbour porpoise breeding/rearing season during piling operations and whether this is a matter for the NRW Protected Species Licence.
 - 10.6 Securing these matters through the DCO/CEMP/OEMP/AEMP.

11. Inter-tidal and Sub-Tidal Ecology:

- 11.1 Habitats Directive Annex 1 Feature: Reefs. The October 2014 Note from TLSB on engineering solutions to improve support for Sabellaria on the lagoon wall and the monitoring and adaptive management in relation to Sabellaria;
- 11.2 Omission of baseline data regarding 'sheltered muddy gravel habitats' in the 2013 Phase 1 re-survey of Swansea Bay and whether the October 2014 TLSB note on the Swansea Bay Site of Importance for Nature Conservation (SINC) now addresses this;
- 11.3 MINNS/INNS Bio-security Risk Assessments and strategies, including the need to include/assess risks from non-marine invasive species.

12. Coastal Birds:

- 12.1 Sanderling/Ringed Plover mitigation (beach nourishment in respect of the accretion of mud at Blackpill SSSI). How this is to be addressed in the AEMP?
- 12.2 Risk to diving birds – is there now agreement that the depth of the turbines below the water level (indicated as an 11m waterhead, in the response to ExA Q's) is sufficient to ensure that diving birds (great crested grebes and cormorants) will not be at risk from the operational parts of the turbines when they dive?

13. Management Plans

- 13.1 Are the AEMP/CEMP/OEMP 'standalone' documents, or are they inter-related? Is the AEMP the 'over-arching' management and mitigation plan?
- 13.2 The mechanism for document revision approvals and document control.
- 13.3 Other environmental monitoring and management plan issues.

14. Flooding

- 14.1 The Applicant's October 2014 'Note to Support Amendment to DCO to Address Flood Risk' identifies a preferred solution for addressing the potential increased risk of flooding at Mumbles. Is the proposed solution acceptable to NRW and CCS and deliverable through the DCO and a Town and Country Planning Act (TCPA) application?
- 14.2 Would the preferred option meet the policy requirements of Technical Advice Note (TAN) 15⁶?

⁶ Technical Advice Note (TAN) 15: Development and Flood Risk, Welsh Government, 2004

15. Construction, Noise and Transport

- 15.1 Audible Reversing Bleepers. The October 2014 CEMP has been updated (para 13.0.0.2) to state that audible reversing alarms are only to be used during daylight hours, but has avoided stating that they also are only to be used M-F. This should be added, as it was agreed in the ISH in September.
- 15.2 Vehicle occupancy rates in response to item 13.ii of the agenda for the September 2014 ISHs, the Applicant was going to clarify how the vehicle occupancy rates for contractors and construction staff had been derived. This information appears to remain outstanding.
- 15.3 Transport/Access - it is understood that all construction traffic would use the McDonalds junction entrance from Fabian Way with the eastern ABP entrance not being used. If all entrances were to be used, CCS maintains that local residents would achieve greater protection in terms of air quality. Has this been considered?
- 15.4 Transport Plan for construction traffic - it is understood that HGV construction traffic will be routed from J42 of the M4 Motorway in order to prevent HGVs travelling through Swansea city centre. How will this be made a requirement in the DCO and enforced?

16. Water Quality

Section WQ3 of the AEMP (Oct 2014) edition has been updated to address the CCS concerns regarding the need for the Applicant to fund the recalibration of water quality modeling. Is the revised wording in this section of WQ3 now acceptable to CCS and does this resolve the issue?

17. Electromagnetic Fields (not discussed at ISH previously)

Cable depth in response to the ExA Q10,2. TLSB submitted a report by ERA Technology reference 2255, dated May 2014, entitled, 'Magnetic Field Calculations for the Proposed Swansea Tidal Lagoon Cable Route'. This identified the minimum cable depth that is required in order to meet the required standards. How is the depth of the cable to be secured through the DCO/CEMP so that it is buried at a suitable depth?

18. Navigational and Dredging Issues

- 18.1 Ship simulation studies - the ExA's view is that a ship simulation study with wave modelling is necessary.

This would resolve the exact mitigation measures that are needed for the Swansea Approach Channel. This may include dolphin piles along the full length of the western lagoon wall as a mitigation measure.

- 18.2 Proposals for jurisdiction within the lagoon (Article 50)
- 18.3 Exact extent of Harbour Authority/ ABP's jurisdiction and that of the Applicant/undertaker. Who would be responsible for providing assistance to any vessel that for whatever reason runs upon the lagoon wall?

- 18.4 Safe navigation with no delay to commercial shipping during construction and extent to which this can be secured through Protective Provisions progress with these.
- 18.5 What stage have the negotiations reached regarding the life-time maintenance dredging of the Swansea and Port Talbot approach channels? How will any such agreement be enforced?
- 18.6 For the Monkstone Cruising and Sailing Club - how do you justify wanting a 1 in 4 gradient of the eastern lagoon sea wall? Does the Applicant agree with this, if not, why not?
- 18.7 Is the Applicant confident of reaching an agreement with the Neath Port Authority regarding safe navigation during the construction of this area of the Project? How will this be secured?
- 18.8 Is the Applicant and the Neath Port Authority confident of reaching an Agreement regarding any dredging that may be necessary during the life-time of the project? How will this be secured?

Day Two

19. Panel Statement on the Draft Development Consent Order

Having considered written representations received to date, including the agreed list of key elements from the Planning Drawings the ExA considers changes are necessary to the Order such that it would be capable of being made. The Panel may make a statement to this effect, including reference to the proposed Development Consent Obligation.

20. The Draft Development Consent Order

Interested parties will be requested to recapitulate any outstanding proposals they have to amend the draft DCO (to the extent not already listed on this agenda).

The draft DCO will be considered article by article, part by part. The Panel proposes, without prejudice to its final recommendation on development consent or on the form of any Order, the following significant changes to the draft Development Consent Order/issues which will be amongst those on which the Panel will be asking questions throughout the Order at the hearing:

- 20.1 Removal from the **scheduled works** of the following elements not considered to be a Nationally Significant Infrastructure Project:
 - (a) the upper storeys of the offshore building (but retaining switch room, visitor centre etc. extending over ground and first floors only);
 - (b) mounting facilities for public works of art (unless considered necessary for reasons of good design as referred to in NPS EN-1);

- (c) the current extent of boat facilities (on various works) to be reduced to that necessary for the operation and maintenance of the generating station;
- (d) the current extent of visitor parking.

The removed works are understood to be intended to be secured through a Development Consent Obligation, subject to planning permission, provisionally therefore the Panel's view is that this would not constitute a material change to the project as a whole.

All other numbered works (subject to some amendments) are considered necessary to the good design, maintenance and operation of the generating station. This includes landscaping (such as the beach, park and public realm), access roads and cable connections.

A number of works (oyster spatting ponds, 2b, 2c, 2d, 3, 4, 6a, 8a, 8b, 9 and 10 including works such as reclamation of land are considered offshore and therefore not on land allowing them to be considered as ancillary works which are not s32 development. Unnumbered works and some further unnumbered works)

20.2 Draft DCO in detail:

- (a) Work 1a should be described as the "western" sea wall,
- (b) Work 1b the "eastern" sea wall,
- (c) the **offshore building** should be referred to and entirely contained within work 2a with the following words added after 'comprising':

... to the extent necessary to the operation and maintenance of the generating station—
 the offshore building centred upon XXXXXE; XXXXXN, up to XX metres in length, XX metres in width and up to the height specified in part 2 comprising a switch room, a visitor centre and/or viewing area(s)

- (d) the **onshore building** should be entirely contained within 6b and the wording revised to specify which works are within the building and those without for example as follows:

Work No. 6b A work consisting of construction of onshore operation and maintenance facilities being the onshore building centred upon XXXXXE; XXXXXN, up to XX metres in length, XX metres in width and up to the height specified in part 2 comprising--

- i. maintenance workshop(s) and spares store(s);
- ii. boat facilities;
- iii. office accommodation;
- iv. welfare facilities and
- v. a control room;

and the above Work No. 6b also consisting of, to the extent necessary to the operation and maintenance of the generating station, the construction of onshore facilities between the following points and up to the ground levels and street furniture heights specified in part 2 consisting of—

visitor orientation meaning ...;

visitor parking spaces and facilities meaning ...;

non-visitor vehicle parking facilities meaning ... and garages; and

emergency access facilities meaning

- (e) **Further development** (unnumbered works) should be limited to what has been described and assessed, for example as follows:

and in connection with such works and to the extent that they do not otherwise form part of any such work, further development, including development which is mitigation or enhancements being part of the nationally significant infrastructure project subject to the requirements and as whether or not shown on, the masterplan and demolition plan comprising—

temporary construction works, including storage areas for rock armour, working areas, laydown areas and construction sites;

waterfront public realm meaning ... including works to existing wave protection walls;

habitat creation (including mariculture);

internal site roads and vehicle parking facilities;

bunds, embankments, swales, landscaping and boundary treatments and fencing;

the alteration, removal, clearance, refurbishment, reconstruction, decommissioning and demolition of any buildings and structures within the Order limits to the extent shown on the demolition plan;

the provision of footpaths;

lighting columns and lighting; and

safety/emergency points.

- (f) **Hatchery and laboratories:** whether these are necessary to the generating station given the management of the lagoon and may be included in Work 6b.
- (g) **Mounting facilities for public works of art:** whether these are necessary to the good design of the generating station and may be included in the works (if so where).
- (h) **Pearl structures:** it being unclear where these, as shown on the Planning Drawings, were listed in the applicant's draft DCO scheduled works, whether these are necessary to the generating station given the management of the lagoon and may be included in Work 6b.
- (i) Sch1 Part 1A **Ancillary works** if used should be introduced as follows:

Ancillary Works

Works within the Order limits to the extent necessary and ancillary to the construction operation and maintenance a nationally significant infrastructure project being an offshore generating station as defined in sections 14(1)(a) and 15(3) of the 2008 Act which have been subject to an environmental impact assessment recorded in the environmental statement comprising:

- (j) Prior to the word work in each ancillary work (if used) should be the appropriate type of work consistent with Schedule 5 of the PA2008 for example as follows:

Work No. 2b A temporary civil engineering work consisting of a sediment berm cofferdam for the purposes of constructing Work No. 2a between points ... and up to the height specified in part 2;

Work No. 2c An offshore work to a navigable watercourse comprising up to 15 dolphin piles with lights, cable booms and/or floating buoys in between located up to 500 metres seaward from the outer edge of Work No. 2a (266113E; 189484N) to XXXXE; XXXXN and up to the height specified in part 2 for the purposes of demarcating a safety zone; and

Work No. 2d An offshore work to a navigable watercourse comprising buoys (with or without lights) with floating boom(s) located up to 500m landward from the outer edge of Work No. 2a (266123E; 189494N) to XXXXE; XXXXN for the purposes of demarcating a safety zone.

Work No. 3 An offshore work consisting of a buried pipeline for the extension and re-siting of the existing long sea sewage outfall from 268408E; 189407N to 268030E; 187224N at a minimum depth of ...and replacement of diffuser apparatus.

Work No. 4 An offshore work to a navigable watercourse consisting of a new eastern channel training wall in the River Neath providing for the relocation of Monkstone light(s) from XXXXE; XXXXN to XXXXE; XXXXN up to the height specified in part 2;

Work No. 6a An offshore civil engineering work consisting of the construction of a jetty or mole incorporating a slipway into the lagoon between points XXXXE XXXXN; XXXXE XXXXN; XXXXE XXXXN and XXXXE XXXXN and floating pontoons and piles or dolphins located between 267494E; 191898N; 266998E; 191498N; XXXXE XXXXN and XXXXE XXXXN up to the heights specified in part 2;

Work No. 8a An offshore civil engineering work comprising a pontoon and related piles on the eastern bank of the River Tawe, between 266765E; 191650N to 266835E; 191747N up to the height specified in part 2;

Work No. 8b An offshore civil engineering work comprising replacement or alteration of but not any extension of the existing pontoon on the western bank of the River Tawe up to the height specified in part 2;

Work No. 9 An offshore civil engineering work comprising reclamation of land to establish a saltmarsh habitat area of up to 5 hectares between ...and coastal grassland habitat area of approximately 3 hectares between ... including pedestrian and cycle routes at the northern edge of the lagoon adjacent to the reclaimed land up to the height specified in part 2;

Work No. 10 An offshore civil engineering work comprising reclamation of land to establish a new coastal grassland and dune area of up to 11 hectares between.. close to the landfall of Work No. 1b incorporating:

a beach area;

a visitor/information point meaning a bench and a noticeboard to serve Crymlyn Burrows SSSI; and

extension and resiting of the existing surface drainage outfalls serving Fabian Way.

and to the extent that they do not otherwise form part of any numbered work, further

ancillary civil engineering, navigable watercourse and other works comprising—

- a. oyster spatting ponds;
- b. installation of services along eastern and western seawalls, including electricity and telecommunications; and
- c. buoys, beacons, fenders and other navigational aids, warning or ship impact protection works;
- d. temporary landing places, moorings or other means of accommodating vessels in the construction of the scheduled works.
- e. works to alter the position of apparatus on, over or under tidal waters or tidal lands within the Order limits

20.3 Part 2 of Schedule 1 **Limits of Deviation** would need to be updated to give the vertical parameter for all works unless given in Part 1 within the list of numbered works.

20.4 A significant number of the works lack **clear parameters** (maximum height or ground level, width, length and/or location). Each work requires clear parameters in the horizontal and vertical planes given the proposal is for a Rochdale envelope consent.

20.5 The **Planning Drawings** would need to be reduced or amended to indicate the elements not to be consented/that require planning permission.

20.6 The above reductions in volumes may or may not require a diminution of **land required to be compulsorily acquired**.

20.7 **The DCO** remaining articles/parts including the following issues:

- (a) Article 2 ancillary works: may need to be defined as a term;
- (b) Article 2 **further included maintenance**: needs to be defined to extend to “any constituent part of any work but not to the whole of any work”.
- (c) Article 2 planning drawings : need to be defined as those to be certified under the Order
- (d) Article 3 (2) **refurbishment, reconstruction** etc. are works and should be scheduled as such in Schedule 1 and therein should not describe “any buildings” but defined buildings/the demolition plan.
- (e) Article 3 (4)(b)(i) **vertical limits of deviation**: usually only used in detailed DCO consents, in this case the application is for a Rochdale envelope of development and thus dimensional limitations and clear parameters should be given in Schedule 1 for each work, if limits of deviation are proposed then the deviated height limit must be extend only up to the assessed heights shown in the works plans and planning drawings. In addition a vertical limit of deviation of 500mm or 1000mm is conventional in DCOs (rather than 3000mm).
- (f) Article 4 **Maintenance and decommissioning** to include decommissioning, it is suggested (noting objections from the Welsh Government) that paragraph (1) is redrafted as follows: “

4.—(1) Subject to the other terms of this Order, including the requirements, the undertaker may within the order limits, at any time maintain, decommission and demolish the authorised development except to the extent that this Order, or any scheme or agreement made under this Order, provides otherwise.

- (2) Subject to paragraph (3) and the requirements the power to maintain the authorised development includes the power to carry out and maintain any of the following as may be necessary or expedient for the purposes of or for purposes ancillary to the construction or operation of the authorised development namely—

- (a) works to alter the position of apparatus below ground level including mains, sewers, drains and cables including below ground structures associated with that apparatus within the Order limits(b) (c) (d);

- (b) works of decommissioning and demolition

Sub-paragraphs (2)(b) **tidal/offshore apparatus** is an ancillary work and should be listed therein

Sub-paragraphs (2)(c) to (g) are minor **works** which would be permitted development under the Town and Country

Planning Act 1990 whether required in the course of construction nor maintenance and may be deleted, alternatively (e.g. access to a highway) they should be covered in the scheduled works and limited to what is necessary for the numbered works and is set out and assessed in the works plans and planning drawings.

(g) is also **protective works** to building affected, the power to do which is already described in article 14 and subject to the limitations therein. It would be inappropriate to expand its application under this article.

- (g) Article 7 **Guarantees**: (1) delete 'sufficient security' and insert:

subject to the provision in (5) £10.5Million (ten million and five hundred thousand pounds)

and add at end:

(5) The relevant planning authority may at any time agree a total liability sum other than £10.5Million following the receipt of sufficient independent evidence that the land and rights over which powers of compulsory acquisition have been granted may reasonably be considered to have changed.

or similar wording.

- (h) Article 10 consent of the local authority required for powers under the **Road Traffic Regulation Act 1984**
- (i) Article 20 objections to inclusion of **MCA** from Trinity House
- (j) Article 34 why this article relating to **statutory undertakers** is necessary given the conflict with s127 and 138 9(including objection from Welsh Government).
- (k) Open space: A new article (34A) on **open space** would be required to comply with s131/2 e.g.:

Special category land

34A. —(1) Upon entry by the undertaker on to the special category land pursuant to article 23 (compulsory acquisition of rights), so much of the special category land as must be required for the purposes of the exercising by the undertaker of the order rights must be discharged from all rights, trusts and incidents to which it was previously subject.(2) In accordance with section 132(3) of the 2008 Act, the Secretary of State is satisfied that the special category land when burdened with the order rights will be no less advantageous to affected persons than it was before the imposition of the order rights on the special category land.

(2) In this article—

“affected persons” means—

- i. the persons in whom the special category land was previously vested;
- ii. other persons, if any, entitled to rights in common or other rights; and
- iii. the public;

“order rights” means rights exercisable over the special category land by the undertaker under article 24 (compulsory acquisition of rights);

“the special category land” means the land identified as...

Or other appropriate subsection of s131/132 to be inserted as appropriate and the open space land to be identified here and in Requirement 15.

- (l) Article 38 **Trees**: Whether any Tree Preservation Order trees or trees situated in a Conservation Area would be affected.
- (m) Article 39 **Commons Act 2006**: request from Welsh Government for deletion.
- (n) New Government consultation: **“Decommissioning of Offshore Energy Installations under the Energy Act 2004: Guidance Notes for Industry”** and

Article 40 **Disapplication of the Energy Act 2004** (including objections from Welsh Government):

(2) - Whether this article should limit the scope of s105 of the Energy Act 2004 as the primary legislation and given that s105(8)(e) specifically provides for **the leaving of objects in the waters** upon decommissioning (subject to the undertaking of monitoring and maintenance).

(3) - Why this is not a Requirement for a **decommissioning programme** to be submitted “before any offshore construction works commence” as required in para 2.6.54 of NPS EN-3.

(4) - Whether payment into a **fund** only from the fiftieth year would be considered too “late into the life of” the installation as provided against in the draft “Decommissioning of Offshore Energy Installations under the Energy Act 2004: Guidance Notes for Industry” para 8.9 and whether it is consistent with the guiding principles in para 8.6.

- (o) Article 45 Byelaws: Whether these will provide for any **public access** free of charge and whether this should be secured here.

- (p) Article 46 Procedure in relation to certain approvals

The stipulation **not “unreasonably withheld”** is a term of property law and not appropriate to control decisions of a planning authority, highway authority or street authority and references to such authorities should be deleted.

The ExA does not consider that there is sufficient evidence to justify a departure from the normal **procedure for discharging/appealing on requirements**. In addition since the provisions of the Town and Country Planning Act 1990 (as amended) reflect the devolution settlement and because the discretion of the Welsh Government on appeal procedure should not be fettered the bespoke process for discharging appeals should be deleted and the appropriate provisions (s78 etc.) of the above Act should be inserted here in place of (2) and Schedule 6.

- (q) Article 47 **Certification** should list the land plans, works plans, planning drawings (to include the **master plan** as amended to identify works that will require planning permission and the **demolition plan**), **piling plan**, management plans and sections to be certified to ensure the correct version of each is recorded and secured through any Order.
- (r) Article 49 **Planning jurisdiction**: the Welsh Government’s policy view on this proposal given its usual jurisdiction in this matter as respects the devolution settlement. NB. The Panel’s provisional view is that whilst the Secretary of State for Energy and Climate Change, in the context of the making of an Order in the UK Parliament, retains the legislative ability to effect the relevant boundary change (for the purposes only of the two Acts) he would not wish to do so unless the Panel had consulted the Welsh Government in case it had any objection to the provision.
- (s) Article 50 **Harbour jurisdiction**: the appropriate harbour authority in the proposed lagoon (need for legislative detail to be infilled).
- (t) Article 53 **Crown rights**: the need for consent from the appropriate crown authorities to all relevant provisions as set out in s135(1) and (2). (May be deferred to Compulsory Acquisition Hearing)
- (u) The **tailpiece** “unless otherwise approved” to all requirements except landscaping and R1(2) should be removed except in the case of details of landscaping. R1(2) could not effectively confine the scope for discharge decisions pursuant to any tailpieces because it would fetter

the discretion of and could not be enforced by the enforcement body (the LA) upon itself and would thus be unenforceable.

- (v) R4 Planning drawings should be referred to as these will be **certified under article 47**, (and "the plans listed in requirement 5" could be deleted).
- (w) R4 the **works that should subject to further details** being approved would be as follows assuming the works were re-listed as above: Works No. 1a, 1b, 2a, , 6b, 7a,7b, 7c, 7d, 7e, 7f, 7g, and ancillary works 8a, 8b, 9 10 and further ancillary works (a), (c) and (d).
- (x) R5 Planning drawings: should be referred to as "certified under article 47". All and any development or **detail on planning drawings** not within the NSIP as defined in the relisted works above would need to be removed from the Planning Drawings or notes added identifying the elements are excluded from the content of the authorised development and would be subject to planning permission. Alternatively certain drawings may be removed entirely.
- (y) R6 Whether any minimum content of the **management plans** should be set out in this requirement.
- (z) R7 The **landscaping scheme** should describe in more detail and control a number of works of a general nature (e.g. waterfront public realm, habitat creation etc.) including, from the scheduled works:
 - (a) waterfront public realm meaning ... including works to existing wave protection walls;
 - (b) habitat creation (including mariculture);
 - (c) internal site roads and vehicle parking facilities;
 - (d) lighting columns
 - (e) bunds, embankments, swales, landscaping and boundary treatments and fencing;
 - (f) the demolition of buildings and structures within the Order limits to the extent shown on the demolition plan;
 - (g) the provision of footpaths;
 - (h) safety/emergency points.
- (aa) R8 need for additional (5) defining "commencement of operation" for the purposes of this requirement.

- (bb) R19 on piling should secure adherence to the **Piling Plan**.
- (cc) R26 missing drawing reference. Drawing to be certified under A47.
- (dd) R31 which has been removed needs to be further considered as to how the **navigational safety** mitigation and securing of access to the mouths of the rivers will be secured.
- (ee) R38 The ExA wishes to hear evidence on the need or otherwise to extend the **dredging scheme** to cover dredge arising from the channels.

The ExA intends to publish an ExA's draft DCO incorporating these and some more minor illustrative changes above as soon as possible for the purposes of setting out the Panel's tentative conclusions to enable interested parties to make representations upon them. The draft would also be intended to provide an illustration of a DCO which could be made, as required by the Secretary of State, without prejudice to the ExA's decision on its recommendation to the Secretary of State.

Compulsory Acquisition Hearing

Venue: Brangwyn Hall, The Guildhall, Swansea SA1 4PE

Date: Thursday 23 October 2014

Time: Room open from 9.30am

Business commences at 10:00am on all hearing days. Breaks will be taken at convenient times during the hearing as directed from the Chair, including at approximately 1.00pm for an hour.

AGENDA

Day 3

1. Welcome and Introductions

2. Crown Land

Crown Estate

- 2.1 Consent from Crown Estate under s135(1) to Article 50
- 2.2 Consent from Crown Estate under s135(2) to Article 15
- 2.3 Consent from Crown Estate under s135(2) to any other provisions of the DCO

Former Department of the Environment

- 2.4 Consent from Department of the Environment/successor Crown authority under s135(1) or (2) in relation to Applicants identified plots.

Other Crown Authorities

- 2.5 Consent from any other crown authorities.

3. Open Space

The ExA is examining whether the relevant Secretary of State in relation to open space in Wales may be satisfied that the tests in s131 and s132 would be met (regardless of which Secretaries of State may need to consider the ExA's Report where it will relate to this matter).

The ExA will ask questions in relation to the evidence provided that the tests are satisfied and whether public access over open space land would be permanently secured (cf. Applicant's response to the examining authority's question 13.31 referring to a new requirement 35).

4. Land of Unknown Ownership

Whether diligent enquiries have been made in relation to land of unknown ownership.

5. Statutory Undertakers

The ExA is examining whether the relevant Secretary of State in relation to the statutory undertakers, who have made and not withdrawn a relevant representation, may be satisfied that the tests in s127 and s138 would be met in relation to the plots below (regardless of which Secretaries of State may need to consider the ExA's Report where it will relate to this matter).

Statutory Undertakers that have made relevant representations:

- 5.1 ABP
- 5.2 Neath Port Authority
- 5.3 Baglan Bay Operations
- 5.4 Royal Mail
- 5.5 Dwr Cymru
- 5.6 National Grid
- 5.7 Western Power Distribution
- 5.8 Coal Authority
- 5.9 Telefonica O2 Ltd
- 5.10 Swansea bay Port Health Authority (if land affected)
- 5.11 Natural Resources Wales (if a SU / land affected)
- 5.12 Welsh Government (if land affected)
- 5.13 Marine and Coastguard Agency (MCA) (if a SU / land effected)
- 5.14 Trinity House (if SU / land affected)

Whether the following have made a relevant representation:

- 5.15 Wales & West Utilities
- 5.16 Virgin Media
- 5.17 SSE Swalec
- 5.18 British Telecom

6. Representations from Affected Persons / Other Person

- 6.1 ABP
- 6.2 Baglan Operations Ltd
- 6.3 University of Swansea
- 6.4 Welsh Government
- 6.5 Dan Morrissey
- 6.6 Pontardawe and Swansea Angling Society Ltd

7. Whether all the plots are required/incidental/replacement land (s122(2)) and procedure followed (s122(3))

With reference to all/any plots/land for acquisition and with reference to any development not considered an NSIP.

- 7.1 Why is the land for Work 9 (reclamation of land for saltmarsh habitat and coastal grassland with cycle access) shown grey and not pink for acquisition? Why is no plot number shown?
- 7.2 The land at foreshore plot 05030 near the western landfall is described on the masterplan as "soft slip", what proposed finished surface would be provided and why is it needed for the development of the generating station?
- 7.3 On plots 0236 and 0238 why is the land for Work 10 (reclamation of land for saltmarsh habitat and coastal grassland/beach/SSSI visitor point/extension of surface drainage outfalls from Fabian Way) shown grey and not pink for acquisition?

7.4 Why is the land for Work 6b (onshore building) shown grey and not pink for acquisition?

8. Whether extent of plots is no more than is reasonably necessary

With reference to guidance relating to procedures for Compulsory Acquisition⁷ (para 11) and including whether all reasonable alternatives on all plots has been considered (para 8).

- 8.1 Is the acquisition of the full extent of plot 01007 necessary for the construction of pontoons only to the extent necessary for the generating station?
- 8.2 Is the full extent of plots 05041, 01135 and 05045 needed if visitor parking only to the extent necessary for the generating station to be provided?
- 8.3 Why does the access road skirt toward the northern order limit on plot 01135, why would it not take a more direct route avoiding the need for such an extent of acquisition?
- 8.4 If a lease from the Crown Estate to construct and operate the project is being sought, would that lease extend over plots such as 05005, 09010, 06020, 10025 why is it necessary to acquire all rights in such plots compulsorily? Why are the alternatives not sufficient?
- 8.5 Offshore plots 16005 and 05010 appear to extend well beyond limits of deviation and reasonable working areas for relevant works, should not the extent of the compulsory of these plots be reduced as unnecessary?

9. Whether there is a compelling case in the public interest

With reference to all/any plots/land for acquisition.

10. Whether the Human Rights Convention tests are met

With reference to all plots including those required for temporary possession.

- Article 1 – protection of property
- Article 8 - right to respect for private and family life

10.1 Cable route into substation: Has the applicant now ruled out the cable route suggested by Baglan Bay Operations via temporary possession of plot 04070 and in which case why does this plot remain proposed for temporary possession?

10.2 North west tip of site up to and including Tawe barrage: For the construction of pontoons only to the extent necessary for the generating station is the temporary possession of full extent of the following plots necessary: 01005, 01015, 01020, 01025, 01045, 01062, 01035? Have alternatives been explored?

11. The Funding Statement / information and Article 7

Any further funding matters.

⁷ Guidance related to procedures for the compulsory acquisition of land, DCLG, September 2013

12. Modification of any Compensation Provision (s126)

As prohibited by s126.