



**NEATH PORT TALBOT COUNTY BOROUGH COUNCIL**

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# **SUBMISSION FOR DEADLINE FOUR – 7 OCTOBER 2014.**

**Tidal Lagoon Swansea Bay Project**

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PINS REFERENCE: EN010049

NPT REFERENCE: P2014/0145

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## **Tidal Lagoon Swansea Bay Project**

(NPT reference P2014/0145)

- 1.0 Information Provided in Response to Issue Specific Hearings Commencing 16 September 2014.
- 2.0 Information Provided in Response to Consultation on Applicant's Additional Submitted Information.
- 3.0 Comments Made in Response to Draft DCO dated 5 August 2014.

- 1.0 Information Provided in Response to Issue Specific Hearings Commencing 16 September 2014.
- 1.1 Item 1 Relevant to Agenda Item 4.4.**
- 1.2 The Authority has discussed this matter with the project team and has agreed a comprehensive list of items that the Authority considered to be necessary to the development delivery. The Authority considers that these elements are essential to the delivery of a Tidal Lagoon as described within the applicants submitted Environmental Statement and other supporting documents. It is noted that this is the first tidal lagoon of its type and represents an opportunity to establish the first truly sustainable generating station that, in addition to a substantial contribution to energy generation, can also be used by the community in which it is located for their own leisure activities, while also attracting tourist and visitors who would undoubtedly contribute to the economy of the area. This is an opportunity that until now has not been possible on other energy generating infrastructure projects of this size.
- 1.3 Swansea Bay is a physically dominating natural feature that is central to the identity of not just the City of Swansea, but also to the other smaller communities which are located in and around the bay area. It is well established as a tourist destination in itself and has established leisure and tourist attractions linked to its appearance, its leisure and sporting activities and facilities and its biodiversity. The Tidal Lagoon would impound a significant portion of the Bay with a walled construction which would undoubtedly change the visual appearance of the Bay as a whole. It could be argued that this is no different than the numerous other energy generating stations that are located throughout this area, such as the GE Power Station at Baglan Bay, the solar and wind farm developments and biomass and anaerobic digestion plants.
- 1.4 The Tidal Lagoon, however, has a footprint significantly greater than the above infrastructure projects combined, as well as representing an innovative way of generating a predictable level of renewable energy. Within this context, it is essential that this development delivers *as a whole* and actively engages the public, not only by encouraging and educating visitors in respect of this new form of energy generation; but through creating an environment for which the public (and the developer) can be proud, through the attractive public realm, the habitat created both on shore and off shore through the creation of rock pools along the wall; public art; and the provision of sailing, swimming and other sporting events. As part of this active public experience, the visitors' facilities represent an essential opportunity to educate the public

not just about sustainable energy generation, but also about how it can be done, while minimising its impact upon the environment in which it is located.

- 1.5 The failure to maximise the delivery of all aspects of the potential development opportunities would therefore amount to a failure to deliver a truly innovative and sustainable project, which generates energy while also potentially enhancing aspects of the community and environment in which it is located. With constantly increasing demands for sustainable sources of renewable energy, combined with ever decreasing opportunities for additional wind and solar projects, as more and more projects are built out, perhaps it is going to become increasingly important that energy generation is not just something that certain communities must live next door to, but something that they can live with and share directly and indirectly in the benefits of.
- 1.6 The proposed Tidal Lagoon has an estimated energy generating life span of approximately 120 years, with a likelihood that the sea walls would remain beyond this period. In the event a DCO is granted, it is essential that current and future generations within the communities which will have to live with this development, do not just share in the tourism and leisure benefits of the project. Many of these people may not ever visit the lagoon, but may experience the traffic congestion during major events, or may have a direct view of the seawalls from their homes. It is essential to the holistic sustainable delivery of the project that all aspects of the community in which the project is situated have the opportunity to benefit from their intimately interconnected relationship with this project, which is why the Authority considers that a community benefit programme is not just necessary, but an essential part of the project's delivery.
- 1.7 While the Authority understands the applicants view that it will not be until their 35<sup>th</sup> year that they will clear their debt on the project and as such have suggested that their community benefit programme would only begin at this point; the Council is of the view that the communities in which the project is based should be viewed as much as shareholders, as those who hold share certificates. Therefore, the Authority would wish to see a community benefit programme starting at the end of year one. However, with acknowledgement of the developer's obvious costs during the first 35 years of the project, the Council accepts that this programme could start with a smaller contribution at first, which would increase year on year, until it reaches an agreed level of contribution once the developer has settled its debts. This approach has the benefits of establishing both the project and the benefits programmes within the communities from year one, while also reflecting the interconnectivity of the partnership between the project and the communities in which it is located.

1.8 The Authority is also of the opinion that the essential aspects of the project should be secured through a section 106 agreement and that the agreement should be signed prior to the issuing of any potential DCO.

**1.9 Item 9 Relevant to Agenda Item 7.7.**

1.10 The Authority has no technical knowledge of the relative merits of one design over another in regards to the possible engineering solutions to improve the design of the Sabellaria mitigation scheme.

**2.0 Information Provided in Response to Consultation on Applicant's Additional Submitted Information.**

2.1 The production of updated CEMP, OEMP and AEMP are welcomed, however it is noted that these documents appear to be draft submissions with some issues still missing, particularly in the case of the OEMP. For example the AEMP refers to the OEMP outlining the role and responsibilities of the proposed Warden(s); however this information appears to be missing from the OEMP. It is also understood that there is still no outline of the proposed Major Events Management Plan at present. In addition Section B of the OEMP states that methodologies for listed works will be secured on the final version of the OEMP. It is considered that these should be detailed now to demonstrate that they can be secured. Also in light of the changes to the piling activities, it is considered that sections 5.0.0.2 – 5.0.0.5 of the CEMP should be removed. Further under sections 7.0.0.25 – 7.0.0.31 of the CEMP it is considered that it should specify under what circumstances the difference outlined techniques are to be employed.

2.2 The CEMP refer to an INNS Management Strategy (3.0.0.8 and 7.0.0.42 of the CEMP) in addition to the Bio-security Risk Assessment (appendix 1), but an outline of this document does not appear to exist; whereas the OEMP only refers to adopting the Bio-security Risk Assessment, with no reference to an INNS Management Strategy. There is no plan for the removal of INNS that could spread from existing populations in the bay and affect mitigation proposals making them unviable. The presence of American slipper limpet *Crepidula fornicata* and Wireweed *Sargassum muticum* are of particular concern as they have the potential to negatively affect initiatives such as the seagrass area, to dominate the bioreef/bioblocks/wall habitat, and to damage the outputs of collaborations such as the Native Oyster Scheme, Lobster Hive Scheme and Seaweed Scheme. Throughout the documents there is no detail on how these things will be dealt with. The potential for such species to make proposed mitigation unviable must be recognised. There is currently only the

risk assessment available and this deals with the movement of INNS into and out of Swansea Bay, but does not deal with the potential for existing INNS to create significant problems. It is also noted that within section 7.0.0.2 of the CEMP it states that Goldenrod will be removed. However it should be clarified which species of Golden rod they are referring to, i.e *Solidago higanthea* not the native *Solidago virgaurea*.

- 2.3 It is also noted that the list of the project's main elements within the CEMP is significantly more comprehensive than the same list that appears in the OEMP. The CEMP currently appears to be at a later stage of development than the OEMP, which is perhaps to be expected as this is probably the more standard of the two documents; however there are still some issues that would need further expansion and development with the CEMP. For example the AEMP explains why it would not monitor some of the issues identified within the CEMP, but there is nothing within the CEMP that similarly explains the situation. It would be helpful if there was a section within each report that explains the role of the other management plans and explains how they relate to each other.
- 2.4 The complaints reporting section within the CEMP is largely acceptable, but it does not explain what actions would be taken, and within what timescale, if a complaint is found to have merit; at present it appears to assume that there would be no required outcome from the complaint. Similarly, the section of hours of working assumes a position of 24 hours working, seven days a week, but states that it would keep the authority informed of hours of working when working onshore and close to sensitive receptors. Due to the scale of the proposed project and the likelihood that as of September 2015 the University Campus will have a full intake of residents, it is considered that the hours of works section should be more prescriptive in response to phases of development likely to take place in close proximity to the campus buildings.
- 2.5 It is also noted that the proposed CEMP covers a number of issues that are either affected by or which are controlled by specific requirements within the draft DCO. It is suggested where such issues occur reference should be made to the relevant requirement for the sake of clarity and completeness, such as section 14 of the CEMP which should be amended to bring it in line with requirement 16 of the DCO, instead of this statement simply referring to just a watching brief during dredging operations. We were also unable to find a reference that requires copies of the Management Plans to be kept up to date and to be kept available for reference at convenient located on site. For instance there would be little point in keeping the documents in a central office on shore, if the relevant phase of construction was operating off shore.

- 2.6 The proposed use of a Marine Mammal Observer as outlined within section 5 of the CEMP is welcomed, but it is noted that this role is stated to only be employed during the construction phase of the development. It would appear that this role could also be beneficially employed at least for the first few months of operation to assess and monitor whether the Acoustic measures are operating as predicted for the marine mammals. The Shadow HRA relating to Cetaceans and Pinnipeds section 7.4.0.8 states that the acoustic deterrent devices will be considered in relation to those used for fish. However, there has still not been an assessment of the use of ADDs for both Harbour porpoise and fish and the relationship between the two uses. Section 7.4.0.22 discusses protocol to be developed in conjunction with the RSPCA and TBDMLR, but it does not state that these organisations have agreed to be involved in the Project. Therefore, the relationship between the ADDs used for cetaceans and fish, and securing the cooperation of external organisations for assistance with protocol appear to remain outstanding.
- 2.7 The OEMP 10.0.0.2 refers to establishing, maintaining and monitoring quieter areas within the lagoon, particularly to avoid disturbance to birds. There are no details on how these areas will be defined and regulated and nothing in the AEMP regarding the monitoring.
- 2.8 The Authority would wish to see a clearer statement of how the AEMP will operate in conjunction to the OEMP as well as setting out clear aims for the AEMP. The AEMP currently states that it is a standalone document; however the Authority does not believe that this is an accurate or helpful statement. The AEMP clearly make a number of references to the ES, pre-construction, construction and operational stage surveys, the CEMP and OEMP. It also explains how it uses this information to establish a baseline for further monitoring to be considered against. It would appear to the Authority that the AEMP is not and cannot be a standalone document, but more an iterative and developing document that evolves both its monitoring and resultant mitigation strategies throughout the course of the life span of the project. The Authority agrees with the principles of such an iterative approach to the monitoring and mitigation of the project especially given the current unique nature of the project and its location within a complex and dynamic environment. However to ensure that the document continues to address its principal role throughout future adaptations, it is considered important that the aims of the documents are clearly stated and understood.
- 2.9 It appears noticeable within the current version of the AEMP that there is a very heavy focus upon monitoring within the document. The Authority does not object to this detail within the monitoring sections of the document, but

would wish to see the development of a clearer and more detailed working of the potential scale of mitigation measures or options framework that could be implemented in response to the eventual monitoring results. It is important that if the AEMP is to be a truly adaptive plan its mitigation sections, which are the active part of the plan, must be more comprehensively developed.

- 2.10 The Authority welcomes the commitment made within the AEMP for an AEMP Review Group, but considers that it would be inappropriate for the group to be chaired by, or on behalf of the applicants/operators. Instead, it is suggested that an independent chair should be sought, preferably from a statutory authority which is likely (in some form) to be in existence for the duration of the project, such as a representative of NRW.
- 2.11 Turning to the other supporting information, it is considered that there remains uncertainty as to how the potential effects of the Project on the Crymlyn Burrows SSSI dune system will be mitigated. Section 3 of the Updated HRA Kenfig, Blackpill and Crymlyn Clarification Report R2295TN, clearly demonstrates that while Crymlyn Burrows is a mostly accreting system, erosion events occur and these are important to maintain the dynamism of the system. The AEMP does not adequately deal with the impacts of the Project on the system. In Tables 5.1 and 7.3 further/remedial action does not include any action proposed to mitigate for accretion affecting the features of the SSSI at Crymlyn Burrows. Section 5.4.3.15 states that “particular attention will be paid to accretion at Crymlyn Burrows SSSI”, but again it only discusses the potential for mitigation such as beach replenishment not for removal of accreted material at the SSSI. In Table 11.1 the Limits of Acceptable Change on Supply of Wind-blown Sand should include the same trigger as Management of Recreational Pressure which is triggered by adverse effects on the conservation objectives of the SSSI. Outstanding issues remain including what is the limit of acceptable change, what is the proposed mitigation in the case of over accretion, how will this be maintained, who will manage it and how will it be secured as the land is in private ownership.

### **3.0 Comments Made in Response to Draft DCO dated 5 August 2014.**

- 3.1 The majority of the comments that the Authority has made in response to the draft DCO's within our LIR, our response to the first round of Written Questions and our response to Deadline III, remain unchanged. Nevertheless, we remain in discussions with the applicant regarding the next proposed changes to the draft DCO.
- 3.2 The Authority is extremely concerned, however, regarding the removal of Articles 17, 18 and 19 from the draft DCO. These Articles in brief allowed provision for the Welsh Government to require the applicant to carry out tidal works or to remove them or restore them and should the applicant fail to comply, it allowed the Welsh Government to carry out the works themselves and to seek recourse from the applicants. It is currently unclear as to why these Articles have been removed. If these have been removed due to concerns that they perhaps duplicate provision under the Marine Consents Procedure, the Authority would ask the Examining body to ensure that the enforcement powers under the Marine Consents procedure would cover all the necessary provisions of these Articles for all aspects of the tidal works proposed. However, if the Articles were removed due to budgetary concerns, the authority considers that this would be an inadequate reason for their removal and would wish to see the Articles reinstated.
- 3.3 As a Local Planning Authority we are of course aware of the enforcement powers that would be available to us, following the accretion date when our Development Management functions would be returned to the Authority under Article 47. However, in regard to such a technically unique project, it is highly unlikely that the Authority would have either the in-house expertise or the necessary resources to commission external specialist consultants who would have the necessary expertise to identify specific measures necessary to bring about the desired result, let alone the ability to fund such works should the applicant refuse to do so, or are simply no longer in being to carry out the works themselves. This situation is unlikely to improve in the future due to further budgetary constraints and the potential amalgamation of Authorities through local government reorganisation which is likely to take place within the next few years.
- 3.4 This issue is of course linked to the concerns raised by the Authority within our LIR and Written Representations regarding potential failure of the project company, a major funder or a major contractor during construction operations. While the applicants have explained that they consider this to be an unlikely occurrence, it is noted that there are no proposed safeguards to ensure that should such an event occur that there would be sufficient funds available to allow any partially completed works to be made good or to remove any

structure not yet completed to a sufficient degree to facilitate their completion to an adequate extent. It is difficult for the Authority to share the applicant's confidence in the potential funding of the project when in recent years significant financial institutions and large scale companies have faced the threat of failure. It is likely that once the project has been completed to a certain point that the potential profits of completing the project would ensure that the development is completed by others, however a failure at an early stage when the sea walls are only partially completed would require action to be taken to rectify the visual impacts, biodiversity issues and to mitigate coastal process issues associated with only partial completion of the structure.

- 3.5 The Authority welcomes the provision under Article 40(4) of a fund from the fiftieth year for the provision of maintenance of the retained works following decommissioning of the generating station. However the Authority is concerned regarding the lack of information regarding the potential projections of when the fund would be sufficient to ensure adequate income could be earned to facilitate the maintenance of the structure in perpetuity or what would happen if at the 120 year it was shown that the fund was insufficient to maintain the structure thereafter, or similarly what would happen if the generating station ceases generation on the 51<sup>st</sup> year. The Authority is unaware of information that sets out how or whether it would actually be financially or physically possible to demolish the sea wall structure and return the site to its former condition at any point once it has been constructed.