

## EN010049 Tidal Lagoon Swansea Bay (TLSB)

**Issue Specific Hearing commencing 21 October 2014 & Compulsory Acquisition Hearing held 23 October 2014.**

**Panel's Note of Information Proposed by interested parties to be submitted at Deadline V on 28 October 2014**

NB. Given the limited amount of time between the final conclusion of the Hearings/publication of this note and Deadline V, the Panel, exercising its discretion and whilst hoping to receive key documentation by the deadline, will accept submissions of items below up to Tuesday 4<sup>th</sup> November 2014.

No.	Relevant Agenda Item	Information / Revision to Draft Development Consent Order (DCO) to be submitted:	Interested parties to submit:
1.	ISH 2.	<b>Development Consent Obligation</b> to include provision for public access free of charge to lagoon, beach, park, public realm, sea walls and visitor centre element of offshore building (alternatively provision in DCO for such access).	Applicant & City and County of Swansea Council (CCS)
2.	ISH 3.	<b>Coastal processes written questions:</b> NRW is asked to respond to parts (a) and (b) of the Examining Panel's question 8.1 in light of material presented to the examination and of matters considered at the hearings.	Natural Resources Wales (NRW)
3.	ISH 3.	<b>Coastal processes likely significant effects:</b> notes from NRW and the applicant to comment on the relevance of Worst Case Scenarios and Likely Significant Effects in relation to environmental assessment of the project and the preparation of the AEMP and in the light of the position put forward by Mr Gibbs on the morning of Wednesday 21 <sup>st</sup> October (summary annexed hereto).	Applicant & NRW
4.	ISH 3.	<b>Sediments:</b> A note of coastal processes references in the submitted documentation: <ul style="list-style-type: none"> <li>i. to sources of sediment that are being added to the bay, in particular from the rivers that flow into it.</li> <li>ii. to assessment of quantities of mobile sediments within Swansea Bay.</li> <li>iii. a presentation of the quantities of sediment being added to the bay with the figures of annual dredging that have been carried out in past years and are anticipated as taking place as</li> </ul>	Applicant & NRW

		<p>a result of constructing and operation of a tidal lagoon.</p> <p>iv. an assessment of the practicality of mitigating against potential mud accretion within the western bay.</p> <p>li and iv to be prepared in consultation with NRW and if not an agreed note every effort made for NRW's comments to be received by the Panel as soon as possible.</p>	
5.	ISH 6.2	Agreed note/Statement of Common Ground: on likely significant effects on <b>Crymlyn Burrows Site of Special Scientific Interest</b> and secured management measures including on efficacy, practicality and securing of the movement of sand.	Applicant & NRW
6.	ISH 7.	Summary/revised <b>Water Framework Directive (WfD) report</b> (addressing WfD Article 4.7 a to d) in consultation with NRW and Ponterdawe and Swansea Angling Society (PASAS). NRW to provide any outstanding issues to the applicant asap to enable these to be addressed.	Applicant & NRW
7.	ISH 7.	<b>Response/view from NRW on WfD</b> (it was noted this may not be able to be provided by NRW until 11 Nov 2014).	NRW
8.	ISH 8.	View from Natural Resources Wales on applicability of <b>Eel Regulations</b> .	NRW
9.	ISH 13.	Requirement 6 to be amended to provide for regular <b>review of the AEMP</b> .	Applicant
10.	ISH 13.	Management Plans: Any proposals for <b>mitigation measures</b> within the environmental management plans which interested parties believe should be recorded in the text of Requirement 6 as minimum specifications.	Local Authorities / <b>all Hearing participants</b> .
11.	ISH 13.	<b>Mitigation ready reckoner</b> of measures accepted into/rejected from the Management Plans to date identifying where each mitigation n measure is secured.	Applicant
12.	ISH 17.	The securing in the DCO of a minimum cable depth in relation to <b>electromagnetic field</b> considerations.	Applicant
13.	ISH 15.	The inclusion in the DCO of provisions for <b>driver alarms</b> rather than audible beepers during anti-social working hours.	Applicant
14.	ISH.16.	<b>Water Quality</b> and section WQ3 of the Adaptive Environmental Management Plan. Confirmation from CCS that the revised wording is acceptable/any	CCS & applicant

		amendments to documents from the applicant in respect of this.	
15.	ISH 18.	Note on the production of a <b>ship simulation study</b> and confirmation that any resulting mitigation measures are secured by DCO or that there is a reasonable prospect that they can be secured.	Applicant in consultation with ABP
16.	ISH 18.	<b>Dredging power</b> to be added to the DCO and other revisions to the tidal works articles clarifying the powers would be subject to the provisions of the Marine and Coastal Access Act.	Applicant
17.	ISH 18.	<b>Dredging requirement 38:</b> any necessary redrafting including confirmation that NRW believe it provides sufficient mitigation of impacts upon Kenfig Special Area of Conservation.	Applicant in consultation with NRW
18.	ISH18.	The need for protective provisions in relation to <b>King's Dock</b> to be considered by the applicant.	Applicant
19.	ISH 18.	A <b>draft of the Marine Licence</b> following the application made by the applicant.	NRW
20.	ISH 20.1	Revised <b>DCO drafting excluding from the Works:</b>  <ul style="list-style-type: none"> <li>- the upper storeys of offshore building;</li> <li>- any volumes of the onshore building not necessary to the generating station, and</li> <li>- some extents of boating facilities not necessary to the generating station,</li> </ul> and the revised and signed Development Consent Obligation to provide for such development.	Applicant
21.	ISH 20.1	If no DCO amendment reducing the scale of <b>boating facilities</b> is proposed, a note relating to each of the boating facilities referred to in the Scheduled Works justifying why facilities of that scale are necessary for the generating station, include details of what they are intended to mitigate and whether they would be subject to charge or free for public access (NB. The Panel's recognition that regular boat access from the mouth of the Tawe is likely to be necessary to provide good offshore access to the west and in the event of needing an alternative to access along the sea wall).	Applicant
22.	ISH 20.2	Within any DCO amendments submitted	Applicant

		identification within the scheduled works of the <b>engineering suite</b> (assuming this is necessary in the offshore building and as distinct from the switch room) and in the commentary clarification of its necessity.	
23.	ISH 20.2	Within any DCO amendments submitted provision of further dimensional certainty in DCO for <b>visitor facilities</b> .	Applicant
24.	ISH 20.2	Within any DCO amendments consideration of greater clarity in the <b>parameters of each Work</b> (especially where any widths or heights are missing - and where relevant ground levels) and where (in DCO or in documents referred to in it) these are set down (for example through including the parameters in the description of the work or clarifying the sheet of Work Plans/Sections for each work).	Applicant
25.	ISH 20.2	Consideration to be given to deleting Article 34 such that s127 and s138 relating to <b>statutory undertakers</b> may be relied upon instead.	Applicant
26.	ISH 20.2	Consideration to be given to redrafting article 40 to conform with recent consultation guidance on <b>decommissioning</b> tidal lagoons with particular attention to the timing of the submission of a decommissioning scheme, the scope of the scheme and the time at which any decommissioning fund referred to in the DCO would begin to accrue.	Applicant
27.	ISH 20.2	Consideration to be given to redrafting article 7 state the sum of £10.5Million compulsory acquisition <b>liability</b> as assessed in the examination (subject to possible review) and redrafting to provide for the satisfaction of CCS and the provision of an expert to advise CCS.	Applicant
28.	ISH 20.2	Consideration to be given to redrafting article 47 to include listing of the Design and Access Statement, any planning drawings, the environmental management plans etc. to be <b>certified</b> under the Order.	Applicant
29.	ISH 20.2	Consideration to be given to preparation and approval of a <b>navigational safety scheme being delivered in a requirement</b> rather than in the protective provisions.	Applicant

30.	ISH 20.2	Note explaining the responsibilities of Harbour Authorities vis-à-vis the applicant for <b>navigational safety</b> and confirmation that navigational safety measures would be adequately secured by the DCO.	ABP
31.	ISH 20.2	A <b>commentary</b> on changes made to the draft DCO.	Applicant
32.	ISH 20.3	Updated list of <b>other consents</b> that would be required in order for the development to become operational including covering any additional Marine Licence that may be required for dolphin piles pursuant to the scheme of navigational safety etc.).	Applicant
33.	CAH 2.	Letters consenting to the DCO as drafted in relation to any <b>Crown Land</b> from all appropriate crown authorities (Crown Estate, former Department of the Environment and Welsh Ministers).	Applicant
34.	CAH 3.	Clarification of which subsections of s131/2 are to be relied upon for the acquisition of <b>open space</b> and inclusion of the relevant subsections/redrafting in the DCO.	Applicant
35.	CAH 5.	Either confirmation of withdrawal of representations by all <b>statutory undertakers</b> who have made representations, or where not withdrawn substantive evidence that the relevant tests in s127/38 are met.	Applicant
36.	CAH 6.3	Note including any updates arising from <b>sampling</b> of heavy metals.	Applicant
37.	CAH 6.5	Note in consultation with CCS clarifying the terms upon which the public would have the right to use the internal access road / whether it could be <b>public highway</b> .	Applicant and CCS
38.	CAH 8.5	Review of whether full seaward extent of <b>plots 16005 and 05010</b> beyond lagoon wall are necessary to the development in compulsory acquisition terms and if retained a note justifying the same.	Applicant

Annex – Summary of Panel’s Introduction to Issue Specific Hearing  
Agenda Item 3. Coastal Processes

Worst Case Scenario and All Potential versus Likely Significant Effects

In the 3<sup>rd</sup> bullet point on page 12 of their 9<sup>th</sup> July Written Representation NRW’s position is expressed as follows:

NRW recognise that there is an inherent uncertainty in the prediction of impacts arising from the scheme but in absence of detailed information, assessments should be based on “worst case scenario”.

And at the bottom of page 12:

NRW is therefore concerned that a comprehensive assessment has not been undertaken on this aspect of the proposal, including consideration of worst case scenarios and whether all potential impacts have been identified.

HOWEVER, the web based “Planning Practice Guidance” states that:

The aim of Environmental Impact Assessment is to protect the environment by ensuring that a local planning authority when deciding whether to grant planning permission for a project, which is likely to have significant effects on the environment, does so in the full knowledge of the likely significant effects, and takes this into account in the decision making process.

The Worst Case scenario is relevant in relation to aspects of the scheme that are based on the Rochdale Envelope. The IPC Advice note nine: Rochdale Envelope advises that:

The EIA should assess the likely worst case in terms of the potential variations within a project but the detailed design of the project and the variations should not vary beyond these limits so that the proposals as built would not have been assessed, thereby rendering the ES inadequate

And that:

The challenge for the EIA will be to ensure that all the realistic and likely worst case variations of the project have been properly considered and clearly set out in the ES and such that the likely significant impacts have been adequately assessed.

It may be possible to draft a DCO in such a way as to allow some flexibility in the project. The project should be described in such a way that a robust EIA can be undertaken.

The Advice Note refers to para.122 of the Rochdale Judgment:

The assessment may conclude that a particular effect may fall within a fairly wide range. In assessing the 'likely' effects, it is entirely consistent with the objectives of the Directive to adopt a cautious 'worst case' approach. Such an approach will then feed through into the mitigation measures envisaged.... It is important that these should be adequate to deal with the worst case, in order to optimise the effects of the development on the environment.