



# The Planning Inspectorate Yr Arolygiaeth Gynllunio

3 Whitehall Place  
London  
SW1A 2AW

Customer Services: 0300 068 5770  
e-mail: [giles.scott@decc.gsi.gov.uk](mailto:giles.scott@decc.gsi.gov.uk)  
Web: [www.decc.gov.uk](http://www.decc.gov.uk)

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Your Ref:

Our Ref: EN010049

Date: 14 April 2015

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Dear Sir / Madam

## **Planning Act 2008 (as amended) and The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)**

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

#### **REQUEST FOR COMMENTS FROM THE APPLICANT, NATURAL RESOURCES WALES (NRW), THE WELSH GOVERNMENT (WG) AND OTHER INTERESTED PARTIES ON THE APPLICATION FOR THE PROPOSED TIDAL LAGOON SWANSEA BAY - EN010049**

Following the completion of the examination on 10 December 2014, the Examining Authority submitted a Report and Recommendation in respect of its findings and conclusions on the above application to the Secretary of State for Energy and Climate Change on 10 March 2015 which the Secretary of State is currently considering. In accordance with section 107 of the Planning Act 2008, the Secretary of State has three months to determine the application.

There are a number of issues on which the Secretary of State should be grateful if parties identified in bold, and any other parties who wish to comment, provide an update or further clarification. The issues are grouped by topic heading:

#### 1. Water Framework Directive

The Secretary of State has reviewed all representations and notes the submission by NRW dated 9 December 2014 and submitted to the examination on 10 December 2014. The Secretary of State would like responses to the following from the **applicant and NRW**:

- i. Regarding Article 4(7)(a) of the Directive, have all practicable mitigation measures to reduce any adverse impacts on the status of the Swansea Bay water body been considered? If not, please explain what additional measures might be taken.

- ii. Regarding Article 4(7)(a), how is it proposed to secure successful delivery of any mitigation measures?
- iii. Regarding Article 4(7)(a), what evidence is there that these measures will mitigate adverse impacts on the status of the Swansea Bay water body?
- iv. Regarding Article 4(7)(c), are there further benefits to human health and/or human safety that need to be considered by the Secretary of State?
- v. Are there any other costs or benefits you can identify over alternative sources of renewable energy generation?
- vi. Regarding Article 4(7)(d), what alternatives have been considered for the proposed project, including the following (either independently or in-combination):
  - design;
  - location; and
  - alternative sources of power generation?

Did any of the alternatives considered have significantly better environmental effects? What evidence is there that alternatives considered could not be developed for reasons of technical feasibility or disproportionate cost?

- vii. Regarding Article 4(8), what evidence is there that the proposed project will not permanently exclude or compromise the achievement of the objectives of the Water Framework Directive within the Neath Estuary or Tawe Estuary water bodies (as defined in the Western Wales River Basin Management Plan)?

## 2. Habitats Directive/Marine Environment

- i. The Secretary of State notes the applicant's and NRW's representations during the examination subsequent to publication of the Report on the Impacts on European Sites (11 November 2014). However, in order to inform his decision-making, the Secretary of State requests that the **applicant** and **NRW** provide responses to the following:
  - what is the current position regarding possible adverse effects on the features of the Kenfig Special Area of Conservation ("SAC")?
  - is there now agreement between the applicant and NRW on this matter?
  - what evidence or measures can the Secretary of State rely on to have confidence that there will be no adverse effects on the Kenfig SAC?
- ii. The Secretary of State requests that the **applicant** provide an update on the

status of the applications for a European Protected Species Licence, Marine Licences and other necessary permissions, consents and licences. Do any **interested parties** foresee any impediment to these being granted?

### 3. Eel and Salmon Regulations

- i. Having reviewed responses from NRW and the Applicant, why does the **applicant** consider it necessary to disapply Regulations 14 (eel passes) and 17 (screens) of The Eels (England and Wales) Regulations 2009 (SI 2009 No 3344) and section 14 of the Salmon and Freshwater Fisheries Act 1975 in relation to the proposed tidal lagoon? The Secretary of State notes the response on 8 December 2014 by NRW.
- ii. If the provisions of the 2009 Regulations are not disapplied, why does the **applicant** consider it likely that:
  - (a) a notice requiring eel passes would be served on the applicant by NRW under Regulation 14(2)(a); and,
  - (b) no exemption given from screens would be given to the applicant under Regulation 17(5)(a) of the 2009 Regulations?
- iii. What is **NRW's** advice on the application of these Regulations to the proposed project?
- iv. The **applicant** is requested to provide representation on what effect would the requirement of (a) eel passes and (b) screens, have on the working of the proposed tidal electricity generating station?
- v. Do the **applicant** and **NRW** consider that the proposed project would divert waters frequented by salmon or migratory trout by means of any conduit or artificial channel?

### 4. Dredge and Spoil Disposal

What activities does the **applicant** expect to be undertaken under Article 17 of the draft DCO submitted to the examination by the Applicant on 4 December 2014 for which a Marine Licence granted under the Marine and Coastal Access Act 2009 is not needed? Is the purpose of the Article to require consultation with Associated British Ports?

### 5. Navigational Safety

In the applicant's note addressing ship simulation, the **applicant** agrees to undertake such a study. Has the Ship Simulation Study been completed and consulted upon?

- i. What, if any, measures are proposed to be implemented as a result of the Study?
- ii. Are these agreed with the relevant parties? The Secretary of State requests evidence of such agreements.

6. Tidal Works

What activities does the **applicant** expect to be covered by Article 18 of its proposed DCO which would not also require a Marine Licence granted under the Marine and Coastal Access Act 2009?

7. Abatement of Tidal Works

What tidal works does the **applicant** expect to be covered by Article 19 of its proposed DCO that would not be covered by provisions of a Marine Licence for which the enforcement authority would also be the Welsh Ministers?

8. Section 106 Agreement

Please could the **applicant** provide a certified copy of the completed section 106 agreement that was submitted to the examination in draft form on 8 December 2014?

9. Jurisdiction

Can the **applicant** explain the reasoning for extending the jurisdiction of the City and County of Swansea and Neath Port Talbot County Borough Council to cover the development seaward of the mean low water line in respect of the following statutes?

- the Environmental Protection Act 1990;
- the Control of Pollution Act 1974; and
- the Town and Country Planning Act 1990.

10. Environmental Permitting Regulations

- i. Has **Natural Resources Wales** consented to the exclusion of the permit requirements in the Environmental Permitting (England and Wales) Regulations 2010?
- ii. Specifically, why does the **applicant** consider it necessary to remove requirements for permits for the discharge of water through turbines and sluices comprised in the proposed project?

**The deadline for any responses is Tuesday 28 April 2015.**

Responses to the points outlined in this letter should be submitted by email to: swanseatidal@infrastructure.gsi.gov.uk. Please send any hard copy response to:

Tidal Lagoon Swansea Bay project team  
Secretary of State for Energy and Climate Change  
c/o the Planning Inspectorate  
Eagle Wing 3/18  
Temple Quay House  
Temple Quay  
Bristol  
BS1 6PN

Your responses will be published on the Swansea Bay Tidal Lagoon project page of the Planning Portal website as soon as possible after 28 April 2015.

This letter is without prejudice to the Secretary of State's decision whether to grant development consent for Tidal Lagoon Swansea Bay and nothing in this letter is to be taken to imply what that decision might be.

Please only reply to this letter if you wish to provide responses to the specific questions being asked.

Yours faithfully

***Giles Scott***

Giles Scott  
Head of National Infrastructure Consents

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.