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Date: 6 March 2014

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).

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.

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.

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:-

- 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.
- 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).

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

- Clarify the height and dimensions of all elements of the development as set out in Part 1 of Schedule 1 of the draft DCO (Doc3.1) 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.
- 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).
- Confirm which element of the seawall forms the upward limit of deviation with reference to the worst case assessment presented in the ES.

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

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.

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

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.

Options in the draft DCO

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.

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.

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

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.