



The Planning Inspectorate Yr Arolygiaeth Gynllunio

Meeting note

File reference	EN010049
Status	Final
Author	Ruth Jones
Date	24 October 2013
Meeting with	Tidal Lagoon Swansea Bay
Venue	2 Rivergate, Bristol
Attendees	Tidal Lagoon Swansea Bay Ltd (TLSB) Gill Lock (Head of EIA) Alex Herbert (Head of Planning) Michael Baker (Planning Executive) Howard Bassford (DLA Piper) Emma Rodican-Jones (DLA Piper) Natural Resources Wales Lisa Hopkinson (marine licensing team) Lucy Skates (advisory team) Planning Inspectorate Jackie Anderson (Case Manager) Simone Wilding (Head of Case Management) Tim Hallam (Legal Manager) Andy Luke (Senior EIA Advisor) Hannah Nelson (EIA Advisor) Richard White (Assistant Case Officer) Ruth Jones (Assistant Case Officer)
Meeting objectives	To provide a progress update and discussion of draft documents
Circulation	All attendees

Summary of key points discussed and advice given:

The Planning Inspectorate (the Inspectorate) explained its openness policy and the commitment to publishing any advice under Section 51 of the Planning Act 2008 (the 2008 Act). It was confirmed that the Inspectorate is unable to give legal advice on which developers or others can rely and that developers should seek their own legal advice.

Programme:

Update on pre-application consultation

TLSB distributed a draft project consultation programme illustrating consultation since March 2011. The diagram showed how the non statutory and statutory consultation had been carried out, the methods and topics which were consulted upon, and the

different parties who were consulted with and how this corresponded with the Planning Act 2008. TLSB discussed how the timeline of consultation had informed features of the project; the consultation began by presenting Lagoon Design D, which was then considered to not be viable, and this had progressed to consulting upon designs E-M. Through consultation, design J3 was the option which was put to parties in the statutory consultation phase which began with certain categories of consultee under s42 on 4 June 2013 and is still on-going with others. TLSB informed the meeting that this period was due to finish on 10 November 2013.

TLSB reported on the positive feedback which it has received from attendees at a number of their public consultation events and in written submissions/ questionnaire responses. The most recent event was held on 17 October 2013 at the Liberty Stadium, Swansea and comprised a presentation on the findings of the Environmental Impact Assessment.

Draft Documents: Environmental Statement

The Inspectorate noted that Section 42 consultation of relevant statutory consultees had been undertaken on the basis of preliminary environmental information (PEI), as required by the relevant legislation, and in the absence of the final results of detailed studies including coastal process modelling. As yet, a draft Environmental Statement (ES) has not been circulated to any of the statutory consultees. The Inspectorate noted that sharing a draft ES was not required by legislation. NRW stated its view of limitations upon discussing mitigation measures in the absence of the detailed findings of the EIA.

TLSB stated that its current intention was not to share a draft ES with statutory consultees prior to the submission of the application. It did not consider that consultees would benefit from viewing the draft ES prior to submission. TLSB added that the approach taken in the ES had not changed from the principles set out in the PEI, and the assumptions of the PEI were endorsed by the findings of the EIA.

TLSB informed the Inspectorate that the EIA process remains ongoing. The outputs of the process to date had recently been shared with key parties at an event in Swansea on 17 October and meetings are planned with NRW to hold further discussions. TLSB said that the bulk of the EIA assessment work had now been completed and most but not all of the ES chapters had been written.

The Inspectorate discussed whether the current approach posed a risk to the consenting process and strongly advised that a draft ES and Habitats Regulations Assessment (HRA) report should be circulated to relevant statutory consultees for their comments prior to the submission of the application. The Inspectorate explained that, for consultation to be effective, consultees would need a reasonable amount of time to consider the documents. Natural Resources Wales (NRW) agreed with this approach.

The Inspectorate explained that consultation on draft ES chapters was advisable in the circumstances, in case it might be concluded that limited consultation on the methodologies and outcomes of key surveys and modelling had occurred to date. Further consultation would assist in ensuring that:

- the application, including the ES, meets the relevant tests at acceptance;
- the need to request further or any other information during the examination is minimised or avoided; and

- where possible any important issues are resolved in advance of submission of the application, in turn allowing for a more efficient examination and minimising risks to the examination timetable.

The Inspectorate reminded the applicant that there is a risk that material changes to an application may not be acceptable following submission of an application for a proposed NSIP. Therefore, it is advisable, though not a legal requirement, to consult and seek agreements with statutory consultees regarding the assessment conclusions and proposed mitigation prior to the submission of an application. TLSB confirmed that, in its view, there was unlikely to be the need for extensive changes to the application post-submission.

TLSB indicated that coastal process modelling had now been completed, and that the relevant ES chapter is currently being written with the intention that this would be completed by mid-November. The importance of this modelling in terms of underpinning other EIA topic assessments, the HRA and the Water Framework Directive (WFD) Assessment was discussed. NRW indicated that it had outstanding concerns in relation to the baseline data that underpin the coastal process modelling. The Inspectorate advised that TLSB should hold further discussions with relevant consultees to ensure that it may satisfy itself that the modelling is sufficiently robust to inform the assessment.

NRW highlighted that, without seeing a draft ES, it is unable to comment on the Project's compliance with Article 4.7 and 4.8 of the Water Framework Directive (WFD). It was agreed that further discussions on this matter would be held between TLSB, the advisory section of NRW and CEFAS.

Draft Documents: General Points

The Inspectorate highlighted a few general corrections and points that would need to be addressed by TLSB:

- A summary table of s49 responses would be useful, in addition to the full responses;
- S44 is referred to in several places as having been complied with, however this should refer to compliance with s42(1)(d);
- The SoCC was made available after the Localism Act 2011 amended s.47 so para. 3.1.1.3 should say 'made available' rather than 'published';
- Para 3.1.2.2 says that CCSC, NPTCBC and PINS provided comments. It should be made clear that PINS provided advice under s51 of the Planning Act 2008, rather than comments;
- The term 'PILS' is used in several places, and it would be preferable to use the term 'affected persons' or 'persons with an interest in land';
- Para 4.3.1.2, states "this is a minimum level of engagement" - the Inspectorate presumes that this is an error; and
- Mis-spelling of Hinkley (Hinckley).

Draft Documents: Natural Features Plan/Report and Historic Environment Plan/Report

TLSB queried whether the Natural Features Report and Historic Environment Report needed to be separate documents, or if they could be incorporated within the ES. The Inspectorate confirmed that it had received applications previously where such reports had been provided in different ways, either as standalone documents or as relevant chapters of the ES. The latter approach would be acceptable to the Inspectorate, so long as the relevant reports are properly signposted in the covering documentation.

So far as a natural features plan and historic environment plan are concerned, the provision of which are governed by the requirements of the Infrastructure Planning (Application: Prescribed Forms and Procedure) Regulations 2009, the Inspectorate confirmed that it takes a pragmatic approach at acceptance and alternative scales may be acceptable as long as appropriate justification is provided with the application.

Marine Licence

Due to the location of the Project in Wales, TLSB must submit a separate application to NRW for a Marine Licence in addition to an application for a Development Consent Order (DCO). TLSB sought to confirm the length of the process to determine a Marine Licence application. NRW gave 18 months as an estimate, based on previous records of the Welsh Government in respect of offshore renewable projects. NRW also stated that they expected that it would not be able to issue a Marine Licence until the SoS had made a decision on the DCO application. Notwithstanding this, NRW confirmed that it would seek to issue a "minded to" letter to the Examining authority before the close of the examination in order to assist the SoS's decision.

Submission

The Planning Inspectorate advised TLSB on a number of points which would be highly beneficial when submitting the application for development consent, including delivery of the documents in the morning. The Inspectorate made a number of general points with regard to consistency of the wording of the documents, and creating documents which were easily navigable in terms of cross referencing and the number referencing in the chapters. It was also felt that a timeline of consultation carried out, such as that tabled earlier in the meeting, would assist the case team greatly during the acceptance process.

At present, TLSB informed the Inspectorate that 6 December remained the proposed date of submission. However, following discussions earlier in this meeting, there would be internal discussion within TLSB as to whether this will still be the preferred option. NRW advisory had noted that if it, and possibly other statutory consultees, were to review the draft ES, it would ideally like to have a minimum of 8 weeks to do so adequately and sufficiently.

Draft DCO and Explanatory Memorandum

The Inspectorate queried the continued lack of content within Part 2 of Schedule 1: Building Heights, and highlighted the need to constrain building heights and other parameters. TLSB responded that with regard to setting parameters, in respect of the seawall and other elements of the Project, it would refer to the DCO drawings showing cross-sections of the seawall, based on the approach taken in Transport and Works Act Order precedents. Maximum heights and a vertical upward limit of deviation would be set in due course.

The Inspectorate queried the DCO article on byelaws, and the reason for its inclusion. TLSB highlighted how the leisure aspect of the application would mean that the lagoon walls would be open to the public, and the provision to make byelaws is available as a mechanism to provide public order powers to the applicant. TLSB confirmed that the byelaws would not be drafted unless and until the DCO is granted.

TLSB confirmed that it had shared the previous version of the draft DCO with the relevant local planning authorities and had incorporated their comments into the current draft. TLSB stated that the relevant local authorities were happy with the planning jurisdiction article in the draft DCO (currently article 46). With regard to Part 1 of Schedule 1 TLSB said that the detailed drafting of this would be further refined

before submission of the application. It also noted that the bridges previously included in Work 5a had been deleted in response to consultation, and that a pontoon to serve a water taxi service was now being proposed as a new Work 6.

The Inspectorate noted that there was now a Crown rights article in the draft DCO. TLSB noted that this had been included in response to the Inspectorate's comments on the previous draft of the DCO. TLSB said that it continued to have discussions with the Crown Estate on the grant of a lease, and that it expected an "in principle" agreement before the end of the examination.

The Inspectorate advised TLSB that, before submission, the draft DCO should be put into the Statutory Instrument template. TLSB will receive a letter from the Planning Inspectorate informing them of the details required with this submission.

Specific decisions / follow up required?

The Inspectorate to send TLSB a letter informing them about their need for compliance with the Statutory Instruments DCO Template.

TLSB to complete, as best as possible, the draft Environmental Statement for review by statutory consultees, in particular Natural Resources Wales, preferably before submission of the DCO application.

TLSB to discuss internally the viability of the proposed submission date which is currently set at 6 December