



# The Planning Inspectorate

## Proposal by Tidal Lagoon Swansea Bay Limited for the proposed Tidal Lagoon Swansea Bay development

### Comments on the Draft Habitat Regulations Assessment Screening Report (July 2013)

- 1.1 This note provides comments from the Planning Inspectorate's Environmental Services Team (EST) on the Draft Habitat Regulations Assessment Screening Report (July 2013) (the Draft HRA Report) submitted by Tidal Lagoon Swansea Bay plc (TLSB) in July 2013.
- 1.2 A high level review of the draft HRA report has been conducted and headline comments provided. These comments should not be considered as exhaustive, and do not prejudice any request or decision taken by the Secretary of State, the Planning Inspectorate or any Examining Authority should an application for development consent be submitted at a future date.

#### *Summary*

- 1.3 At present the Draft HRA Report comprises the screening stage of the HRA process. The Draft HRA Report does not exclude potential significant effects for a number of qualifying features for a number of European Sites. If the results of the screening assessment remain the same at the time of submission of an application for development consent, the final HRA report would need to include sufficient information to enable the decision maker to make an appropriate assessment (AA) of the implications for that/those site/s in view of the site's conservation objectives.
- 1.4 It is noted that the Draft report is based on preliminary studies and it should be fully updated to reflect detailed surveys, modelling and other relevant studies before the submission of an application for development consent.
- 1.5 It is noted that TLSB have consulted with Countryside Council for Wales (CCW), now Natural Resources Wales (NRW), on the content of the draft HRA report. Given the relatively high level assessment that has been conducted to date and that the report only goes as far as the screening stage, the applicant is advised to consult with the relevant Statutory Nature Conservation Body (SNCB), following further detailed modelling and the next stage of the assessment.
- 1.6 The applicant should seek to demonstrate how they have had regard to any comments made by consultees. Where reference is made to consultation, including with the SNCBs, the final HRA report should be clear as to whether agreement has been reached with these consultees. Where issues are outstanding and have not been agreed with the SNCBs this should be clearly identified in the report.
- 1.7 The final report should clearly distinguish between the screening stage (Stage 1) and that of appropriate assessment (Stage 2), and this should be reflected through the provision of screening and integrity matrices as described in the

Planning Inspectorate's Advice Note 10 (AN10) and the accompanying appendices which provide a template for the matrices.

- 1.8 The Planning Inspectorate welcomes the commitment (paragraph 3.6.0.4 of the Draft HRA Report) to include screening and integrity matrices in the final HRA report. Each matrix provided for a European site should consider whether the project is likely to have a significant effect both alone and in-combination with other projects. At present the HRA report does not consider potential in-combination effects for each of the sites at the screening stage.
- 1.9 The HRA process is distinct from the EIA process, and should the application be accepted the content of the final HRA report, along with any evidence gathered throughout the examination, will be presented during examination as a 'Report on the Implications for European Sites' (RIES). Comments on the RIES will be invited as part of questions issued under Rule 17 to the SNCBs and interested parties during the examination period. Therefore where conclusions have been reached in the HRA report, these should be fully substantiated with reasoned justifications, and where appropriate adequate supporting evidence should be provided with the matrices. Supporting evidence may include baseline data, the outputs of modelling or detailed assessments, academic reports, or any evidence that the Statutory Nature Conservation Bodies (SNCBs) support the conclusion reached. Where necessary the HRA report should include at least a summary of any evidence that arises from the EIA.
- 1.10 Where reliance is placed on mitigation to reduce or avoid effects (e.g. construction management measures), then this should be clearly stated within the HRA report which should include a description of proposed mitigation with cross reference to the relevant DCO requirements and factors affecting the certainty of their implementation, noting where residual effects would remain.

#### *Stage 1 (Screening)*

- 1.11 The Draft HRA Report sets out the European sites considered by Tidal Lagoon Swansea Bay plc (TLSB) at Section 3.1.
- 1.12 The Draft HRA report presents two stages for screening (see table 3.2 of section 3.1 and section 3.2 of the draft HRA report). This may be confusing to the reader and, as screening is one stage of the HRA process, it should be applied in the same way for all sites considered.
- 1.13 The screening assessment should consider all elements of the proposed development. The assessment contained in Table 3.3 of the Draft HRA Report largely relates to the construction, operation and decommissioning of the main lagoon wall and turbines. The HRA report should clearly demonstrate that all elements of the project as described in the Draft DCO have been considered including any provision for roll-on/roll-off ferry berthing facility; integral visitor centre, leisure facilities and public realm; emergency and operational facilities; dredging works; works to Swansea Port Channel; works to Neath Harbour Channel; works to existing long sea outfall; navigation facilities; ecological enhancement and mitigation; and navigational/lighting works; grid connection and other onshore works and access works if included in the Draft Development Consent Order (DCO). If the conclusion is that these elements are unlikely to result in an impact on any European site then this should be clearly documented and supporting evidence and / or justification should be provided.

- 1.14 The Draft HRA report presents a stage 1: screening assessment. In doing so it also considers whether there are implications for the site's conservation objectives. For clarity, stage 1 of the HRA process: screening, would typically consider whether the project is likely to have a significant effect on the interest features of the site, and only where sites cannot be screened out would consideration of implications for a site's conservation objectives be required as part of the stage 2: appropriate assessment. The final report should clearly distinguish between the screening stage and that of appropriate assessment.
- 1.15 It is noted from paragraph 3.1.0.1 of the Applicant's Draft HRA Screening Report that consultation with Natural Resources Wales (NRW) (formally Countryside Council for Wales) has informed the sites which have been considered within Stage 1 (Screening). The Applicant should look to agree with NRW the sites and features which will be taken forward to Stage 2 (Appropriate Assessment) where the potential for likely significant effects cannot be excluded. The Applicant may wish to provide a summary table of consultation with NRW, or consider developing a Statement of Common Ground with the body which will demonstrate to the SoS where there is agreement and disagreement with the conclusions made by the Applicant within the draft HRA Report.

#### *Stage 2 (Appropriate Assessment)*

- 1.16 Where likely significant effects on a European cannot be excluded through the screening process, the Applicant must consider whether those effects will adversely affect the integrity of the site in view of its conservation objectives.
- 1.17 Any sites and features taken forward to Stage 2 (Appropriate Assessment) should be presented and assessed within the integrity matrices within the format set out in Appendix 2 of PINS Advice Note 10 (<http://infrastructure.planningportal.gov.uk/legislation-and-advice/advice-notes/>). It is noted from paragraph 3.6.0.4 of the Applicant's HRA Screening Report that the Applicant intends to provide integrity matrices within the draft HRA Report to be submitted with the application, however these have not been provided within the Draft HRA Report submitted to PINS for comment.
- 1.18 Unless the Applicant's concludes that the project will not adversely affect the integrity of any European site, the applicant's assessment will need to move to Stage 3 and 4 of the HRA process.

#### *In-combination Assessment*

- 1.19 Section 3.6 of the draft HRA Report documents the screening assessment for each European Site but does not consider in-combination effects for each of these sites. Instead, subsequent to the screening of individual sites, in combination effects are addressed separately at Section 3.8. These two elements should not be considered separately and the assessment should consider whether the project is likely to have a significant effect both alone or in combination with other projects for each European Site and qualifying feature.
- 1.20 The Applicant may conclude that some sites and qualifying features will progress to Stage 2 (Appropriate Assessment) as a significant in-combination effect cannot be excluded, even if significant effects can be excluded for the project alone.

- 1.21 Table 3.8 presents the plans and projects which the Applicant, in consultation with NRW, the County and City of Swansea and Neath Port Talbot Borough Council has considered for inclusion within the in-combination assessment. The Applicant should clearly indicate which of these projects will be included within the in-combination assessment and whether the list of final projects has been confirmed with NRW.
- 1.22 Table 2.1 of the draft HRA report sets out the works that will form part of the DCO. If there are other works required for the project which are not included in the application for development consent and require consent under a different process, these would need to be considered within the in-combination assessment.
- 1.23 When considering which plans/projects to include within the in-combination assessment, Table 3.8 of the Applicant's HRA Screening Report appears to screen out some sites on the basis that works are "distant from European Sites" and works are "outside of the marine and coastal environment". The Applicant should look to demonstrate how the projects, alongside the proposed Tidal Lagoon Swansea Bay development do or do not share pathways and linkages to European sites, something which does not always correspond to distance or an onshore/offshore distinction.

*Scope of assessment and evidencing the conclusions within the screening and integrity matrices*

- 1.24 Section 3.1 of the draft HRA report indicates that all Natura 2000 sites which include marine or coastal features within the wider Swansea Bay area are considered. If other sites, for example sites with terrestrial features, have been excluded from the HRA a reasoned justification for why these sites would not be affected should be provided in the final report.
- 1.25 It is not clear from the report what the "Swansea Bay area" comprises. Paragraph 3.1.0.1 indicates that the search area was "based on results of initial high level coastal process modelling and consideration of features associated with the SAC/SPA". Further clarity and justification of the spatial scope of the assessment, for example by providing information on the likely extent of impacts, species connectivity (based on relevant foraging, feeding ranges etc.), and any other environmental pathways, would assist in demonstrating that all sites that could potentially be affected have been considered in the screening exercise. Where reliance is placed on the outcomes of the coastal process modelling, information on the outcomes of that modelling would help to substantiate the conclusions drawn in the assessment.
- 1.26 The current screening exercise is based on initial high level modelling, and further detailed modelling is ongoing (see paragraph 3.2.0.4 of the Draft HRA report). The final report should be updated taking into account any detailed modelling such as the coastal processes modelling, and fish behavioural, entrapment and mortality modelling.
- 1.27 Where the findings of baseline surveys could usefully inform the assessment, such as for fish, bird and marine mammals, then the relevant findings should be summarised and referred to in the assessment. A table indicating the species identified as present at the site or in the vicinity and the qualifying features of European sites may be a useful way of presenting this information.

- 1.28 Where the findings of other academic studies are referred to or relied upon in order to inform the assessment, these should be clearly referenced and any agreement from SNCBs on whether these can be relied upon should be clearly indicated.
- 1.29 The Draft HRA report makes multiple references to small numbers of species being affected or limited loss of habitat (see Table 3.3 of the Draft HRA Report). When stating the level of species or habitat likely to be affected, where possible this should be quantified and, where relevant, comparators should be provided in order to demonstrate the relative importance of the population or area likely to be affected.
- 1.30 Paragraph 3.1.0.2 states that further sites were added for consideration as a result of consultation with CCW. It would be useful if any reasons provided by CCW were also stated.
- 1.31 Paragraph 3.1.0.4 states that as harbour porpoise does not represent a qualifying feature of any European Site in the area it will not be included within the HRA. This is a relatively high level statement, and any information available in respect of the presence of marine mammals at the site and in the vicinity, European sites where marine mammals represent qualifying features, and the likely ranges and behavioural activity of marine mammals would provide further clarity on whether there is any connection to a European site designated for marine mammals.
- 1.32 The conclusions within the matrices should be clearly evidenced and reasoned justification provided within the final HRA report. Where the HRA report relies on assessment carried out as part of the EIA, the outcomes of this assessment should be summarised within the HRA report with references provided for any detailed data contained within the ES. It is important that the information, assessment and conclusions presented within the ES and the HRA report are consistent.
- 1.33 The potential impacts of the project are set out at Sections 3.3 and 3.4 of the HRA report. This list should be agreed with the relevant SNCB. The assessment presented within Table 3.3 of the Draft HRA Report only addresses some but not all of the potential impacts. For example in the case of a number of qualifying features, the effects of changes in coastal processes are considered but the effects of mobilising contaminants are not, and a reasoned justification would assist the reader in understanding why some effects are considered unlikely to occur. The use of the matrices as set out in AN 10 would assist in ensuring that all potential impacts are considered for all qualifying habitats and species.
- 1.34 Paragraph 3.6.0.3 of the Applicant's HRA Screening Report states that the assessment of impacts upon European sites is based upon a worst case scenario. It would be useful for a table which records the worst case parameters on which the assessment is based to be included within the draft HRA.

#### *Format of the Report*

- 1.35 The screening matrices should be completed within the format as set out in Appendix 1 of AN10 and should be completed for all sites considered at the screening stage (including those within paragraphs 3.1.01, 3.1.02 and within Table 3.2). Separate matrices should be provided for each European site included within the assessment including any Ramsar sites. The aim of the

matrices is to clearly demonstrate that all features of each designation have been fully considered in the assessment, and the matrices should therefore include an assessment for each qualifying feature.

- 1.36 Upon completion of these matrices, sites where a potential significant effect upon any of the qualifying features cannot be excluded should be progressed to 'Stage 2 – Appropriate Assessment' where an assessment of the implications for the site's conservation objectives and of effects on the site's integrity should be carried out and documented in the integrity matrices within the format set out in Appendix 2 of AN10.
- 1.37 The draft HRA report does not include a contents page or copies of the original citations for all European sites considered. These should be included in the final report submitted as part of an application for development consent.

#### *Appendix 2 – Information on the European Sites and their Qualifying Features*

- 1.38 The information provided on the qualifying features and the conservation objectives of each site is welcomed and can be cross-referred to within the draft HRA.

#### *Illustrations*

- 1.39 The information presented within Figure 3.1 in the Applicant's HRA Screening Report is unclear. Any illustrations provided within the HRA should be legible, to an appropriate scale, clearly labelled, and with a north point.

#### *Potential transboundary effects*

- 1.40 Appendix 1 of the Draft HRA Report includes transboundary information. The transboundary process is triggered by the EIA Regulations which are distinct from the Habitats Regulations. It is not usual for information relating to potential transboundary effects to be presented within a draft HRA report unless a potential impact upon a European site within another EEA State has been identified. On the basis of the information presented in Draft HRA Report, this information would be more appropriately included within the ES. If the transboundary information contains information that is pertinent to the HRA, this should be included within the assessment presented in the HRA report. If including and referring to the PINS Regulation 24 transboundary assessment within application documents the applicant is advised to make clear that this assessment was undertaken at the pre-application stage and on the basis of the limited information available at that time and that should new information be presented to the Planning Inspectorate it would need to review the conclusion as to whether or not the development is likely to have significant impacts on the environment in another EEA State.