



Meeting note

File reference	EN010049
Status	Final
Author	John Pingstone
Date	14 August 2013
Meeting with	<u>Tidal Lagoon Swansea Bay (TLSB)</u> Alex Herbet Gill Lock Mike Harris (SLR Consulting) Howard Bassford (DLA Piper) Emma Rodican-Jones (DLA Piper) <u>Planning Inspectorate (the Inspectorate)</u> Jessica Powis – Principal Case Manager Jackie Anderson – Case Manager John Pingstone – Case Officer Tim Hallam – Legal Manager Andy Luke - Senior EIA Advisor Hannah Nelson – EIA Advisor
Venue	Temple Quay House, Bristol
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 progress of pre-application consultation

TLSB was of the view that consultation and publicity under ss42/47/48 of the 2008 Act had gone well and said that the responses from consultees had been largely positive. A questionnaire had generated 2300 responses. A total of 19 public events have been held, with approximately 1100 attendees.

TLSB pointed out that it is still receiving representations after the original deadline as some parties have requested extra time.

The Inspectorate asked what objections there had been. TLSB stated that the majority of objections expressed concerns about coastal processes, water quality, and ecology. They were also concerns raised by local fishermen (both commercial and recreational).

The Inspectorate queried whether any statutory consultees had not responded. TLSB confirmed that any statutory consultees who had not responded had been chased. Also that the consultation had been done on a precautionary basis, therefore several non-statutory bodies had been included.

Update on additional pre-application consultation

The Inspectorate noted that the s.42(1)(d) consultation had been separated from the remainder of the s42 consultation, and queried why this approach had been taken. TLSB considered that this was a more appropriate approach and confirmed that PILs had been consulted in an identical manner to the other s42 consultees.

In regard to the further EIA consultation planned for Sept/Oct 2013, TLSB stated that this will be non-statutory consultation. It will however still be reported on in the application documents. The purpose of this round of consultation will be to attempt to reach further agreement with statutory consultees and to share further information with stakeholders.

TLSB will make the Habitats Regulations Assessment (HRA) report available to statutory parties. The Inspectorate advocated continuing dialogue with Natural Resources Wales (NRW) in order to evolve the report. It was also noted that the Planning Inspectorate's National Infrastructure advice note covering HRA matters (advice note 10) is currently being updated and will shortly be reissued.

Submission

In regard to the submission date, the Inspectorate queried whether TLSB would have time to take into account the responses to this separate non-statutory consultation. TLSB was of the view that there would be time before the proposed submission date to consider responses and make minor any changes to the application to take into account the views of those consultees.

The Inspectorate noted that the proposed submission date has now moved back to 6 December 2013 in order to incorporate proper consideration of consultation responses. The Inspectorate suggested that if this submission date was to slip to mid or late December TLSB should take into account that the adequacy of consultation responses would be requested during this period, and that the availability of Local Authorities may be limited.

Post-Application

TLSB outlined its expectations for the timing of events after it has submitted the DCO application to the Inspectorate. The Inspectorate noted that a discussion document provided at the meeting set out a projected timetable for certain stages of the process that was shorter than typical timescales for other projects. The Inspectorate were of the view that it would have a greater likelihood of being achieved, assuming that the project is accepted, if TLSB could reach as much agreement as possible via Statements of Common Ground (SoCG) prior to submission. TLSB noted that it was an ambitious timetable but that it was designed to avoid a possible delay at the decision

stage caused by a clash with the expected general election and a period of purdah. The Inspectorate noted this and asked that if TLSB feels that there are particular commercial milestones to which the project is working it should detail this in the application documents. The applicant has control over the start and end dates of the relevant representations period and the timing of its certification of compliance with s56 of the Planning Act. After this point, the timescales are either set down in legislation or will be at the discretion of the Examining Authority.

The Inspectorate pointed out that it may be helpful if TLSB pre-populate the s55 checklist in order to assist the acceptance process. TLSB queried whether the Inspectorate may wish to raise issues surrounding election cycles and purdah with relevant Secretaries of State in order to prevent decisions being delayed. The Inspectorate noted this and indicated that it would be considered.

TLSB enquired about the number of hearings that might be held. The Inspectorate suggested that it is difficult to predict at this stage because the process is primarily a written one. Compulsory Acquisition and Open Floor Hearings will be held if requested by parties; Issue Specific Hearings are held at the discretion of the Examining Authority.

The Inspectorate queried whether there would be any need for compulsory acquisition of land owned by statutory undertakers or interests over open space or common land under s127 and s131/132 of PA 2008 respectively. TLSB stated that it hoped to reach agreement with the relevant statutory undertakers but an application under s127 was a possibility. TLSB was of the view that there was no common land affected by the proposed development, although they were looking into whether an area of affected beach might constitute open space.

Draft Order and explanatory memorandum – General Points

The Inspectorate provided some high-level comments on the draft DCO, it was explained that detailed comments would follow the meeting in writing.

The Inspectorate said that there was a need for greater consistency in the draft DCO in terms of how local planning authorities were defined, and how these terms were used in the draft Order. TLSB said it was proposed that all of the offshore land within the Order Limits would accrete so as to be within the administrative boundary of Swansea, and that the relevant local authorities were understood to be happy with this proposed approach. The onshore element of the Order Land lay in the administrative areas of both Swansea and Neath Port Talbot.

With regard to the lagoon walls the Inspectorate queried whether the 5m vertical deviation shown in the works plans was fixed. TLSB thought that it was unlikely this full height would be used and that, acknowledging the need to be as precise as possible, the deviation may well be reduced, possibly to 1m. Specifically for the lagoon walls there will be both works plans and sections. The Inspectorate suggested that it would be helpful to see these draft plans prior to submission.

The Inspectorate queried whether the 240MW capacity is a maximum capacity. TLSB stated that this was a nominal capacity not a maximum, but that in any event the working capacity will not be below the 100MW threshold set by the Planning Act 2008. TLSB said that they were not proposing to include maximum or minimum capacity figures in the draft DCO.

The Inspectorate queried whether the OFTO (Offshore Transmission Owner) regime applies. TLSB was of the view that it does not apply. It was also queried whether TLSB intended to submit a cable statement and a safety zone statement in order to meet the requirements in regard to offshore generating stations set out in Regulation 6 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. TLSB stated that it did intend to submit these documents as it is treating the development as an offshore generating station. In connection with s48 of the Planning Act the notice has been published in the Lloyd's List and in an appropriate fishing journal in order to meet the requirements set out for offshore schemes.

The Inspectorate queried whether TLSB had considered limiting what is consented by the DCO by what is assessed in the Environmental Statement. TLSB stated that this limitation would be implemented in the appropriate articles and definitions.

In regard to the draft table of consents provided at the meeting the Inspectorate pointed out that this should be provided with the application. Also in regard to a table of mitigation secured by the DCO it was thought that it would be helpful if TLSB could provide this in the ES.

In regard to the submission date of the Marine Licence TLSB stated that it would be submitted at the same time as the DCO application. The Inspectorate suggested that it would be helpful if a draft ML could be submitted for review along with the next iteration of the draft DCO.

The Inspectorate asked whether TLSB had made any progress towards obtaining a lease from the Crown Estate. TLSB said that it had recently met with the Crown Estate, although it had no substantive update to give at this stage, but was aware that if this is not resolved it may be the subject of questions from the Examining Authority, and in due course from the Secretary of State.

Given the novel nature of the scheme the Inspectorate asked whether TLSB had given any consideration to which National Policy Statement (NPS) might apply, if any. TLSB was of the view this is not clear-cut, but suggested that the energy challenge/ need case set out in EN-1 would apply to the scheme. If EN-1 were deemed not to be a national policy statement to which the Secretary of State should have regard under s104 of the Planning Act 2008 in making a decision upon this project, it would still be an important and relevant matter for the purposes of his making a decision pursuant to section 105. TLSB was aware that the NPPF could also be relevant and various Welsh and local policies. The Inspectorate advised that the position be set out in the planning statement accompanying the DCO application. It was agreed that TLSB would consider the policy framework further and possibly provide its current thoughts on the matter to the Inspectorate for advice.

The Inspectorate said that TLSB will need to be confident in identifying which parts of the development it considers to be integral to the project and those which would in England be associated development (if any). TLSB noted this and pointed out that as part of its consenting strategy it may be twin-tracking applications for development consent and for "associated development", if necessary, which will be submitted at the same time.

Draft Order and explanatory memorandum - Points regarding Specific Articles/Requirements

In regard to Article 4 (non-material changes) TLSB informed the Inspectorate that this will be removed as s.96A of the Town and County Planning Act 1990 does not apply to development in Wales.

Article 8 (Guarantees in respect of payment of compensation) requires approval from the relevant planning authority. The Inspectorate queried whether this article should be discharged by the Secretary of State rather than the Local Planning Authority. TLSB noted this and will consider the wording.

In regard to Articles 17 (Right to dredge) and 18 (Tidal works not to be executed without approval of the Welsh Government) the Inspectorate asked whether these articles would be more appropriately placed within the Marine Licence. TLSB noted this point and explained that they will consider whether articles can be moved or deleted so as to improve clarity and reduce duplication.

Article 18 appears to be inconsistent with Requirement 1 in that it uses a 5 year period rather than 7. TLSB noted the need for consistency within the DCO.

With regard to Article 25 (Power to override easements and other rights) the Inspectorate asked which rights would be relevant. TLSB stated that none were identified at this stage.

In regard to Part 3 Requirement 1, the Inspectorate queried why the time limit for commencement of the development was 7 years rather than 5. TLSB noted, and would give further thought to this.

In regard to Schedule 1 Part 2 (Building Heights) the Inspectorate queried whether this will be populated and whether it would set out maxima. TLSB pointed out that this version of the DCO is a fairly early draft and hence it has yet to be fully completed. In the version submitted with the application this will be populated. Any maxima to be included and other dimensions will be shown using the Works Plans.

The Inspectorate queried the approach TLSB had taken in regard to Schedule 6 (post-consent changes), and particularly in regard to appeals. TLSB explained that they had followed the approach used in the Hinkley Point C Nuclear Power Station DCO.

The Inspectorate queried whether Crown Land provisions would be included in the draft DCO. TLSB would give further thought to the need to include such a provision.

Environmental and Habitats Issues

The Inspectorate pointed out that a revised HRA advice note (Advice note 10) will provide information on matrices. These are used to form the RIES (Report on the Implications for European Site) along with comments from Statutory Nature Conservation Bodies (SNCBs). The Inspectorate emphasised the importance of the matrices, as having to revise them during the examination would be an additional burden during an already busy time. It was suggested that TLSB look at previous RIES in order to gain an understanding of what is required.

The Inspectorate queried whether TLSB would be going to undertake Appropriate Assessment in regard to any European Sites. TLSB thought that it would need the results of detailed modelling before a judgement could be made.

It was queried whether TLSB would be submitting a single ES for the DCO and Marine Licence applications. TLSB stated that it did intend to submit a single ES. It was also noted that Natural Resources Wales [CEFAS?] did want the Water Framework Directive and the Habitats Regulations Assessment within the ES, but that they would defer to the Inspectorate on this issue.

It was noted that there is the possibility of separate consents and licenses being sought for other related development which may not be included within the DCO application. In the event that one ES is submitted to assess both the DCO application and development being consented under separate consents or licences, the ES would need to clearly distinguish effects of the DCO application and where mitigation has been identified as required, whether this needs to be secured through the requirements of the DCO or through separate consents or licences.

(Please see below for more detailed comments on the HRA screening report)

Specific decisions / follow up required

The Inspectorate to continue discussions with the Secretary of State in regard to the potential for election cycles to impact upon NSIP decisions.

TLSB to send revised draft application documents - including Order, Explanatory Memorandum, land and works plans, compulsory acquisition documents and consultation report - in advance of the next meeting.

TLSB to send a submission to the Inspectorate regarding what TLSB consider to be the relevant policy context – the Inspectorate to respond in writing.