



## S51 Advice

<b>Status</b>	<b>Issue</b>
<b>Author</b>	Richard Hunt
<b>Date</b>	17 February 2017
<b>Enquiry from</b>	Sian John
<b>Organisation</b>	Tidal Lagoon Power

### Summary of advice given:

On 9 December 2016, Tidal Lagoon Power (the Applicant) requested s51 advice from the Planning Inspectorate (PINS) in relation to the Applicant's approach to consenting compensatory habitats. The Applicant's request incorporated eight questions. Their request for s51 advice comprises the Tidal Lagoon Power "Request for s51 advice on TLP's approach to consenting compensatory habitats" and Annex 1: Related Correspondence, which are both appended to this advice. The questions raised are reproduced in their entirety below for context. Questions 2 and 3 are linked, therefore this response comprises seven responses to the eight questions.

The Applicant was reminded of the PINS openness policy that any advice given would be recorded and published on its website under s51 of the Planning Act 2008 (as amended by the Localism Act 2011) (PA2008) and that any advice given does not constitute legal advice upon which developers (or others) can rely.

### Questions asked by the Applicant and advice given under s51

- 1. Because a DCO for a NSIP in Wales cannot include the provision of consent for Associated Development (AD) (e.g. a habitat creation site elsewhere on the coast of South Wales), consent has to be progressed through the TCPA process. For these ADs it is therefore assumed that, although details of the proposals will need to be included in the DCO sufficient to demonstrate the deliverability of the required compensation package, full EIA (an ES) will not need to be included in the DCO application documentation (rather this will be provided as part of the parallel TCPA consent application)?***

### **PINS Response**

Under the provisions of the Wales Act, 2017 (Section 43 - Alignment of associated development consent), a Development Consent Order (DCO) for a Nationally Significant Infrastructure Project (NSIP) for a generating station in Wales can in future include the provision of consent for AD. Consent does not therefore have to be

progressed through a Town and Country Planning Act (TCPA) consenting route. AD forming part of an application would require full EIA, as part of the EIA of the development for which consent was being sought. The Department for Communities and Local Government (DCLG) 2013 guidance document "Planning Act 2008 Guidance on associated development applications for major infrastructure projects" provides examples of general types of development that can be considered as AD.

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations (2009) require Applicant's to provide under 5(g) "*sufficient information that will enable the Secretary of State to make an appropriate assessment of the implications for the site*" and under part 5(i) "*a land plan identifying (i) the land required for, or affected by, the proposed development; (ii) where applicable, any land over which it is proposed to exercise powers of compulsory acquisition or any right to use land*".

The Applicant's submission must also include an Environmental Statement the content of which is defined in the Infrastructure Planning (Environmental Impact Assessment) Regulations (IP EIA) (2009):

*"(a) that includes such of the information referred to in Part 1 of Schedule 4 as is reasonably required to assess the environmental effects of the development and of any associated development and which the Applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile; but  
(b) that includes at least the information referred to in Part 2 of Schedule 4"*

A full EIA would not be required to be provided in the DCO application for each compensatory site, where a separate EIA was to be prepared for the purposes of a separate TCPA consent. However, the absence of a full EIA for each site identified within the DCO has potential to undermine confidence in the proposed compensation package.

Sufficient detailed environmental assessment information would need to be included with the Development Consent Order (DCO) application to demonstrate the deliverability of the compensation package; that the proposed compensatory habitat could achieve the relevant compensation objectives; and that there would be certainty associated with the mechanism that will secure it. The provision of this information also forms part of the tests within the Secretary of State's s55 Acceptance Checklist.

We would require sufficient information to assess whether there was a reasonable prospect of the compensation being provided. Clear presentation of the phasing of other consents would be important to provide confidence in the package of compensatory measures as a whole. Any DCO reliant on provision of compensation through a TCPA consent would likely be conditional upon that consent being granted.

The Applicant is advised to agree the level of assessment information required to be submitted within the DCO application with Natural Resources Wales and Natural England prior to submission.

**2. To what extent does the compensatory package to be provided by TLP for TLC need to be fully resolved at the point of application? That is, does the DCO need to detail the package in absolute terms across the full suite of compensatory measures proposed or would a range of options (that equally could deliver the compensation package required) be acceptable**

***for some measures (where consent would be progressed through the TCPA)? In asking this question, we understand that the application documents will need to be comprehensive in demonstrating that the required compensation can be delivered (one way or another).***

***3. For example, would the approach to compensation that was followed for the Bristol Deep Sea Container Port Harbour Revision Order – which established that compensation would be provided at one of three different, viable sites – be acceptable for the Cardiff lagoon project?***

### ***PINS Response***

S37 of PA2008 states that an application for an order granting development consent must specify the development to which it relates. At the point of application, the Applicant must also provide the information required under the APFP Regulations including an ES and “(g) any report identifying any European site to which regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1994 applies, or any Ramsar site, which may be affected by the proposed development, together with sufficient information that will enable the Secretary of State to make an appropriate assessment of the implications for the site if required by regulation 48(1)”. The Applicant must also demonstrate that the application includes sufficient information to enable the Appropriate Authority to secure any necessary compensatory measures to ensure that the overall coherence of the Natura 2000 network is protected (s66 of the Conservation of Habitats and Species Regulations 2010 – “the Habitats Regulations”).

The compensatory package should therefore be capable of providing the required compensation to maintain the coherence of the Natura 2000 network and this should be agreed with the relevant Statutory Nature Conservation Body(ies), where possible. The provision of this information forms part of the tests within the Secretary of State’s s55 Acceptance Checklist.

The compensatory package would need to have met any consultation requirements under s42, 47 and 48 of PA2008. Any main alternatives would require sufficient assessment information to be provided in accordance with the IP EIA Regulations and as highlighted in National Policy Statement (NPS) EN-1<sup>1</sup>.

The compensation package could include measures to be progressed through a TCPA consenting route, where these were not determined to be AD. AD would require a full EIA.

Whilst there is currently no NPS specific to tidal lagoons, NPS-EN1, which touches on wave and tidal power states in relation to applications states that “*In some instances it may not be possible at the time of the application for development consent for all aspects of the proposal to have been settled in precise detail. Where this is the case, the Applicant should explain in its application which elements of the proposal have yet to be finalised, and the reasons why this is the case. Where some details are still to be finalised the ES should set out, to the best of the Applicant’s knowledge, what the maximum extent of the proposed development may be in terms of site and plant specifications, and assess, on that basis, the effects which the project could have to ensure that the impacts of the project as it may be constructed have been properly assessed.*” However, the absence of a full environmental assessment has potential to undermine confidence in the proposed compensation package.

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<sup>1</sup> Overarching National Policy Statement for Energy (EN-1). Department of Energy and Climate Change, 2011.

It is important to note that changes to the proposed application could trigger the need for material or non-material change applications. The Applicant is advised to seek confirmation of the level of detailed information required to satisfy relevant Statutory Nature Conservation Bodies regarding the effectiveness of compensatory measures.

If compulsory acquisition was proposed for any of the compensatory sites under consideration, compliance with s122(3) of the PA2008 (compelling case in the public interest) would be difficult to demonstrate where different options were available.

**4. For an NSIP in Wales, could proposed compensatory measures (such as habitat creation through managed realignment) in England constitute AD if we have no AD sites in Wales? (In this case compensatory measures proposed in Wales, that are not integral to the main DCO, would be taken forward using TCPA route). Or, can AD be promoted in both England and Wales?**

**PINS Response**

With the introduction of the Wales Act, 2017 (Section 43 - Alignment of associated development consent), a DCO for a generating station NSIP in Wales can in future include the provision of consent for AD. Consent does not therefore have to be progressed through the TCPA route. The DCLG 2013 guidance document "Planning Act 2008 Guidance on associated development applications for major infrastructure projects" provides examples of general types of development that can be considered as AD.

If the compensation site was wholly in England, then in principle, it too could be AD that could be granted consent under s115 PA 2008, provided its association with the development for which development consent is required could be adequately demonstrated [We are not aware of any examples of a Welsh DCO authorising AD in England]. AD must be included in the same application as the principal development<sup>2</sup> and therefore requires full EIA.

We highly recommend consultation with Welsh Government on the components of proposals before submission and with Natural Resources Wales and Natural England regarding the development of any compensatory habitat proposals.

**5. Is it possible to include compensatory sites within a DCO in order to obtain CPO rights – but deliver them through a TCPA route? Pinsent Masons have advised us that the DCO process allows for this in Wales.**

**PINS Response**

Sections 122 to 134 of the PA2008 (as amended) establish the main provisions relating to the authorisation of compulsory acquisition (CA) powers for land. A previous NSIP (Hirwaun Power Station) was consented, which excluded the gas and grid connections as development from the DCO but included compulsory acquisition powers over that land. The CA powers included in the Hirwaun Power Station DCO were conditional on the subsequent granting of TCPA planning permission for the connections by the local planning authority. The DCO therefore secured CA whilst providing confidence regarding the overall deliverability of the proposed development. The Applicant should be aware that CA can only be included where there is sufficient justification and the statutory tests are met (principally s122 PA2008). The responses to questions 2/3 above explain that if compulsory acquisition is necessary for the delivery of compensatory sites, compliance with s122(3) PA2008 (compelling case in

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<sup>2</sup> Guidance on associated development applications for major infrastructure projects. DCLG, 2013.

the public interest) will be required. The Applicant should note that in light of the powers granted, a deliberately high bar is set to satisfy this statutory requirement. This would be particularly challenging for a case where the proposed development included different options and combinations relevant to the final package of compensation.

**6. Please could you confirm the consultation requirements for any compensatory measures we are seeking to take forward, and in particular for sites referred to within the DCO, but taken forward (as AD) using the TCPA consenting route? We have assumed that standard TCPA consultation requirements will apply. For sites for which consent is sought through the DCO we would consult at the same time and in the same way as for the lagoon proposals.**

### **PINS Response**

It is essential to the validity of the application that the entire site for which development consent is going to be needed be included in the application and consulted on in full accordance with the legislation. Adding land after submission may not be possible having regard to the need for consultation and the front-loaded nature of the PA2008 process. Any amendments to the original application submitted would need to be considered in terms of the material and non-material change process. The Applicant should consider the PINS Advice Note 16<sup>3</sup> in this respect.

If additional land is to be subject to compulsory acquisition, the procedures in the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 would need to be followed as well as any consultation requirements under the PA2008 procedures.

We note that including compensatory habitat in England within the DCO, has (subject to its location) potential implications for the pre-application requirements in terms of the number of s42 and s47 consultees; notification requirements for consultation bodies under s48; consultation on the Statement of Community Consultation (SoCC); the drawing of the Order Limits; the notification requirements under Regulation 9 of the IP EIA Regulations; and transboundary screening decisions (and therefore the potential scope of Interested Parties at examination). Post-application the inclusion of compensatory habitat in England (depending on location) would have potential to impact on the number of representations and impact on the examination process (e.g. requiring an extended range of issue specific hearings and venues in different locations) and for the reasons highlighted above may trigger change applications.

**7. Based on the EU's Habitats Directive, and its guidance, the geographic limit for compensation is the biogeographical region in which the project is proposed. We therefore assume there is no geographical limit, within the Atlantic Biogeographical Region, to compensation sites that could be included in DCO (albeit it is acknowledged that local provision should be sought first). Please would you confirm this?**

### **PINS Response**

Compensatory measures have to ensure the maintenance of the contribution of a site to the conservation at a favourable status of natural habitats types and habitats of species "within the biogeographical region concerned" and as a general principle a site should not be irreversibly affected by a project before that compensation is in place. The Applicant is recommended to seek advice from the Statutory Nature Conservation

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<sup>3</sup> Advice note 16: How to request a change which may be material. Planning Inspectorate. July 2015.

Bodies regarding the appropriateness of any compensation sites proposed to be included within the DCO application or on which the DCO is to rely.

**8. We expect compensation sites to be confirmed throughout the pre-application process, and this might include after consultation on DCO options has occurred. Could we still include these (latterly identified) sites in the DCO, as long as they are covered in the final/draft EIA consultation phase?**

**NB: following clarification – the Applicant rephrased the question as follows - could we include new compensation sites in the DCO (a) if they are covered as part of s42 consultation (where presumably the answer is yes?) and (b) if they are not covered in the s42 consultation but are covered in the final draft EIA which will be subject to consultation with statutory consultees?**

### **PINS Response**

As stated above, it is essential to the validity of the application that the entire site for which development consent is going to be needed be included in the application and consulted on in full accordance with the legislation.

It is at the Applicant's discretion to add new sites at any point prior to submission, however adding land to an application may not be possible having regard to the need for consultation and the front-loaded nature of the PA2008 process. Adequacy of consultation forms part of the tests within the Secretary of State's s55 Acceptance Checklist, therefore the Applicant should satisfy itself that the relevant tests in s42 and s47 of the PA2008 have been met. Therefore in answer to part a) of the question, all of the relevant consultation requirements of PA2008 would need to be met, not just s42.

In answer to part b) where substantive changes to the DCO proposals were identified after s42 and s47 consultation and provision of preliminary environmental information (PEI), the Applicant would need to consider the materiality of such changes and whether specific consultation was required in relation to them. For example, the Hinkley C Connection Project undertook specific, tailored consultation on changes to the overhead line proposals at Mark following s42 and s47 consultation but prior to submission of the DCO application.

## Request for s51 advice on TLP's approach to consenting compensatory habitats

As part of the Evidence Plan process for Tidal Lagoon Cardiff (TLC), Tidal Lagoon Power requests that the Planning Inspectorate considers the following questions relating to the proposed DCO for TLC. The eight questions set out below concern the proposed approach to the provision of compensation (should it be determined that an adverse effect is predicted to arise due to TLC and that IROPI and no alternative solutions can be demonstrated).

- 1. Because a DCO for a NSIP in Wales cannot include the provision of consent for Associated Development (AD) (e.g. a habitat creation site elsewhere on the coast of South Wales), consent has to be progressed through the TCPA process. For these ADs it is therefore assumed that, although details of the proposals will need to be included in the DCO sufficient to demonstrate the deliverability of the required compensation package, full EIA (an ES) will not need to be included in the DCO application documentation (rather this will be provided as part of the parallel TCPA consent application)?*
- 2. To what extent does the compensatory package to be provided by TLP for TLC need to be fully resolved at the point of application? That is, does the DCO need to detail the package in absolute terms across the full suite of compensatory measures proposed or would a range of options (that equally could deliver the compensation package required) be acceptable for some measures (where consent would be progressed through the TCPA)? In asking this question, we understand that the application documents will need to be comprehensive in demonstrating that the required compensation can be delivered (one way or another).*
- 3. For example, would the approach to compensation that was followed for the Bristol Deep Sea Container Port Harbour Revision Order – which established that compensation would be provided at one of three different, viable sites – be acceptable for the Cardiff lagoon project?*
- 4. For an NSIP in Wales, could proposed compensatory measures (such as habitat creation through managed realignment) in England constitute AD if we have no AD sites in Wales? (In this case compensatory measures proposed in Wales, that are not integral to the main DCO, would be taken forward using TCPA route). Or, can AD be promoted in both England and Wales?*
- 5. Is it possible to include compensatory sites within a DCO in order to obtain CPO rights – but deliver them through a TCPA route? Pincent Masons have advised us that the DCO process allows for this in Wales.*
- 6. Please could you confirm the consultation requirements for any compensatory measures we are seeking to take forward, and in particular for sites referred to within the DCO, but taken forward (as AD) using the TCPA consenting route? We have assumed that standard TCPA consultation requirements will apply. For sites for which consent is sought through the DCO we would consult at the same time and in the same way as for the lagoon proposals.*



7. *Based on the EU's Habitats Directive, and its guidance, the geographic limit for compensation is the biogeographical region in which the project is proposed. We therefore assume there is no geographical limit, within the Atlantic Biogeographical Region, to compensation sites that could be included in DCO (albeit it is acknowledged that local provision should be sought first). Please would you confirm this?*
  
8. *We expect compensation sites to be confirmed throughout the pre-application process, and this might include after consultation on DCO options has occurred. Could we still include these (latterly identified) sites in the DCO, as long as they are covered in the final/draft EIA consultation phase?*



## **Annex 1: Related Correspondence**

**From:** Sian John [<mailto:sian.john@tidallagoonpower.com>]  
**Sent:** 09 December 2016 12:16  
**To:** Hunt, Richard; Tim Carter  
**Cc:** Tom Carpen; Jo Pickard; Eva Bishop; Alex Herbert; Roger Woods; Tessa Blazey  
**Subject:** RE: Cardiff HRA meeting

Dear Richard

Please find attached a request for s51 advice on TLP's proposed approach to consenting compensatory habitats. This amounts to a series of questions based on the topics for discussion that Tim has previously sent to you.

Please let me know if you have any initial queries regarding the questions once you have had a chance to absorb them.

Best regards  
Sian

**From:** Hunt, Richard [<mailto:Richard.Hunt@pins.gsi.gov.uk>]  
**Sent:** 12 January 2017 14:52  
**To:** Sian John  
**Cc:** Tom Carpen; Alex Herbert; Roger Woods; Tim Carter; David Price; Robert Hanson  
**Subject:** RE: Cardiff HRA meeting

Hi Sian,

Our internal legal review process has highlighted one point of clarification with respect to the questions. In question 8 we were unclear what the "final/draft EIA consultation phase" referred to. I interpreted this to mean, post s42 consultation (reference to consultation on the DCO options in the question being taken to mean the s42 consultation) but can you clarify?

Thanks

Richard

Dr Richard Hunt  
Senior EIA and Land Rights Advisor  
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Twitter: @PINSgov

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**From:** Sian John [mailto:sian.john@tidallagoonpower.com]  
**Sent:** 31 January 2017 17:12  
**To:** Hunt, Richard  
**Cc:** Tom Carpen; Alex Herbert; Roger Woods; Tim Carter; David Price; Robert Hanson  
**Subject:** RE: Cardiff HRA meeting

Hi Richard

Sorry for the delay in responding, this one slipped by me.

In Q8 we ask if TLP could include (new) compensation sites in the DCO (following s42 consultation on preferred options) if they are included in the draft EIA consultation phase. You interpreted this to mean post s42 consultation. This was not in fact my thinking, as I envisaged s42 consultation potentially on a preferred option/options and, subsequently, on a PEIR (Draft EIA). However, talking to the team further about this, it is possible (as for Swansea) that consultation on the final draft EIA is undertaken (with statutory consultees) after the s42 consultation on the PEIR.

Given this, I think our question is, could we include new compensation sites in the DCO (a) if they are covered as part of s42 consultation (where presumably the answer is yes?) and (b) if they are not covered in the s42 consultation but are covered in the final draft EIA which will be subject to consultation with statutory consultees?

Thank you  
Sian

**From:** Hunt, Richard [mailto:Richard.Hunt@pins.gsi.gov.uk]  
**Sent:** 01 February 2017 08:35  
**To:** Sian John  
**Cc:** Tom Carpen; Alex Herbert; Roger Woods; Tim Carter; David Price; Robert Hanson  
**Subject:** RE: Cardiff HRA meeting

Hi Sian,

Thanks for the clarification. Since this email will now effectively form part of the request for s51 advice do you want to send a fully rephrased question or would you be happy for the email below to be appended to the official set of original questions?

Regards

Richard

**From:** Sian John [mailto:sian.john@tidalagoonpower.com]  
**Sent:** 01 February 2017 16:45  
**To:** Hunt, Richard  
**Cc:** Tom Carpen; Tim Carter; David Price; Robert Hanson  
**Subject:** RE: Cardiff HRA meeting

Hi Richard

I am happy for the email below to be appended to the official set of questions.

Best regards  
Sian

**From:** Hunt, Richard [mailto:Richard.Hunt@pins.gsi.gov.uk]  
**Sent:** 17 February 2017 10:34  
**To:** Sian John <sian.john@tidalagoonpower.com>  
**Cc:** Tom Carpen <Tom.Carpen@pins.gsi.gov.uk>; Alex Herbert <alex.herbert@tidalagoonpower.com>; Roger Woods <roger.woods@tidalagoonpower.com>; Tim Carter <tim.carter@tidalagoonpower.com>; David Price <David.Price@pins.gsi.gov.uk>; Robert Hanson <Robert.Hanson@PINS.gsi.gov.uk>  
**Subject:** EN010073 Draft s51 Advice regarding Associated Development

Dear Sian,

Please find attached the draft s51 advice in response to Tidal Lagoon Cardiff's questions regarding Associated Development. This advice takes account of the changes under the Wales Act 2017.

Please can you confirm your likely date to return any comments or queries. Once we have your comments we will then formally publish the advice on our website.

Kind regards

Richard

Dr Richard Hunt  
Senior EIA and Land Rights Advisor  
Major Applications and Plans

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**From:** Sian John [<mailto:sian.john@tidallagoonpower.com>]

**Sent:** 21 February 2017 18:39

**To:** Hunt, Richard

**Cc:** Tom Carpen; Alex Herbert; Roger Woods; Tim Carter; David Price; Robert Hanson

**Subject:** RE: EN010073 Draft s51 Advice regarding Associated Development

Dear Richard

Further to my previous email, we have assumed that our comments will be published, along with any response you have to them.

Could you please confirm that that assumption is correct?

Best regards

Sian

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**From:** Hunt, Richard <[Richard.Hunt@pins.gsi.gov.uk](mailto:Richard.Hunt@pins.gsi.gov.uk)>

**Sent:** 23 February 2017 11:36

**To:** Sian John

**Cc:** Tom Carpen; Alex Herbert; Roger Woods; Tim Carter; David Price; Robert Hanson

**Subject:** RE: EN010073 Draft s51 Advice regarding Associated Development

Dear Sian,

Yes that's correct.

Regards

Richard

Dr Richard Hunt  
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Twitter: [@PINSgov](https://twitter.com/PINSgov)

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**From:** Sian John [<mailto:sian.john@tidallagoonpower.com>]

**Sent:** 24 February 2017 14:50

**To:** Hunt, Richard

**Cc:** Tom Carpen; Alex Herbert; Roger Woods; Tim Carter; David Price; Robert Hanson; Eva Bishop

**Subject:** Re: EN010073 Draft s51 Advice regarding Associated Development

Dear Richard

Thank you for providing TLP with draft s51 advise in response to our questions regarding Tidal Lagoon Cardiff.

You offered us the opportunity to return comments and queries, and we do have a few, as set out below:

Regarding Question 6, the crux of this question was requesting confirmation of the consultation requirements for any compensatory sites/measures we intend to take forward using the TCPA consenting route (i.e. that is, where they do not meet the criteria for Associated Development). These sites/measures will be referred to (described) in the DCO (and consulted on throughout) but the detailed assessment will stand alone, and we have assumed that standard TCPA consultation requirements will apply for the application. Could you please confirm that that is your understanding?

Regarding Question 8 (b), could you please confirm if we could include new compensation sites in the DCO if they are not included within the s42 consultation but are included within the s47 consultation and the PER? We have assumed that we could do.

Finally, one of the big issues that we are trying to gain a better understanding of is - how far away is too far away for a separate element of the project to be considered to be Associated Development? We are aware of the DCLG's 2013 guidance on associated development applications for major infrastructure projects, but (in this content) it does not really provide an answer. We have also received some advice that, for a development in south Wales, for example, compensatory measures in north Wales might be too distant to be considered as Associated Development (let alone projects in England). However, your s51 response implies

that compensation in England could be Associated Development. Therefore any clarification you can provide on distance and AD would be greatly appreciated.

kind regards  
Sian

**From:** Hunt, Richard  
**Sent:** 07 March 2017 16:31  
**To:** 'Sian John'  
**Cc:** Tom Carpen; Alex Herbert; Roger Woods; Tim Carter; David Price; Robert Hanson; Eva Bishop  
**Subject:** RE: EN010073 Draft s51 Advice regarding Associated Development

Dear Sian,

Thank you for your email and clarification regarding the questions. It is difficult to respond to the questions since there are some complex and nuanced issues arising from the approach that you are suggesting. Perhaps it would be better to deal with these matters in a more detailed face to face discussion, subject to our usual publication requirements for meeting notes.

*Regarding Question 6, the crux of this question was requesting confirmation of the consultation requirements for any compensatory sites/measures we intend to take forward using the TCPA consenting route (i.e. that is, where they do not meet the criteria for Associated Development). These sites/measures will be referred to (described) in the DCO (and consulted on throughout) but the detailed assessment will stand alone, and we have assumed that standard TCPA consultation requirements will apply for the application. Could you please confirm that that is your understanding?*

We are unable to comment further on the consultation requirements for a scheme consented under a different regime by a different authority.

*Regarding Question 8 (b), could you please confirm if we could include new compensation sites in the DCO if they are not included within the s42 consultation but are included within the s47 consultation and the PER? We have assumed that we could do.*

We assume that PER is intended to mean Preliminary Environmental Information (PEI) or PEI Report. Tidal Lagoon Cardiff need to ensure that the consultation requirements set out in the Planning Act 2008 have been met prior to submission and that consultation is undertaken in accordance with the approach set out in its Statement of Community Consultation. The adequacy of consultation is considered at the point of application and prior to acceptance. Failure to meet the consultation requirements set out in the act could result in an application being refused for examination.

*Finally, one of the big issues that we are trying to gain a better understanding of is - how far away is too far away for a separate element of the project to be considered to be Associated Development? We are aware of the DCLG's 2013 guidance on associated development applications for major infrastructure*

*projects, but (in this content) it does not really provide an answer. We have also received some advice that, for a development in south Wales, for example, compensatory measures in north Wales might be too distant to be considered as Associated Development (let alone projects in England). However, your s51 response implies that compensation in England could be Associated Development. Therefore any clarification you can provide on distance and AD would be greatly appreciated.*

We are unable to provide any further comment on this matter. Whether development could be deemed to be associated development would ultimately be for a panel to decide at examination and subject to consideration at acceptance.

Kind regards

Richard

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