

# NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

## Environment and Highways Cabinet Board

28 January 2016

### Report of the Head of Planning

N. Pearce

#### Matter for Decision

**Wards Affected:** *Coedffranc West*

#### Consultation on applications for Harbour Revision Orders for the Port of Neath and the Port of Swansea.

#### Purpose of Report

- 1 To keep members apprised of the request from the Marine Management Organisation (MMO) for a consultation response on two applications for Harbour Revision Orders for the Port of Neath and the Port of Swansea in order to assist with the progression of the Tidal Lagoon Swansea Bay scheme.
- 2 To obtain approval from Members for the consultation response to be returned to the MMO.

#### Executive Summary

- 3 A Development Consent Order for the Tidal Lagoon Swansea Bay was issued by the Secretary of State on the 9 June 2015.
- 4 The Order contains a number of Requirements that must be agreed for both the onshore and offshore works. Currently the Local Planning Authorities do not have jurisdiction to agree the offshore details.
- 5 A consultation request for two Harbour Revision Orders has been received. The Orders are intended to resolve the jurisdiction issues associated with offshore works in relation to the Tidal Lagoon Swansea Bay Development Consent Order.
- 6 There are not considered to be any adverse implications as a result of the Harbour Revision Orders as originally drafted and

consulted upon by the MMO. An informal request has been received from the applicant requesting that further amendments be considered. The Authority is currently in discussions with the applicant regarding the specific wording.

## Background

7 On the 9<sup>th</sup> June 2015 a Development Consent Order for Tidal Lagoon Swansea Bay was granted by the Secretary of State. The Order granted permission for the construction of a tidal powered generating station (240MW) comprising of the construction of a 9.5km length of seawall to house 16 turbines and 10 sluice gates, which would form a tidal lagoon area of 11.5sq.km. including seabed and foreshore, together with

- associated dredging;
- 11kV or 33 kV and 275kV cabling to facilitate grid connections;
- operation and maintenance facilities including gantry crane,
- visitors centres and information points and viewing areas,
- substation, lighting;
- boating facilities and storage,
- hatcheries,
- offices,
- welfare facilities,
- control rooms and laboratories,
- car parking and emergency access facilities,
- workshops,
- hardstanding,
- slipways,
- jetties,
- mole and floating pontoons and access points;
- hard and soft landscaping,
- public art and habitat creation;
- extension of the existing long sea sewerage outfall plus installation of ultra violet storm water treatment facilities;
- a new eastern channel training wall to River Neath;
- internal access carriageways, access tracts and footways;
- Navigational aids;
- drainage outfall and swales;
- bunds, embankments, boundary treatment and fencing;

- plus demolition of buildings.

- 8 The Development Consent Order contains a number of Requirements (these are the equivalent of conditions associated with a planning permission) which seek to control and restrict the development. These Requirements refer to development both onshore and offshore and extend across the authority boundaries of the City and County of Swansea and Neath Port Talbot County Borough Council. They require the approval of either or both the Councils in their capacity as relevant planning authorities. Currently both Swansea and Neath Port Talbot Council only have jurisdiction to the mean low water mark. Therefore requirements that contain work offshore fall outside of the Authorities' jurisdictions and therefore cannot be agreed until the Councils' planning jurisdictions are extended beyond the mean low water mark.
- 9 The applications for the Harbour Revision Orders seek to remove the proposed Tidal Lagoon from the jurisdiction of the existing Port Authorities and extend each of the Council's jurisdictions for the Planning Act 1990 and the Control of Pollution Act 1974 and the Environmental Protection Act 1990 thus enabling each council to discharge details associated with the requirements of the DCO whether they are above or below the mean low water mark. This will allow the councils to discharge the requirements contained in the DCO, enforce the provisions of the DCO and enforce the provisions of the section 106 agreement in relation to the Tidal Lagoon development. The use of a Harbour Revision Order has been suggested by the Welsh Government as the most appropriate mechanism to extend the jurisdiction of the Councils to include the off-shore works.
- 10 The MMO is the governing agency that will determine the Harbour Revision Order applications and we as a council are a consultee in the process
11. The recommended consultation response on behalf of the council is attached as Appendix A to this report. Having considered the purpose of the Harbour Revision Order and the associated legal implications, the Council support the proposal as a vehicle for securing appropriate jurisdiction over the proposed lagoon.

## **Financial Impact**

- 12 The consultation response has been formulated from within existing budgets.
- 13 Should the Harbour Revision Order applications be approved the applicant would be able to apply for agreement of details in accordance with the Requirements related to the offshore works. The applicant and the Council have signed a Planning Performance Agreement that provides a financial contribution to the Council to enable sufficient resources to be in place to assess and discharge the submitted requirements. Whilst this agreement is for an initial period of one year, there is a facility to renegotiate the agreement beyond this period if needed.
- 14 However any enforcement activity or monitoring that would be required would fall outside of the Planning Performance Agreement and would need to be addressed through existing budgets.
- 15 Costs of works associated with the ongoing review and agreement of details in association with Requirement 6 for the provision of an Adaptive Environmental Management Plan will be provided for by the applicant as secured under Part 7, Article 54 (2).
- 16 Therefore currently there are no adverse financial implications as a result of this report. However potential financial impacts would remain under review by the Head of Planning.

## **Equality Impact Assessment**

- 17 A Screening Assessment has been undertaken to assist the Council in discharging its Public Sector Equality Duty under the Equality Act 2010. After completing the assessment it has been determined that this proposal does not require an Equalities Impact Assessment.

## **Workforce Impact**

- 18 Should the Harbour Revision Orders be granted there would be some additional workforce impacts. However the existing Planning Performance Agreement outlined in the Financial Impact section of this report will initially ensure that resources are provided to ensure

that details relating to the Requirements can be processed in accordance with Development Management Procedures. This would however be dependent upon the applicant's submission programme.

## **Legal Impact**

- 19 The orders will have a legal impact as they will result in a change of jurisdiction and enforcement responsibilities. The Orders extend jurisdiction for the City and County of Swansea and Neath Port Talbot County Borough Council. The LPAs' respective planning jurisdictions will be extended beyond the mean low water mark out in to Swansea Bay to cover the offshore elements of the Tidal Lagoon. As such the Order will extend the Council's jurisdiction for the Planning Act 1990 and the Control of Pollution Act 1974 and the Environmental Protection Act 1990. This will allow the Authority to discharge the requirements contained in the DCO, enforce the provisions of the DCO and enforce the provisions of the section 106 agreement in relation to the Tidal Lagoon development.
- 20 It will be necessary for the MMO to satisfy themselves through liaison with the UK and Welsh Governments that the jurisdiction of all relevant primary and secondary legislation is transferred under the HRO.
- 21 The Applicant's Statement of Support, Para. 4.13 refers to Section 72 of the Local Government Act 1972. This Act does not apply in Wales as the provision was repealed by the Local Government (Democracy)(Wales) Act 2013. However a similar provision is contained within Section 46 of the LGDW Act 2013. All references to Section 72 of the Local Government Act 1972 should be amended accordingly so the correct Act and Section are included.
- 22 The jurisdictional issues associated with the HRO should only be for the duration of the development coming into being. Once the Tidal Lagoon has come into being it is understood that Section 46 of the Local Government (Democracy)(Wales) Act 2013 would come into force which would assure that the development accretes to the community boundary directly on shore thereby becoming fully under the jurisdiction of the Local Authority as a whole. As such the Authority considers that there is no reason why the HRO applications should seek to limit, restrict or control this jurisdiction

once established under Section 46. The MMO should satisfy themselves that this is the case.

### **Risk Management**

- 23 If the Orders are granted the area would fall within the jurisdiction of the relevant Local Planning Authorities. There are Development Management processes and procedures in place to deal with any potential risks/ issues that could arise as a result of the development. Therefore any potential risks are not considered to be significant.

### **Other Impacts**

- 24 The development associated with the Development Consent Order will have a positive impact on sustainable development as it will contribute to the renewable energy agenda.
- 25 There are no Crime and Disorder or Counter Terrorism impacts as a result of the consultation request.

### **Consultation**

- 26 The MMO has contacted the Council as a consultee and has requested comments on the applications. As such the Council has conducted an internal consultation exercise to inform the response to the MMO and has also contacted the Swansea Bay Port Health Authority for their views. It is considered that this level of consultation is adequate and there is no necessity to add this report or consultation request to the forward work programme.

### **Recommendation(s)**

- 27
- (1) That the board approve the Council's consultation response attached at Appendix A to the Marine Management Organisation in relation to the applications for Harbour Revision Orders for the Port of Neath and Port of Swansea with immediate effect.

- (2) That the board authorise the Head of Planning to send the consultation response to the Marine Management Organisation.
- (3) That the Head of Planning be given delegated powers to authorise any further responses to consultations from the MMO relating to the Harbour Revision Orders as proposed or as may be amended.

### **Reason for Proposed Decision(s)**

- 28 To keep members apprised of the consultation request from the MMO and to allow for the Council's consultation response to be approved by members.
- 29 To allow the approved consultation response to be sent to the MMO.
- 30 To allow a timely response on any subsequent amendments to the proposed Harbour Revision Orders that may be received from the MMO.

### **Implementation of Decision**

- 31 The decision is an urgent one for immediate implementation, subject to the consent of the relevant Scrutiny Chair (and is therefore not subject to the call-in procedure).

### **Appendices**

- 32 Consultation Response to the MMO.

### **List of Background Papers**

- 33 Harbour Revision Order Applications for the Port of Neath and the Port of Swansea.

### **Officer Contact**

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