

DLA Piper to TLBB

Attached to Tidal Lagoon Swansea Bay DCO email 21.07.15

Dear REDACTED INFORMATION TLBB

Marine Licences for Offshore Works - Offshore Visitor Building

We considered whether it will be necessary to obtain marine licences for the offshore visitor building required for the Project.

Section 65 of the Marine and Coastal Access Act 2009 ("Act") requires 'licensable marine activities' to be carried out in accordance with a marine licence granted by the appropriate licensing authority. This relates only to the marine licensing regime, of course. It does not provide a substitute planning authority.

1) Licensable marine activities

Section 66 of the Act relevantly defines 'licensable marine activities' as:

- a. depositing any substance or object, in the sea or on or under the sea bed, from:
 - i) any vehicle, vessel, aircraft or marine structure;
 - ii) any container floating in the sea;
 - iii) any structure on land constructed or adapted wholly or mainly for the purposes of depositing solids in the sea;
- b. constructing, altering or improving any works either in or over the sea or on or under the sea bed; and
- c. carrying out any form of dredging, whether or not involving the removal of material in the sea (e.g. the construction or alteration of jetties).

In particular, we draw your attention to **section 66(1), paragraph 7**, which provides that the construction, alteration or improvement of any works within the UK marine licensing area either in or over the sea or on or under the sea bed constitutes a licensable marine activity for the purposes of the Act.

The offshore works comprised in the Project are within 'the UK marine licensing area', and hence subject to the section 66 regime. This is defined in section 42 of the Act as:

- a. the area of sea within the seaward limits of the territorial sea adjacent to the UK (viz. extending at most 12 nautical miles / 13.8 mi);
- b. any area of sea within the limits of the exclusive economic zone; and
- c. the area of sea within the limits of the UK sector of the continental shelf (so far as not falling within the area mentioned in paragraph b. ...).

2) Alteration/improvement of works in the sea

The construction of the seawall and turbine housing (so far as relevant) will constitute works in the sea. The construction of the offshore building could also constitute a licensable marine activity insofar as it may require the alteration or improvement of the existing seawall to accommodate it (e.g. in the preparation of its foundations). Indeed (in line with what have said below), even if the offshore building is consented before the seawall is in place, this is likely to constitute a licensable marine activity since at that stage, the area subject to the application would comprise the sea.

3) Construction of works over the sea

The construction of the offshore building could be considered the construction of works over the sea and thus a licensable marine activity because:

- it will be built above what is currently the sea; and/or
- when built on the seawall it will be surrounded on either side of the seawall by sea, and below by a structure built on the sea.

4) Construction of works in the sea

a. Timing of the construction of the offshore building

According to the phasing plan at 2.3 of the draft marine licence for the rest of the Project, works which could potentially relate to the offshore building fall in phases 2 (operation and management facility construction is considered part of the offshore building), 3 and 4. Depending on how the final phasing plan is determined, there is the potential for works linked to the construction of the offshore building to begin when the seawall is not fully completed and the area upon which the offshore building is being constructed is still, for the purposes of the Act, in the sea.

b. Depth required for the foundations of the offshore building

The application form for a marine licence requires the provision of details of works to be carried out below mean high water springs. The 'sea' for the purposes of the Act is defined as 'any area submerged at mean high water spring tides' including waters closed by a lock or other artificial means against the regular action of the tide but into, and from which, sea water is permitted to flow (see sections 322 and 42(3) and (4) of the Act). Although the offshore building is built on the seawall, depending on the depth of its internal space (which descends several stories from the entrance level) and the necessary foundations, the construction of the building may be below mean high water springs (albeit within the seawall). Given the close proximity of this space to the sea on either side of the seawall, the construction of the offshore building could be considered to be works in the sea under section 66(1) paragraph 7.

Accordingly, we consider that the construction of the offshore building may very well be considered a licensable marine activity.

We confirm that we have also looked at the Marine Licensing (Exempted Activities) Wales Order 2011 and could not find a category which would exempt the construction of the offshore building from requiring a marine licence.

Best

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