STATUTORY INSTRUMENTS

2015 No. 1386

INFRASTRUCTURE PLANNING

The Swansea Bay Tidal Generating Station Order 2015

Made - - - -	*9th June 2015*
Coming into force - -	*30th June 2015*

An application under section 37 of the Planning Act 2008(**1**) (the "2008 Act") has been made to the Secretary of State for an order granting development consent.

The application has been examined by a Panel, which has made a report to the Secretary of State under section 74(2) of the 2008 Act.

The Secretary of State has considered the report and recommendation of the Panel, has taken into account the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(**2**) and has had regard to the documents and matters referred to in section 105(2) of the 2008 Act.

The Secretary of State is satisfied that the special category land (as defined in article 37 of the Order), when burdened with the order rights (as defined in that article), will be no less advantageous than it was before to the persons in whom it is vested; other persons, if any, entitled to rights of common or other rights; and the public, and that accordingly section 132(3) of the 2008 Act applies.

The Secretary of State, having decided the application, has determined to make an Order giving effect to the proposals comprised in the application with modifications.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 114 and 120 of the 2008 Act, makes the following Order—

PART 1

Preliminary

Citation and commencement

1. This Order may be cited as the Swansea Bay Tidal Generating Station Order 2015 and comes into force on 30th June 2015.

(**1**) 2008 c. 29.
(**2**) S.I. 2009/2263; relevant amending instruments are S.I. 2012/635 and 2012/787.

Interpretation

2.—(1) In this Order—

"1961 Act" means the Land Compensation Act 1961(**3**);

"1965 Act" means the Compulsory Purchase Act 1965(**4**);

"1980 Act" means the Highways Act 1980(**5**);

"1990 Act" means the Town and Country Planning Act 1990(**6**);

"1991 Act" means the New Roads and Street Works Act 1991(**7**);

"2004 Act" means the Energy Act 2004(**8**);

"2008 Act" means the Planning Act 2008;

"2009 Act" means the Marine and Coastal Access Act 2009(**9**);

"AB Ports" means Associated British Ports(**10**) (company number ZC000195) being the harbour authority for the Ports of Swansea and Port Talbot;

"access and public rights of way plans" means the plans certified by the Secretary of State as the access and public rights of way plans for the purposes of this Order;

"authorised development" means the works set out in Parts 1A, 1B and 2 of Schedule 1 (authorised development, and ancillary and necessary works);

"book of reference" means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"carriageway" has the same meaning as in the 1980 Act;

"commence" means begin to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of site clearance, demolition work, investigations for the purpose of assessing ground conditions, the diversion and laying of services, the erection of any temporary means of enclosure and the temporary display of site notices or advertisements; and "commencement" must be construed accordingly;

"compulsory acquisition notice" means a notice served in accordance with section 134 of the 2008 Act;

"demolition plan" means the plans certified as the demolition plan by the Secretary of State for the purposes of this Order;

"design and access statement" means the document with that title submitted with the application for this Order and certified as the design and access statement by the Secretary of State for the purposes of this Order;

"environmental statement" means the environmental statement submitted with the application for this Order and certified as the environmental statement by the Secretary of State for the purposes of this Order;

"harbour authority", in relation to a harbour, means the harbour authority that has a statutory duty to manage, maintain or improve the harbour;

(**3**) 1961 c. 33.
(**4**) 1965 c. 56.
(**5**) 1980 c. 66.
(**6**) 1990 c. 8.
(**7**) 1991 c. 22.
(**8**) 2004 c. 20.
(**9**) 2009 c. 23.
(**10**) The registered office of Associated British Ports is Aldwych House, 71-91 Aldwych, London WC2B 4HN.

"highway" and "highway authority" have the same meaning as in the 1980 Act;

"kV" means kilovolts;

"land plans" means the plans certified as the land plans by the Secretary of State for the purposes of this Order;

"limits of deviation" means the limits of deviation for the works comprised in the authorised development shown on the works plans;

"local planning authority" has the same meaning as in the 1990 Act(**11**);

"maintain" includes inspect, repair, refurbish, replace, adjust, alter and also includes (in respect of a constituent part of a work but not the whole of a work) remove, clear, refurbish, reconstruct, decommission, demolish, replace and improve any part of the authorised development, but does not include any activity (other than an activity authorised by or under this Order) that is "EIA development" as defined in the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(**12**); and "maintenance" must be construed accordingly;

"MW" means megawatts;

"Natural Resources Wales" means the Natural Resources Body for Wales;

"Order land" means the land identified by plot numbers on the land plans that is within the Order limits and described in the book of reference;

"Order limits" means the limits shown on the land and works plans within which the authorised development may be carried out;

"owner", in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(**13**);

"planning drawings" means the drawings certified by the Secretary of State as the planning drawings for the purposes of this Order;

"relevant planning authority" means the City and County of Swansea Council in relation to land for which it is the local planning authority for the time being under the 1990 Act and Neath Port Talbot County Borough Council in relation to land for which it is the local planning authority for the time being under the 1990 Act; and "relevant planning authorities" means both of them;

"Requirement" means a Requirement set out in Part 3 (Requirements) of Schedule 1; and a reference to a numbered Requirement is a reference to the Requirement set out in the paragraph of the same number in that Part;

"street" means a street within the meaning of section 48 of the 1991 Act together with land on the verge of a street or between 2 carriageways, and includes part of a street;

"street authority", in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

"tidal work" means so much of any work authorised by this Order as is on, under or over tidal waters or tidal lands below the level of high water;

"Tribunal" means the Lands Chamber of the Upper Tribunal;

"Trinity House" means the Corporation of Trinity House of Deptford Strond;

"undertaker" has the meaning given in article 6 (benefit of Order);

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

(**11**) See section 1(1B).
(**12**) S.I. 2009/2263.
(**13**) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

"works plans" means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All points, distances, areas, directions and lengths referred to in this Order are approximate, and distances between points on a work comprised in the authorised development are to be taken to be measured along that work.

(4) Grid references in this Order are references to points on the Ordnance Survey National Grid.

(5) In this Order, "includes" must be construed without limitation.

PART 2

Principal powers

Development consent, etc. granted by Order

3.—(1) Subject to the provisions of this Order and to the Requirements in Part 3 of Schedule 1, the undertaker is granted development consent for the authorised development.

(2) The authorised development must be constructed—

(a) within the Order limits;

(b) in the lines or situations shown on the works plans;

(c) in respect of the limits of deviation applicable to specific works as shown on the works plans, within those limits of deviation.

(3) In constructing or maintaining the authorised development, the undertaker may—

(a) deviate laterally from the lines or situations shown on the works plans within the limits of deviation, subject to the maximum dimensions set out in Part 2 (dimensions of structures) of Schedule 1;

(b) deviate vertically from the levels shown on works plans 2.2.11A to 2.2.16A (the marine works seawall sections) to any extent downwards as may be found necessary or convenient.

(4) In the case of conflict between the works plans or the plans or drawings set out in Schedule 7 (documents to be certified) and the works as set out in Parts 1A and 1B of Schedule 1 or the maximum dimensions set out in Part 2 of that Schedule, the description of the works in Schedule 1 are to prevail, and the maximum dimensions must not exceed those set out in Part 2 of that Schedule.

Maintenance of authorised development

4.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this Order, or any scheme or agreement made under this Order, provides otherwise.

(2) This article authorises the maintenance of the authorised development within the Order limits only.

Operation of generating station, etc.

5.—(1) The undertaker is authorised to operate the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required to authorise the operation of a generating station.

Benefit of Order

6.—(1) Subject to paragraph (2), the relevant provisions are for the benefit of the undertaker only.

(2) The undertaker may, with the consent of the Secretary of State,—

(a) transfer to another person (the "transferee") any or all of the benefit of the relevant provisions and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person (the "lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the relevant provisions and such related statutory rights as may be agreed between the undertaker and the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by Tidal Lagoon (Swansea Bay) plc(**14**) (company number 08141301).

(4) In this Order, "undertaker" means—

(a) in relation to a relevant provision or related statutory rights, Tidal Lagoon (Swansea Bay) plc or, where the benefit of a relevant provision or related statutory rights are transferred or granted under paragraph (2), any person who for the time being has the benefit of the provision or related statutory rights;

(b) in the case of any other provision, Tidal Lagoon (Swansea Bay) plc or any other person who for the time being has the benefit of the provision under section 156 (benefit or order granting development consent) of the 2008 Act.

(5) In this article, "relevant provision" means any of the following—

(a) articles 9 to 11;

(b) articles 13 to 37;

(c) article 47.

Guarantees in respect of payment of compensation, etc.

7.—(1) The authorised development must not be commenced, and the undertaker must not exercise the powers in articles 24 to 37, until—

(a) subject to paragraph (3), security of £10.5 million has been provided in respect of the liabilities of the undertaker to pay compensation under this Order; and

(b) the City and County of Swansea Council has approved the security in writing.

(2) The security referred to in paragraph (1) may include, without limitation, any 1 or more of the following—

(a) the deposit of a cash sum;

(b) a payment into court;

(c) an escrow account;

(d) a bond provided by a financial institution;

(e) an insurance policy;

(f) a guarantee by a person of sufficient financial standing (other than the undertaker).

(3) The City and County of Swansea Council may agree to the substitution of a different sum to that of £10.5 million referred to in paragraph (1), having regard to the liabilities of the undertaker to pay compensation under this Order existing at the time of the approval referred to in that paragraph.

(**14**) The registered office of Tidal Lagoon (Swansea Bay) plc is Suite 6 J Shed, Kings Road, Swansea SA1 8PL.