



**Asesiad o
Ddatganiad Amgylcheddol**

**Assessment of
Environmental Statement**

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Arolygydd a benodir gan Weinidogion Cymru

Inspectors appointed by the Welsh Ministers

Dyddiad: 04/12/2019

Date: 04/12/2019

Application Ref: 3234121 – The Morlais Demonstration Zone Order

Site address: Areas within the offshore Order limits and the onshore Order limits of the Morlais Demonstration Zone Order, Anglesey

- The Environmental Statement which is the subject of this assessment has been submitted in relation to the above application.
 - The application is made under section 6 of the Transport and Works Act 1992 ('TWA') for an Order under sections 3 and 5 of the Act.
 - The application, submitted on 16 September 2019, is made by Menter Môn Morlais Limited.
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Application and Proposed Development

1. The Morlais Demonstration Zone Order ('the Order'), would enable construction, operation, maintenance, repowering and decommissioning of a new offshore generating station to the west of Holy Island, Anglesey. It would have a gross output capacity of up to 240 megawatts, comprising tidal devices and associated infrastructure offshore together with onshore cabling and associated structures to provide a connection to the existing electricity network.
2. The Order would also grant powers for the compulsory acquisition of land and rights for the construction, operation and maintenance of the proposals. The works and associated matters within the Order are referred to as 'the Project'.
3. An application for an order under the TWA may also request that Welsh Ministers deem the grant of planning permission. Such a request in relation to the onshore elements of the Project is included within the application for this Order.
4. The application was accompanied by a bundle of supporting information including an Environmental Statement ('ES') which outlines the nature of the of the Project, the site selection process and the key findings of the Environmental Impact Assessment ('EIA'). A more detailed description of the proposal to that indicated in paragraph 2 above, is set out in Chapter 4 of the ES.

Legislation and the required content of an Environmental Statement

5. Rule 11 (c), of Statutory Instrument 2006 No.1466 - *Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006* ('the TWA Applications and Objections Procedure Rules'), states that an ES submitted in connection with a TWA application shall include "the data required to identify
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and assess the main effects which the proposed works are likely to have on the environment”.

6. Section 16 of the TWA confirms that section 90 of the Town and Country Planning Act 1990 ('TCPA') gives power for deemed planning permission to be granted by government in certain cases and in regard to TWA Order proposals, inserted section 90(2A) into the TCPA.
7. Regulation 17 (3) of Statutory Instrument 2017 No. 567 - *The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017* ('the EIA Regulations') states that an ES includes, amongst other things, at least a description of: the proposed development; its likely significant effects on the environment; mitigation of the effects; and, the reasonable alternatives studied by the applicant and the reason for the option chosen. It must also include a non-technical summary of the ES.
8. Part 17 (4)(d) of the EIA Regulations reflects the requirement within Rule 11 (c) of the TWA Applications and Objections Procedure Rules. For an ES to comply with Regulation 17 (4)(d), it must *“...include the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment...”*¹
9. Within this context, Rule 17 (1) of the TWA Applications and Objections Procedure Rules states that *“...Where, in the opinion of the Secretary of State, the applicant’s statement of environmental information should contain any additional information in order to constitute an environmental statement for the purposes of the application in question, the Secretary of State shall direct the applicant to supply that information...”*.
10. This assessment of the ES provides the appointed Inspectors’ view on the whether there is a need for additional information to provide *“...the data required to identify and assess the main effects which the proposed works are likely to have on the environment...”* for the ES to meet the requirement of Rule 11 (c) (and as such, that of Regulation 17 (4)(d)).
11. The aim of an ES is to provide a systematic and objective account of the significant environmental effects likely to arise from the proposed development, including sufficient information to verify the conclusions and identify the source of the information provided.
12. For an ES to comply with Regulation 17 (4)(d), it must *“...include the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment...”*
13. This assessment of whether the requirements of ES content have been met is based on the requirements as detailed in the TWA Applications and Objections Procedure Rules and supplemented by the EIA Regs. It is made after a

¹ And Regulation 17 (4)(e) requires an ES to *“...take into account other relevant environmental assessments required under Union legislation or any other provision of domestic legislation, with a view to avoiding duplication of assessment...”*.

judgement as to the adequacy of the ES content by the appointed Inspectors after considering all the available evidence.

14. The ES in this case is comprised of three volumes: Volume 1, ES Chapters; Volume 2, Figures; and, Volume 3, Appendices. The ES submission was accompanied by a Non-Technical Summary that provides its information in an accessible style for the non-technical reader.

Description of the Works Subject to the Application

15. A detailed description of the works subject to the application is considered within Chapter 4 of the ES with the proposed works subject to a Project Design Envelope ('PDE') to provide flexibility, within defined parameters, for works within the Project. The PDE approach would allow for the deployment of a variety of currently available technologies, whilst also allowing for evolution of the design of tidal devices over time. The PDE or 'Rochdale Envelope' approach is a commonly accepted method to address major development schemes where the nature of the proposed development means that some details of the whole project have yet to be confirmed (for example the precise dimensions of structures) when the application is submitted, and flexibility is sought to address uncertainty. Notwithstanding that the fact that final details are not known at this stage within the ES, the broad parameters identified are satisfactory in terms of the description of the development for the purposes of the TWA Applications and Objections Procedure Rules and the EIA Regulations.

Outline of the Main Alternatives

16. A detailed description of the reasonable alternatives studied by the applicant and the reasons for the option chosen are detailed in Chapter 3 of the ES. The consideration of the main alternatives provided within the ES is satisfactory and meets the requirements of the TWA Applications and Objections Procedure Rules and the EIA Regulations.

Description of the aspects of the environment likely to be significantly affected and description of the likely significant effects

17. The ES details the scoping exercise undertaken and describes the likely significant effects under a range of topic headings such as metocean² conditions and coastal processes, marine water and sediment quality, benthic and intertidal ecology, fish and shellfish ecology, marine ornithology, marine mammals, onshore ecology, cumulative impacts, and a Habitats Regulations Assessment ('HRA').
18. It is considered that not all relevant aspects of the physical and natural environment that are likely to be significantly affected have been adequately described. In this respect attention is drawn to comments of Natural Resources Wales ('NRW')³, who is the principal advisor to Welsh Government, and a the statutory consultee on planning applications, for matters relating to the environment/natural resources. NRW refer to matters such as: the lack of

² The Glossary of Terminology within ES Volume 1 Chapter 7 of notes 'metocean' to be the abbreviation of meteorology and oceanography

³ NRW's letter of 31 October 2019

reference in the submitted hydrodynamic modelling report to wave modelling or understanding presented of meteorological effects regarding project interactions, and potential near and far-field impacts; and, the absence of reference to the protected Beddmanarch Bay Shellfish Water area that is in proximity to the site. The Annex attached to this decision lists some of the NRW's '*significant concerns*'.

19. In addition, NRW refer to: *significant concerns*⁴ regarding the adequate assessment of Annex 1 habitats as detailed in the EC Habitats Directive;⁵ and, that *insufficient information* has been provided to conclude that all European designated sites have been adequately screened in to the 'shadow' Habitats Regulation Assessment, and to enable NRW to provide advice.
20. At this stage the absence of such details as referred to by NRW, would indicate information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment have yet to be provided. The examination of the application cannot be properly informed or systematically assessed without such work being undertaken. Therefore, for the purposes of the above rules and regulations the ES is deficient.
21. It is appreciated that some of the issues raised by NRW and other interested parties could be argued to be matters of professional judgement.⁶ However and for the reasons given, having assessed the entirety of the evidence available at this stage of the process, we conclude that the ES requires additional information to meet Rule 11(c) of the TWA Applications and Objections Procedure Rules and Regulation 17(4)(d) of the EIA Regulations.

Has the Environmental Statement, and/or any Further Environmental Information been advertised as required

22. The ES has been advertised as required.

Provision of a Non-Technical Summary

23. Notwithstanding the shortcomings referred to above, a non-technical summary sufficiently summarises the main findings of the ES and has made adequate reference to the relevant legislative provisions.

Overall Conclusions

24. Whilst comprehensive in many respects, it is concluded that the environmental information, submitted by the applicant on 16 September 2019, requires additional information to constitute an Environmental Statement for the purposes of the application received. Therefore, and in accordance with Rule 17 of the TWA Applications and Objections Procedure Rules, the applicant is directed to

⁴ Reference is made to the "*significant concerns*" identified at Annex A.9 of NRW's letter

⁵ Paragraph A.9 of NRW's representation notes these to be "...*bedrock reef, biogenic reef and stony reef and Section 7 Habitats (Environment Wales Act 2016) ...*"

⁶ It is understood that in the period provided by the later operative date, the applicant will be responding to all of the matters raised in the objections and other representations on the application, including those of the parties with an interest in the matters that are relevant to this decision.

supply that additional information in order to address the shortcomings identified above and referred to in more detail in the attached Annex.

Clive Sproule

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Inspectors

Annex A – Extracts from NRW’s letter of 31 October 2019

1. The submitted hydrodynamic modelling report is aimed at understanding the energy resource available within and between the berths rather than for environmental impact assessment and is considered to be missing key information such as the proposed worst-case scenario of 620 devices and associated infrastructure (Annex 1, A.3).
2. There is a significant amount of missing information regarding migratory fish, whilst other water species such as the Freshwater Pearl Mussel have not been screened at all (Annex A.13).
3. Noise propagation has not been modelled using the conditions at the MDZ to allow an assessment of the likely range of impact on marine mammals (Annex 1, A.21).