

Marine Licensing Variation Decision

The Marine and Coastal Access Act (2009)

Applicant: Network Rail Infrastructure Limited

Company Number 02904587

**Network Rail, 2nd Floor
1 Eversholt Road
London
NW1 2DN**

**Barmouth Viaduct Metallic Structure
Refurbishment**

Variation Application Number:

CML2174v1

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OUR DECISION

Based on all the information available, and having regard to all relevant considerations NRW has decided grant the variation to the Existing Marine Licence (see Annex 2) sought by the Variation Application subject to the additional conditions set out in Annex 1.

This decision document:

- explains how the Variation Application has been determined, having regard to the relevant legal framework outlined in section 4;
- explains how relevant considerations have been taken into account and how each of the legal requirements have been considered in determining the Variation Application;
- provides a record of the decision-making process; and
- sets out the reasons for any conditions imposed in connection with any marine licence granted pursuant to the Variation Application.

1 APPLICATION DETAILS

1.1 The Variation Application

Applicant name and address	The Applicant is the company set out below: Company name: Network Rail Infrastructure Limited Company number: 02904587 Address: Network Rail, 2nd Floor, 1 Eversholt Road, London, NW1 2DN
Variation Application reference number	CML2174v1
Existing Marine Licence reference number	CML2174
Date Variation Application was duly made	15/11/2022
Description of variation	Extension to extend expiry date to 31 May 2024. Method change: Rock anchor installations into the north abutment connected to the steel structure, to ensure the masonry abutment is strong enough to safely support the new metallic structure and the weight of lifting equipment during the replacement stage.
Proposal[s] covered by the Variation Application	Refurbishment of Barmouth Viaduct Metallic Structure including Rock anchor installations, grit blasting, repainting and repair or replacement of metallic elements of the structure. (the Project)
Licensable marine activities	Grit blasting, repainting and repair or replacement of metallic elements of the structure. Rock anchor installations into the north abutment connected to the steel structure, to ensure the masonry abutment is strong enough to safely support the new metallic structure and the weight of lifting equipment during the replacement stage.

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	(the Proposed Activities)
Marine Plan area	Welsh inshore region and Welsh offshore region
Variation Application documents:	CML2174-V01 - Application Form – Submitted 11/11/2022 CML2174-V01 - Drill Image – Submitted 11/11/2022 CML2174-V01 - 22opt15003-003a-A2 - Design Drawing - South Facing – Submitted 11/11/2022 CML2174-V01 - 164441-ALG-00-DJP-WPH-ECV-000014 - Method Statement – Submitted 11/11/2022 CML2174-V01 - 164441-ALG-WLS-DJP-SKE-ECV-120050_P01_North Wing Walls Ground Anchors Preliminary – Submitted 11/11/2022 CML2174-V01 - Barmouth Metali Works AA - WFD - J000652.03.WFD.003- Submitted 11/11/2022 CML2174-V01 - EV0006522HRA-1 - Barmouth Metalic Works - AA - HRA - 2022 – Final – Submitted 11/11/2022 CML2174-V01 - Stratum Environmentally Friendly Hammer Oil – Submitted 11/11/2022

2 VARIATION APPLICATION PROCEDURE

2.1 The Variation Application

The Variation Application was accepted by Natural Resources Wales (**NRW**) considered duly made on 15 November 2022. This means we considered it was in the correct form and contained sufficient information for us to begin our determination, but not that it necessarily contained all the information we needed to complete that determination, and the documents considered may therefore include documents provided after the Variation Application was first made.

2.2 Documents considered

In reaching its decision, NRW has considered the documents listed in section 1 of this decision document along with such other information provided by the Applicant or received during any consultation, that NRW considered relevant.

2.3 Commercial Confidentiality

The Applicant made no claim that any information forming part of the Variation Application was subject to commercial confidentiality and we have not received any information in relation to the Variation Application that appears to be commercially confidential.

2.4 Environmental impact Assessment

Council Directive 2011/92/EU (as amended) on the assessment of the effects of certain public and private projects on the environment aims to protect the environment and the quality of life by ensuring that projects which are likely to have significant environmental effects by virtue of their nature, size or location are subject to an environmental impact assessment (EIA) before permission is granted.

The Marine Works (Environmental Impact Assessment) Regulations 2007 ("the Regulations") transpose the EIA Directive in Wales and England for marine licence applications.

Having considered the Variation Application NRW has determined that it does not constitute a development requiring EIA under the Regulations.

3 CONSULTATION

3.1 Consultees

NRW considered it appropriate to reconsult the bodies listed in the table below on 21 November 2022, due to their particular expertise and the responses received from them during the original consultation. These bodies were consulted for a period of 28 days. Those bodies have responded to the consultation an 'Y' can be found in the response received column, those who did not respond to consultation an 'N' can be found in the response received column:

Consultee	Response received (Y/N)	Date(s) of receipt
NRW	Y	07 December 2022

Consultees who did not provide a response were assumed to have no comment.

NRW has had regard to all consultation responses received in making its decision. Where these have impacted on NRW's decision making, this has been noted in the relevant paragraph in section 4 of this decision document.

4 BASIS FOR OUR DECISION

In determining this variation application, including the terms on which it was granted, and the conditions attached to it, NRW has had regard to the factors set out in section 4 below in accordance with the 2009 Act.

Under the 2009 Act NRW is required to have regard to the following:

- the need to protect the environment (see sub-section 4.1);
- the need to protect human health (see sub-section 4.2);
- the need to prevent interference with legitimate uses of the sea (see sub-section 4.3);
- in the case of an application for a licence to authorise construction, alteration or improvement of works within the UK marine licensing area, the effects of any use intended to be made of the works in question when constructed, altered or improved (considered, if relevant in sub-sections 4.1 to 4.5 below);
- any representations which it has received from any person having an interest in the outcome of the Variation Application (summarised in section 3 and where relevant considered in sub-sections 4.1 to 4.5 below); and
- such other matters as it thinks relevant (see sub-section 4.5 below).

4.1 The need to protect the environment:

The reference to the “environment” includes the local and global environment; the natural environment; and, by virtue of section 115(2) of the 2009 Act, any site of historic or archaeological interest. The natural environment may include the physical, chemical and biological state of the sea, the sea-bed and the sea-shore, and the ecosystems within it, or those that are directly or indirectly affected by an activity, whether within the marine licensing area or otherwise.

In considering the need to protect the environment we have considered the relevant environmental legislation set out below.

4.1.1 Water Framework Directive, Groundwater Directive and Water Environment Regulations

(a) The legal framework

The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (**Water Environment Regulations**) implement the requirements of the Water Framework Directive (**WFD**) (Directive 2000/60/EC) which requires consideration as to whether that proposals for development may cause deterioration or prevent a water body from achieving ‘good status’. Proposals likely to cause deterioration or prevent a waterbody from achieving good status should be rejected, unless derogation procedures have been applied.

Under the Water Environment Regulations, NRW must exercise its relevant functions to ensure compliance with the requirements of the WFD, the Environmental Quality Standards Directive (Directive 2008/105/EC) and the Groundwater Directive (Directive 2006/118/EEC).

(b) Factors relevant to our determination

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Please refer to CML1936 Decision Document for conclusions on Water Framework Directive, Groundwater Directive and Water Environment Regulations. These conclusions have not been affected by this variation application and therefore are still considered valid.

In addition to the conclusions outlines in CML1936 Decision Document, NRW has considered additional impacts of this variation application on the following WFD waterbodies

- Mawddach

A Water Framework Directive Compliance Assessment has been undertaken for the Proposed Activities and taken into account in this decision. This assessment concludes that the activity/project is considered as having no risk of causing deterioration or preventing any water body or WFD Protected Area from reaching its objectives and taking account of the advice from technical officers - is considered compliant with the Water Framework Directive/Regulations.

Based on this assessment it is considered that the Proposed Activities when considered alone and in combination, will not pose a risk to deterioration in the status of any of the above listed waterbodies or jeopardise their attainment of good surface water status.

Further details are described within the Water Framework Directive Compliance Assessment.

4.1.2 Biodiversity and resilience of ecosystems duty

(a) The legal framework

Section 6 of the Environment Wales Act 2016 requires that we seek to maintain and enhance biodiversity in the exercise of our functions, and in so doing promote the resilience of ecosystems, in a manner that is consistent with the proper exercise of our functions.

(b) Factors relevant to our determination

NRW is satisfied that in this case, we have taken into account and had due regard to this duty in so far as it is consistent with the function of determining an application for a Marine Licence under the Marine and Coastal Access Act 2009.

4.1.3 European Protected Sites and Ramsar Sites

(a) The legal framework

European sites are those designated under the Conservation of Habitats and Species Regulations 2017 (**Habitats Regulations 2017**) and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (**Offshore Habitats Regulations 2017**) as Special Protection Areas (SPAs) and Special Areas of Conservation (SACs).

The Habitats Regulations 2017 and the Offshore Habitats Regulations 2017 require that any project that is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects) must be subject to an appropriate assessment. NRW undertakes a Habitats Regulation Assessment (HRA) to establish whether an appropriate assessment is required.

In addition NRW must exercise its functions under the 2009 Act so as to secure compliance with the requirements of the relevant European Directives. NRW also has a duty under the Habitats Regulations 2017 to support wild birds by protecting habitats and avoiding pollution.

A Ramsar site is a wetland which has been designated under the Ramsar Convention. The Ramsar Convention does not place specific legal requirements on its parties (though Ramsar sites are often SSSIs or SPAs, considered below), however Ramsar status is considered by NRW as matter of policy in its decision making.

(b) Factors relevant to our determination

The Project is located may affect the following European Protected Sites:

- Pen Llyn a'r Sarnau SAC
- West Wales Marine SAC
- Bristol Channel Approaches SAC
- Eden Afon Marine SAC

The following sites are considered functionally linked but have been screened out of further assessment:

- Cardigan Bay SAC
- Pembrokeshire Marine SAC

A Habitats Regulations Assessment of the Proposed Activities has been undertaken, and NRW (as Statutory Nature Conservation Body) consulted on the HRA.

The following conclusions of the HRA have been considered by NRW in making this decision In light of the conclusions of an appropriate assessment, and taking account of the advice received from protected sites advisors, it has been established that the project will not adversely affect the integrity of any Natura 2000/Ramsar site, taking into account any conditions or restrictions as applicable, either alone or in combination with other plans and projects.

Further details are described within the Habitats Regulations Assessment.

NRW is therefore satisfied that the Proposed Activities, either alone or in combination with other plans or projects, will not adversely affect the integrity of European Sites when undertaken in accordance with appropriate conditions, i.e. licence condition detailed in annex 1 which ensures that Licensed Activity 2 (Rock Anchor Installation) during March to avoid the Atlantic Salmon migratory period.

4.1.4 European Protected Species

(a) The legal framework

The Habitats Regulations 2017 and the Offshore Habitats Regulations 2017 also confer protection on certain designated species (European Protected Species). A licence (EPS licence) must be obtained in order, whether deliberately or accidentally, to capture, kill, disturb or injure such a species, damage or destroy their breeding or resting places or obstruct access to their resting or sheltering places.

(b) Factors relevant to our determination

Please refer to section 4.1.4(b) of Annex 2

Any determination made as part of this decision are without prejudice to the consideration NRW is required to give an EPS licence application as the body with a statutory responsibility for its determination and do not constrain or bind NRW in exercising this function. Should an application for an EPS licence in relation to the Project be made it will be determined by NRW based on all the relevant information available to NRW at that time.

4.1.5 Marine Conservation Zones

(a) The legal framework

Marine Conservation Zones (MCZ) were established under the 2009 Act to protect nationally important, rare or threatened habitats and species. The only currently designated MCZ in Wales is Skomer.

Under the 2009 Act, NRW must exercise its functions in the manner which it considers best furthers the conservation objectives stated for any MCZ or, where that is not possible, in the manner which it considers least hinders the achievement of those objectives.

(b) Factors relevant to our determination

NRW is satisfied that there is no significant risk of the Proposed Activities on the Skomer MCZ.

4.1.6 Sites of Special Scientific Interest (SSSIs)

(a) The legal framework

Sites of Special Scientific Interest are designated under the Wildlife and Countryside Act 1981 (**1981 Act**) and protected by law to conserve their wildlife or geology. NRW must take reasonable steps, consistent with the proper exercise of its functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which an SSSI is of special scientific interest.

(b) Factors relevant to our determination

Please refer to section 4.1.6(b) of Annex 2.

NRW is satisfied that the Proposed Activities do not have the potential to impact on Mawddach Estuary SSSI.

4.1.7 The Waste (England and Wales) Regulations 2011

(a) The legal framework

The Waste (England and Wales) Regulations 2011 (as amended) establish a legal framework for treating waste. This is designed to protect the environment and human health by emphasising the importance of proper waste management, recovery and recycling techniques to reduce pressure on resources and improve their use. Waste generated by a project or activity must in general terms be dealt with in an environmentally friendly way. To achieve this the regulations describe a waste hierarchy which gives an order of preference for how waste is dealt with (prevention, re-use, recovery for other purposes such as energy, and finally disposal).

(b) Factors relevant to our determination

Please refer to section 4.1.7(b) of Annex 2.

4.1.8 Other matters in considered relevant to the need to protect the environment

Please refer to section 4.1.8(b) of Annex 2.

4.1.9 Conclusion of our considerations under the need to protect the Environment

IN SUMMARY, having considered the need to protect the environment, NRW does not consider that any impacts of the Project on the environment (either alone or in combination with other plans or

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projects) are sufficient on their own to justify refusal of the Variation Application provided that the Proposed Activities are implemented in accordance with the conditions set out in Annex 1.

4.2 The need to protect human health

Please refer to section 5.2 of Annex 2.

4.2.1 Conclusion of our considerations under the need to protect human health

IN SUMMARY, having considered the need to protect human health, NRW does not consider that any impacts of the Project (either alone or in combination with other plans or projects) are sufficient on their own to justify refusal of the Variation Application provided that the Proposed Activities are implemented in accordance with the conditions set out in Annex 1.

4.3 The need to prevent interference with legitimate uses of the sea

Legitimate uses of the sea include (but are not limited to): navigation (including taking any steps for the purpose of navigational safety); fishing; mineral extraction; and amenity use.

Please refer to section 5.4 of Annex 2.

4.3.1 Conclusion of our considerations regarding the need to prevent interference with legitimate uses of the sea

IN SUMMARY, having considered the need to protect interference with legitimate uses of the sea, NRW does not consider that any impacts of the Project (either alone or in combination with other plans or projects) are sufficient on their own to justify refusal of the Variation Application provided that the Proposed Activities are implemented in accordance with the conditions set out in Annex 1.

4.4 Marine Policy Documents

(a) The Legal framework

NRW is required to take its decision in accordance with the appropriate marine policy documents unless relevant considerations indicate otherwise.

UK Marine Policy Statement 2011 (MPS)

The MPS is the framework for preparing Marine Plans and taking decisions affecting the marine environment.

Welsh National Marine Plan (WNMP)

The WMNP is the Marine Plan for the Welsh inshore region and the Welsh offshore region and sets out the Welsh Government's policies for and in connection with the sustainable development of this area.

(b) Our determination

UK Marine Policy Statement 2011

This decision has been taken in accordance with marine policy as set out in the UK Marine Policy Statement 2011.

Welsh National Marine Plan

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This decision has been taken in accordance with marine policy as set out in the Welsh National Marine Plan.

4.5 Other matters NRW thinks relevant**4.5.1 Well-being of Future Generations (Wales) Act 2015****(a) The legal framework**

In making its decision, NRW is required to take all reasonable steps to meet its published well-being objectives, which are designed to maximise NRW's contribution to achieving each of the well-being goals set out in the Well-being of Future Generations (Wales) Act 2015. NRW must also act in accordance with the principles of sustainable development.

(b) Our determination

NRW has taken into account its well-being objectives and is satisfied that its decision is consistent with meeting those objectives.

NRW is also satisfied that its decision is consistent with the sustainable development principle i.e. seeking to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

4.5.2 Sustainable management of natural resources**(a) The legal framework**

NRW's general purpose is to pursue the sustainable management of natural resources in relation to Wales and applying the principles of sustainable management of natural resources as set out in section 4 of the Environment (Wales) Act 2016 so far as consistent with the proper exercise of its functions.

(b) Our determination

NRW is satisfied that this decision, when implemented in accordance with the attached conditions, is consistent with its general purpose of pursuing the sustainable management of natural resources in relation to Wales, and applying the principles of sustainable management of natural resources.

5 Conclusions and Recommendations

Based on all the information available, and having regard to all relevant considerations including consultation responses, NRW's decision is to grant the variation to the Existing Marine Licence sought by the Variation Application. We have reached this decision having had regard to the relevant legal framework outlined in section 4 and have also explained in section 4 how each of the legal requirements have been considered. NRW has determined that a Marine Licence for the Proposed Activities should be granted.

Conditions have been attached to the Marine Licence as set out in Annex 1. The reason for the inclusion of each condition is set out with the conditions.

AUTHORISATION

Report by: Joe Thomas	Date: 08/12/2022	Signed: 
Position: Permitting Officer		
Authorised by: Emmer Litt	Date: 12/12/2022	Signed: 
Position: Permitting Team Leader		

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ANNEX 1

Timing Restrictions

The Licence Holder must ensure that **Licensed Activity 2** does not take place between **01 March** and **31 March** inclusive, without prior written approval from the Licensing Authority.

Reason: To avoid the Atlantic Salmon migratory period.

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ANNEX 2

[Existing Marine Licence Decision Document.](#)