

Marine Licensing Decision

The Marine and Coastal Access Act (2009)

Applicant: Conwy County Borough Council
Application reference no: CML2272

Kinmel Bay, Conwy

Kinmel Bay Coastal Defence Improvements Scheme

15 March 2023

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OUR DECISION

Based on all the information available, and having regard to all relevant considerations NRW has decided grant the marine licence sought by the Application subject to the conditions set out in Annex.

This decision document:

- explains how the application has been determined, having regard to the relevant legal framework outlined in section 5;
- explains how relevant considerations have been taken into account and how each of the legal requirements have been considered in determining the 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 Application.

1 APPLICATION DETAILS

1.1 The Application

Applicant Name and Address	The Applicant is the organisation set out below: Organisation name: Conwy County Borough Council. Address: Environment Roads & Facilities, Mochdre Offices, Conway Road, Mochdre, Conwy, LL28 5AB
Application Reference Number	CML2272
Date Application was duly made	24 November 2022
Proposal[s] covered by the application	Kinmel Bay Coastal Defence Improvements Scheme (the Project)
Licensable marine activities	The new rock armour will be a height of 7.2mOD, the current 1 in 4 slope angles of the rock armour will be retained, with the height and width of the crest increasing. The new design will reuse and repurpose the current rock armour material where possible. The existing seawall will be raised by 0.75m, up to 8mOD and improvements will take place at the two beach access points. The deposit of construction vehicle tracking and movements. Minor movement of material for the placement of rock armour. (the Proposed Activities)
Marine Plan Area	Welsh inshore region and Welsh offshore region
Application documents:	Application documents: CML2271 – GKX – JBAU-DD-00-AP-EN-0001-S4-P03-ML_App_Form 23 November 2022 CML2272 Updated Coordinates 08 December 2022

	CML2272-GKX-JBAU-00-00-DS-EN-0001-S3-P02- Design_Access_Statement 23 November 2022
	CML2272-GKX-JBAU-00-00-PC-EN-0001-S4-P02-ML_WMNP 23 November 2022
	CML2272-GKX-JBAU-00-00-MS-EN-0001- S4_P02_ML_Construction_MS 23 November 2022
	CML2272 – GBX-JBAB-00-00-RP-EN-0005-S3-P02- Planning_Statement 23 November 2022
	CML2272 -GBX-JBAB-00-00-RP-EN-0006-S3-P04- Environmental_Statement 23 November 2022
	CML2272-GKX-JBAU-00-00-RP-EN-0008-S3_PO3- Environmental_Statement_Technical_Summary 23 November 2022
	CML2272 – GKX-JBAU-00-00-RP-EN-0009-S3-P02- Environmental_Statement_Volume_2 23 November 2022
	CML2272 GKX-JBAU-00-00-RP-EN-0009-S3-P02- Environmental_Statement_Volumes_2_P1 23 November 2022
	CML2272 GKX-JBAU-00-00-RP-EN-0009-S3-P02- Environmental_Statement_Volumes_2_p2 23 November 2022
	CML2272 CH1701-AMEY-HGN-XX-DR-CH-0001 – Site Location Plan 23 November 2022
	CML2272 CH1701-AMEY-HGN-XX-DR-CH-0116 - General Arrangement Drawing Sheet 1 of 4 23 November 2022
	CML2272 CH1701-AMEY-HGN-XX-DR-CH-0117 - General Arrangement Drawing Sheet 2 of 4 23 November 2022
	CML2272 CH1701-AMEY-HGN-XX-DR-CH-0118 - General Arrangement Drawing Sheet 3 of 4 23 November 2022
	CML2272 CH1701-AMEY-HGN-XX-DR-CH-0119 - General Arrangement Drawing Sheet 4 of 4 23 November 2022
	CML2272 CH1701-AMEY-EWE-XX-DR-CH-3001 - Proposed Works Showing Mean High Water Springs Location 23 November 2022
	CML2272 CH1701-AMEY-GEN-XX-DR-CB-2519 - Structures - Sea Wall Typical Cross Section-Location Plan 23 November 2022
	CML2272 CH1701-AMEY-GEN-XX-DR-CB-2520 - Structures - Sea Wall Typical Cross Sections 23 November 2022
	CML2272 CH1701-AMEY-GEN-XX-DR-CH-2514 - Flood Gate General Arrangement 23 November 2022

	CML2272 CH1701-AMEY-GEN-XX-DR-SE-2515 - St Asaph Car Park Public Conveniences Plan Layout and Section 23 November 2022
	CML2272 CH1701-AMEY-GEN-XX-DR-SE-2516 - St Asaph Ave. Car Park Public Conveniences Elevations 23 November 2022
	CML2272 CH1701-AMEY-GEN-XX-DR-SE-2517 - Kinmel Bay West Shelter Plan Layout and Section 23 November 2022
	CML2272 CH1701-AMEY-GEN-XX-DR-SE-2518 - Kinmel Bay West Shelter Elevations 23 November 2022
	CML2272 CH1701-AMEY-HEL-XX-DR-EO-1401 - Proposed Lighting and Electrical Layout Sheet 1 of 2 23 November 2022
	CML2272 CH1701-AMEY-HEL-XX-DR-EO-1402 - Proposed Lighting and Electrical Layout Sheet 2 of 2 23 November 2022
	CML2272 CH1701-AMEY-HGN-XX-DR-CE-0601 - St Asaph Avenue Car Park Earthworks and Typical Sections Sheet 1 of 2 23 November 2022
	CML2272 CH1701-AMEY-HGN-XX-DR-CE-0602 - St Asaph Avenue Car Park Earthwork and Cross Sections Sheet 2 of 2 23 November 2022
	CML2272 CH1701-JBA-HGN-XX-DR-CH-2511 - Towyn Revetment Rock Armour General Arrangement 23 November 2022
	CML2272 CH1701-JBA-HGN-XX-DR-CH-2512 - Kinmel Bay Rock Armour General Arrangement 23 November 2022
	CML2272 CH1701-AMEY-HKF-XX-DR-CH-1116 - Kerbs, Footways and Pavements St Asaph Avenue Car Park 23 November 2022
	CML2272 CH1701-AMEY-HMK-XX-DR-CH-1217 - Road Markings and Traffic Signs St Asaph Avenue Car Park 23 November 2022
	CML2272 CH1701-AMEY-HMK-XX-DR-CH-1218 - Road Markings and Traffic Signs Sheet 1 of 4 23 November 2022
	CML2272 CH1701-AMEY-HMK-XX-DR-CH-1219 - Road Markings and Traffic Signs Sheet 2 of 4 23 November 2022
	CML2272 CH1701-AMEY-HMK-XX-DR-CH-1220 - Road Markings and Traffic Signs Sheet 3 of 4 23 November 2022
	CML2272 CH1701-AMEY-HMK-XX-DR-CH-1221 - Road Markings and Traffic Signs Sheet 4 of 4 23 November 2022

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	CML2272 CH1701-LDA-ELS-XX-DR-LS-2203 - Access Point AT3 Ramp over Sea Wall Typical Proposed Layout 23 November 2022
	CML2272 CH1701-LDA-ELS-XX-DR-LS-2204 - Access Point AT4 Long Steps Down Revetment Typical Proposed Layout 23 November 2022
	CML2272 CH1701-LDA-ELS-XX-DR-LS-2205 - Access Point AT5 Steps Down Revetment Typical Proposed Layout 23 November 2022
	CML2272 CH1701-LDA-ELS-XX-DR-LS-2206 - Access Point AT6 Typical Proposed Layout 23 November 2022
	CML2272 CH1701-LDA-ELS-XX-DR-LS-2207 - Access Point AT7 Typical Proposed Layout 23 November 2022
	CML2272 CH1701-LDA-ELS-XX-DR-LS-2302 - Parklet detail plan 1 of 2 St. Asaph Avenue Hub 23 November 2022
	CML2272 CH1701-LDA-ELS-XX-DR-LS-2303 - Parklet detail plan 2 of 2 Kinmel Bay West, Towyn Parklets and Rest Area 23 November 2022
	CML2272 CH1701-AMEY-HDG-XX-DR-CD-0501 - Drainage Layout St Asaph Avenue Car Park 23 November 2022
	CML2272 CH1701-AMEY-HDG-XX-DR-CH-0503 - Proposed Soakaway Locations Sheet 2 23 November 2022
	CML2272 CH1701-AMEY-HDG-XX-DR-CH-0504 - Proposed Soakaway Locations Sheet 3 23 November 2022
	CML2272 CH1701-AMEY-HGN-XX-DR-CH-0122 - Standard Details St Asaph Avenue Car Park Sheet 1 of 2 23 November 2022
	CML2272 CH1701-AMEY-HGN-XX-DR-CH-0123 - Standard Details St Asaph Avenue Car Park Sheet 2 of 2 23 November 2022

2 APPLICATION PROCEDURE

2.1. The Application

The Application was accepted by Natural Resources Wales (**NRW**) considered duly made on **24 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 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 by consultees as NRW considered relevant.

2.3. Commercial Confidentiality

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

2.4. Publicity and advertising

In compliance with s. 68 of the Marine and Coastal Access Act 2009 (the 2009 Act) and regulation 16 of the Marine Works (Environmental Impact Assessment) Regulations 2007, a public notice advertising the Project was placed in Rhyl Journal on 14 December 2022 and 21 December 2022 (the Public Notices) and a notice was published on NRW's website. The application documents were made available to the public on the public register [Public register - Customer Portal \(naturalresources.wales\)](https://naturalresources.wales/public-register).

The public were given a period of 42 days from the date of the first Public Notice to provide comments on the application.

No public responses were received in response to the Public Notice.

3 CONSULTATION

3.1 Consultees

NRW considered it appropriate to consult the bodies listed in the table below on 08 December 2022, due to their particular expertise. These bodies were consulted for a period of 42 days. For those bodies which responded to the consultation an 'Y' can be found in the response received column, and those which did not respond to the consultation an 'N':

Consultee	Response received (Y/N)	Date(s) of receipt
The Crown Estate	N	
NRW	Y	19 January 2023
MoD - Safeguarding Defence	Y	03 January 2023
Maritime & Coastguard Agency	Y	05 January 2023

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Trinity House	Y	18 January 2023
Royal Yachting Association	Y	08 January 2023
Local Biodiversity Officer [Conwy County Council]	Y	20 January 2023
Local Planning Authority [Conwy County Council]	N	
Local Harbour Authority [Conwy]	N	
Local Port Authority [Conwy]	N	
Royal Society for the Protection of Birds (RSPB)	N	
Welsh Archaeological Trust	Y	08 December 2022
Royal Commission on Historic Monuments Wales	Y	13 January 2023
Cadw	Y	04 January 2023
Chamber of Shipping	N	
NERL Safeguarding	Y	09 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 5 of this decision document.

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 ("the EIA Directive") 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 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.

4.1 Screening

The application was considered by NRW to constitute an EIA development under the Regulations, and a Screening Opinion (ref SC2108) was issued on 10 February 2022.

Pursuant to Regulation 8 of the Regulations, NRW considered under SC2108 that the proposed works fell under Schedule A2, 69 of the Regulations on the assessment of the effects of the project on the environment, specifically:

Schedule A2, Paragraph 69. Coastal work to combat erosion and maritime works capable of altering the coast through the construction of, for example, dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works.

4.2 EIA

The Marine Licence application required for the Project was accompanied by an Environmental Statement (ES). NRW assessed the project as an EIA development under the Regulations and issued a Written Confirmation of the EIA Consent Decision on 15 March 2023. The Written Confirmation is available on the NRW website and the marine licensing public register. NRW is satisfied that the information incorporated in the EIA Consent Decision is up to date at the time of this decision.

In accordance with Regulation 24 of the Regulations, the following information is included in subsequent sections of this document:

- Conclusion of the EIA assessment
- Any conditions, mitigating and monitoring measures described in the regulatory decision
- Description of features/measures to avoid, prevent, reduce and offset likely significant adverse effects on the environment
- The main reasons and considerations on which this regulatory decision is based
- A summary of the results of consultations undertaken and how these have been incorporated into this regulatory decision

4.3 Conclusion of the EIA

NRW issued a Written Confirmation of the EIA Consent Decision on 15 March 2023, containing the conclusion about Environmental Impact arising from the project and the EIA Consent Decision. In reaching the conclusion, NRW considered the following information:

- The application for a Marine Licence
- The Environmental Statement submitted
- Any further information provided
- The responses to public consultation
- The responses to the technical consultation
- Any comments received from another EEA state
- Any features of the project, or proposed measures, to avoid, prevent, reduce or offset any likely significant adverse environmental effects

NRW considered the likely significant effects of the project, and reached a conclusion on the likely significant effects of the project with regard to the following:

- Population and human health

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- Biodiversity
- Land, soil, water, air and climate
- Material assets, cultural heritage and landscape
- Risk of major accidents and disasters relevant to the project
- Cumulative impacts and in-combination impacts

A summary of the conclusion on the likely significant effects of the project is incorporated below. Full details of the conclusion on the likely significant effects of the project can be found in the Written Confirmation of the EIA Consent Decision.

4.3.1 Population and human health

The Kinmel Bay Coastal Defence Scheme aims to improve the existing coastal and fluvial defences to provide protection to the local community and property. NRW PS is satisfied that by its nature it will provide beneficial outputs for population and human health. The risks to human health associated with the proposed works are considered to be low and with the proposed controls and mitigations in relation to pollution/contamination and landscape the risks are negligible. NRW PS are satisfied that there will be no significant impact on population or human health as a result of the project.

4.3.2 Biodiversity

The Project is in very close proximity (0.2km) to the Liverpool Bay SPA. This was assessed in the Habitat Regulation Assessment, and it was concluded that adverse effect on site integrity can be ruled out, as detailed in section 3.2.4. The ES considered the impact on biodiversity and through the ES and representation received impacts upon a number of receptors including, marine mammals, fish, and benthic habitat where identified and additional mitigation was proposed, such as implementation of a CEMP and Biosecurity Risk Assessment.

NRW PS consider that biodiversity has been appropriately assessed and conclude that considering mitigation proposed within the ES and the licence conditions as outlined in section 8, no significant impact on biodiversity is predicted.

4.3.3 Land, soil, water, air and climate

The installation, operation and maintenance of the Project will not give rise to the production of any hazardous waste. However, there is an impact pathway to water quality through an accidental pollution event, prevention of bacterial die-off (refer to Section 7.6 of this document) also an increase in greenhouse emission from the construction of the Project. The ES has assessed impacts to land, soil, water, and air and proposed mitigation measures which include management of risks of accidental pollution events through pollution prevention best practice and implementation of a CEMP. NRW PS consider that the works have been appropriately assessed and that considering mitigation proposed within the ES and the licence conditions outlined in section 7 and section 8, that no significant impact on water quality is predicted.

4.3.4 Material assets, cultural heritage and landscape

The ES identified a number of cultural heritage assets within the project footprint (Chapter 8 of ES). NRW A, CPAT and RCAHMW are content with the mitigations proposed by the applicant in section 8.6 of the ES, including a toolbox talk being carried out prior to commencement of works, this will include an associated protocol for archaeological recording and reporting to the relevant authorities. In addition, CPAT and RCAHMW stated that a PAD and a WSI would be required but this will be secured through the planning consent.

NRW consider that there is low impact on the landscape due to the project as there is no permanent change to the landscape as a result of the project.

4.3.5 Risk of major accidents and disasters relevant to the project

The Project is not considered to have a high vulnerability to major accidents and disasters. Construction best practice would be utilised to reduce any risk during the construction phase and further risk of major accidents and disasters is not considered to be significant. Also, pollution preventing measures are to be conditioned within the marine licence. NRW PS consider the risk of a major accident or disaster to be extremely low.

4.3.6 Cumulative impacts and in-combination impacts

As detailed in section 3.2.4, NRW PS carried out a Habitat Regulation Assessment, as part of which an in-combination assessment was carried out and concluded subject to appropriate mitigation that the works would not cause a significant impact alone or in combination on a European designated site.

NRW PS concluded that the potential cumulative impacts due to the project have been adequately addressed in the ES.

4.4 EIA Consent Decision

NRW issued a Written Confirmation of the EIA Consent Decision which provides a conclusion on the environmental impacts arising from the project. NRW concluded that the environmental impacts of the Project have been adequately identified, described and assessed. Accordingly, NRW concluded a favourable determination and that EIA consent for the project should be given.

4.5 Mitigation and monitoring requirements

The Written Confirmation of the EIA Consent Decision issued by NRW on 15 March 2023, highlighted the mitigation or monitoring requirements required to be attached to the regulatory consent. These are set out below:

In reaching the EIA Consent Decision required under Regulation 22, NRW must make consideration of the requirement for any mitigation measures or monitoring required to be attached to the consent.

Section 7 outlines where NRW PS considers that there is a requirement for mitigation and/or monitoring, and sets out the measures we consider necessary to address potential impacts identified through the EIA process. These are summarised below:

Licence condition will be required to ensure that the CEMP is submitted to and approved by the licensing authority prior to commencement of licensed activities. This document will detail management measures to reduce impacts during the construction phase such as adherence to pollution control legislation and guidance, and include a risk assessment and method statement.

Licence conditions will be required to ensure that the Biosecurity Risk Assessment and Management Plan is submitted to and approved by the licensing authority prior to commencement of licensed activities this will ensure that the potential for the introduction and spread of INNS will be minimised.

In considering the requirements outlined above we do not consider that these requirements can be met by existing mitigation arrangements.

NRW has considered these requirements in making this regulatory decision. The conditions attached to the Marine Licence are set out in Annex 1, including reasons for the inclusion of each condition.

4.6 Consideration of consultations undertaken

The consultation process described in section 2.4 and section 3 of this document was undertaken to ensure comment was received from appropriate parties.

A Transboundary Screening Assessment did not identify potential for effects to any other EEA State.

A summary of responses from the consultation are included in Annex 2 of this document. NRW has had regard to consultation responses in making the regulatory decision. Where these have impacted on NRW's decision making, this has been noted in the relevant paragraph in section 5 of this decision document.

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4.7 Description of features/measures to avoid, prevent, reduce and offset likely significant adverse effects on the environment

In reaching the Conclusion about Environmental Impact (Regulation 21A of the Regulations), NRW must consider any features of the project, or proposed measures, to avoid, prevent, reduce or offset any likely significant adverse environmental effects (regulation 21A (1)(f)).

NRW considers that the following features of the project, or measures included within the project proposal, as described in the application form, Environmental Statement and other supporting information, would avoid, prevent, reduce or offset any likely significant adverse environmental effects.

The Project has committed to producing a Construction Environment Management Plan (CEMP) which will include measures to manage and reduce potential risks that construction activities could cause to the environment.

Impacts on archaeological environment will be mitigated through the submission of a Written Scheme of Investigation and a Protocol of Historic Discoveries. However, this will be submitted as part of the planning consent.

The Project has committed to producing a Biosecurity Risk Assessment and Management Plan to control the risk of the spread of Invasive Non-Native Species.

4.8 Main reasons for this regulatory decision

The main reasons for the regulatory decision made are described in section 5 of this decision document.

The conclusion of this regulatory decision is stated in section 6 of this decision document.

5 BASIS FOR OUR DECISION

In determining this 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 5 below in accordance with the **Marine and Coastal Access Act 2009** (the **2009 Act**).

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

- the need to protect the environment (see section 5.1)
- the need to protect human health (see section 5.2)
- the need to prevent interference with legitimate uses of the sea (see section 5.3)
- 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 sections 5.1 to 5.5 below)
- any representations which it has received from any person having an interest in the outcome of the application. (summarised in section 3 and where relevant considered in sections 5.1 to 5.5 below)
- such other matters as it thinks relevant (see section 5.5 below)

5.1 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

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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.

5.1.1 Water Framework Directive, Groundwater Directive and Water Environment Regulations 2017

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

NRW has considered the potential effect of the Proposed Activities on the following WFD waterbodies:

- GB641011650000 - North Wales
- GB541006608000 - Clwyd

A Water Framework Directive Compliance Assessment was conducted for the proposal. The assessment initially highlighted impacts to some water Quality elements which required detailed assessment.

NRW A raised concerns during consultation regarding plumes of sediment having the potential to prevent bacterial die-off due to the protection from UV rays causing the bathing water status to fail. Therefore, NRW A requested any works are undertaken outside of the bathing season (15 May – 30 September) to avoid this risk. It was also requested that NRW are kept informed as to when works will take place including any beach closures as this could impact the sampling schedule. However, following further discussions, the sampling location for the bathing water sample was agreed to be moved away from the proposed activities meaning the bathing water status would not fail as a result of the proposed activities. Therefore no restriction for works between 15 May and 30 September has been included in the licence.

In conclusion, when including the mitigations listed above the application when considered alone and in-combination, will not pose a risk to deterioration of the above listed waterbodies

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

5.1.2 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

The Local Biodiversity Officer responded regarding Section 7 priority habitats seawards of the seawall, including embryonic dune and vegetated shingle communities which currently occupy much of the coastline spit feature that define the scheme area. It was stated that this habitat will be mechanically removed and replaced with rock armour which may represent a net loss of habitat diversity in the locality of the project. The Officer stated Methods to carefully retain the vegetated open dune habitat seaward of the seawall by reinstating it around and atop proposed rock armour to ensure retention of the sand in the dune ecosystem as a whole should be explored and if feasible included in an Ecological Management Plan. If not feasible other section 7 coastal priority habitat creation options could be achieved elsewhere on Conwy's coastline e.g. vegetated shingle creation east of Traeth Pensarn SSSI. This information was passed onto the applicant, and they stated that a Ecological Management Plan will address the removal and relocation of the embryonic dune and vegetated shingle communities fronting Sunnyvale, this will be completed outside of the Marine Licensing process.

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.

5.1.3 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 may affect the following European Protected Site:

- Liverpool Bay SPA

A test of likely significant effect (TLSE) was undertaken and potential significant effects on features of the European Sites listed above could be ruled out. The only impact pathway taken through to

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appropriate assessment was for the potential of a pollution incident. This has been mitigated through best practice measures and also the conditioning the submission of a CEMP for approval before commencement of works. NRW A also requested that the marine mammal units are included in section 3.2.1, this was included and stated there would be no impacts due to the closest European Site being over 20km away and pollution incidents mitigation will be incorporated in the CEMP to be submitted before commencement of works. Therefore, it was concluded that the proposal, when considered alone and in-combination, will not adversely affect the integrity of the European site(s) concerned.

Further details are described within the Habitats Regulations Assessment.

5.1.4 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

NRW considers that no protected species are likely to be impacted by the Project.

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.

5.1.5 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 MCZ due to the distance from the Project and the MCZ.

5.1.6 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*

NRW is satisfied that there is no impact pathway to any SSSI.

5.1.7 *The Waste (England and Wales) Regulations 2011*

a) *The legal framework*

The Waste (England and Wales) Regulations 2011 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*

NRW is satisfied that the Proposed Activities meet the requirements of The Waste (England and Wales) Regulations 2011.

5.1.8 *Other matters considered relevant to the need to protect the environment*

As identified within the ES (Chapter 8 of the ES) the works will have a minor impact to the historic environment. Only a small proportion of the works are seawards of mean high-water springs for Kinmel Bay. During consultation with Clwyd-Powys Archaeological Trust and the Royal Commission on the Ancient and Historical Monuments of Wales, it was stated that a Protocol of Historic Discoveries and a Written Scheme of Investigation was required. However, based on the responses from the consultees it will be secured as part of the planning application as a large amount of the Scheme is landwards of mean high-water springs. The Scheme will provide the archaeological mitigation that includes the whole licensable area to the planning authority.

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

5.2 *The need to protect human health*

NRW A raised concerns regarding plumes of sediment having the potential to prevent bacterial die-off due to the protection from UV rays. Therefore, NRW A requested any works are undertaken outside of the bathing season (15 May – 30 September) to avoid this risk. It was also requested that NRW are kept informed as to when works will take place including any beach closures as this could impact the sampling schedule. However, as discussed in section 5.1.1 above, the sampling location for the bathing water sample was agreed to be moved away from the proposed activities meaning the bathing water status would not fail as a result of the proposed activities. Therefore no restriction for works between 15 May and 30 September has been included in the licence.

5.2.1 *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

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own to justify refusal of the application provided that the Proposed Activities are implemented in accordance with the conditions set out in Annex 1.

5.3 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.

The Maritime and Coastguard Agency (MCA) requested that notification must be given to local mariners and fishermen prior to commencement of works, this is included as a standard licence condition 3.1.3. shown in Annex 1. The MCA also requested that bunding or storage facilities are installed to prevent pollution incidents, this is included as condition 3.15 in Annex 1. No other comments regarding navigation were received.

5.3.1 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 application [provided that the Proposed Activities are implemented in accordance with the conditions set out in Annex 1.

5.4 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.

Shoreline Management Plan

Shoreline Management Plan (SMP) SMPs are non-statutory policy documents with the purpose of providing a large-scale assessment to support coastal support management planning.

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

This decision has been taken in accordance with marine policy as set out in the Welsh National Marine Plan. NRW PS agree with the conclusions set out in 'ML_WNMP' submitted 23 November 2022.

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Shoreline Management Plan

The proposed works lie within West of Wales Shoreline Management Plan 2 (SMP2) policy units 11a Great Ormes Head to Scotland. The policy for this unit is Hold the Line in all epochs.

5.5 Other matters NRW thinks relevant

5.5.1 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.

5.5.2 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) (b) Our determination

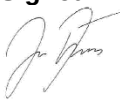
NRW is satisfied that this decision, when implemented in accordance with the attached conditions, is consistent with its general purpose of pursuing the sustainable management of natural resources in relation to Wales, and applying the principles of sustainable management of natural resources.

6 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 Marine Licence sought by the Application. We have reached this decision having had regard to the relevant legal framework outlined in section 5. We have also explained in section 5 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.

7 AUTHORISATION

Report by: Joe Thomas	Date: 15 March 2023	Signed: 
Position: Permitting Officer		
Authorised by: Emmer Litt	Date: 15 March 2023	Signed:

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Position: Permitting Team Leader		
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ANNEX 1

Conditions imposed and reasons for those conditions.

Note: Condition numbers used below reflect the condition numbers used in the licence.

CONDITIONS

Notification and Inspection

3.1 Notification of Commencement

- 3.1.2** The Licence Holder must notify the Licensing Authority no less than **10 days** before the commencement of the Licensed Activities, or an individual phase of the Licensed Activities, is expected to commence.

Reason: To ensure the Licensing Authority are aware of the commencement of Licensed Activities.

- 3.1.2** The Licence Holder must notify Welsh Government Marine & Fisheries Division (Control & Enforcement Branch) no less than **10 days** before the commencement of the Licensed Activities, or an individual phase of the Licensed Activities, is expected to commence.

Reason: To ensure the Marine Enforcement Officers are aware of the commencement of Licensed Activities.

- 3.1.3** The Licence Holder must ensure that local mariners and fishermen's organisations are made fully aware of the Licensed Activities through local notices to mariners **10 days** prior to the commencement of the Licensed Activities.

Reason: To minimise interference with other sea users and ensure other vessels in the vicinity can safely plan and conduct their passage.

3.2 Notification of Vessels and/or Vehicles

The Licence Holder must ensure that the details of the vessels and/or vehicles utilised to undertake the Licensed Activities are submitted to the Licensing Authority and Welsh Government Marine & Fisheries Division (Control & Enforcement Branch) at least **24 hours** prior to the commencement of the Licensed Activities.

Reason: To ensure that the Licensing Authority are made aware, in a timely manner, of the vessels and/or vehicles operating under this licence to enable the Licensing Authority to

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comply with the reporting obligations in the Marine Licensing (Register of Licensing Information (Wales) Regulations 2011 as amended.

3.3 Notification of Agents/Contractors/Sub-contractors

The Licence Holder must ensure that details of any agent(s), contractor(s) or sub-contractor(s) utilised to undertake the Licensed Activities are submitted to the Licensing Authority at least **24 hours** prior to the commencement of Licensed Activities.

Reason: To ensure that the Licensing Authority are made aware, in a timely manner, of the agent(s), contractor(s) or sub-contractor(s) operating under this licence and in order to enable the Licensing Authority to comply with the reporting obligations in the Marine Licensing (Register of Licensing Information (Wales) Regulations 2011 as amended.

3.4 Notification of HM Coastguard

The Licence Holder must ensure that HM Coastguard is made aware of the Licensed Activities at least **24 hours** prior to commencement by contacting The National Maritime Operations Centre at **zone32@hmcg.gov.uk**.

Reason: To ensure the safety of navigation.

3.5 Inspection of Licensed Activities

The Licence Holder must allow Marine Enforcement Officers or any other person authorised by the Licensing Authority to inspect the Works at any reasonable time.

Reason: To allow for inspection of the Licensed Activities to check compliance with the Licence.

3.6 Notification of Completion

3.6.1 The Licence Holder must notify the Licensing Authority within **10 days** of completion of the Licensed Activities.

Reason: To ensure the Licensing Authority are aware of the completion of Licensed Activities.

3.6.2 The Licence Holder must notify Welsh Government Marine & Fisheries Division (Control & Enforcement Branch) within **10 days** of completion of the Licensed Activities.

Reason: To ensure the Marine Enforcement Officers are aware of the completion of Licensed Activities.

3.7 Accident or Emergency

3.7.1 If, by reason of force majeure any substances or articles are deposited otherwise than as permitted as part of the Licensed Activities or in the Licensed Area full details of the circumstances shall be notified to the Licensing Authority within **48 hours** of the incident occurring.

Reason: To allow the Licensing Authority to take appropriate action to ensure the appropriate removal of the unlicensed deposit.

- 3.7.2** If it is necessary for the Licence Holder to recover or remove any equipment, plant or machinery used to undertake the Licensed Activities that have been dropped as a result of an accident or emergency, the Licence Holder is permitted to do so provided that the methodology for such recovery or removal has been approved by the Licensing Authority.

Reason: To allow for the recovery of objects that have been accidentally dropped when carrying out the Licensed Activities.

3.8 Distribution of Copies of this Licence

The Licence Holder is required to ensure that a copy of this Licence is given to:

- All agents, contractors and subcontractors whose names have been provided to the Licensing Authority under condition 3.3 and
- The Masters of any vessels and transport managers responsible for the vehicles employed in accordance of this Licence whose details have been submitted to the Licensing Authority under condition 3.2.

Reason: To ensure that all agent(s), contractor(s), sub-contractor(s) and vessel Masters are aware of their obligations under the conditions established within this Licence to ensure compliance with the conditions.

3.9 Inspection of Documents

Copies of this Licence shall be made available at the following locations:

- at the address of the Licence Holder specified in section 1.2;
- at any site office, located at or adjacent to the Licensed Area, used by the Licence Holder or its agent(s), contractor(s) or sub-contractor(s) responsible for the loading transportation or deposit of any substances or articles permitted as part of the Licensed Activities;
- on board each vessel or vehicle carrying out Licensed Activities.

The documents referred to in this Condition shall be available at all reasonable times for inspection by officers appropriately authorised by the Licensing Authority and authorised Marine Enforcement Officers at the locations stated in that paragraph.

Reason: To ensure that all agent(s), contractor(s), sub-contractor(s) and vessel Masters may access the details of this Licence at all times and to ensure that the details of this Licence are available for inspection when required.

Vessels, Plant and Equipment

3.10 Notified Contractors, Vessels and/or Vehicles only to Carry out Licensed Activities

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Only those agent(s), contractor(s), sub-contractor(s), vessels and/or vehicles whose details have been notified to the Licensing Authority may operate under the terms of this Licence. Any changes must be notified to and be approved by the Licensing Authority in writing prior to any such agent, contractor, subcontractors or vehicles carrying out any Licensed Activities pursuant to or otherwise operating under this Licence.

Reason: To ensure that the Licensing Authority are made aware, in a timely manner, of the agent(s), contractor(s), sub-contractor(s) operating under this Licence to enable the Licensing Authority to comply with the reporting obligations in the Marine Licensing (Register of Licensing Information (Wales) Regulations 2011 as amended.

3.11 Refuelling of Plant and Equipment

The Licence Holder must ensure that plant, vehicles and machinery are not refuelled on the foreshore or in the sea.

Reason: To minimise the risk of fuels/other contaminants entering the marine environment.

3.12 Equipment, Structures and Access

The Licence Holder must ensure that all equipment, temporary structures, access tracks, waste and/or debris associated with the Licensed Activities are removed on completion of the Licensed activities.

Reason: To minimise impacts on the marine environment and other users of the sea/seabed.

Safety**3.13 Removal of Deposited Material**

If the Licensing Authority considers it necessary or advisable for the safety of navigation, the Licence Holder must remove any deposit specified by the Licensing Authority or Marine Enforcement Officers within one month of notice being given by the Licensing Authority, and shall not replace such material until the Licensing Authority has given its written approval.

Reason: To ensure that any material which may pose a hazard to safe navigation has been removed.

Pollution control**3.14 Pollution Prevention**

The Licence Holder must ensure that pollution prevention best practice is adhered to at all times. Any incidents must be reported to the Licensing Authority as soon as possible using the hotline number **0300 065 3000**.

Reason: To minimise the risk of pollution incidents and to ensure the timely report of such incidents to enable the Licensing Authority to take action as appropriate.

3.15 Spillage of Pollutants

The Licence Holder must employ bunding, storage facilities and spill kits to contain and prevent the release of fuel, oils and chemicals associated with the plant, refuelling and

construction equipment into the marine environment. Secondary containment must be used with a capacity of **no less than 110%** of the container's storage capacity

Reason: To minimise the risk of fuels/other contaminants entering the marine environment.

3.16 Prevention of Disposal of Man-made Debris

The Licence Holder must ensure that all reasonable precautions are taken to prevent the disposal of man-made debris to the marine environment. Such material must be removed immediately and be disposed of appropriately. If it is not possible to prevent manmade debris from entering the marine environment during the Licensed Activities, the Licensed Activities must cease immediately.

Reason: To minimise the amount of man-made materials disposed of at sea.

3.17 Cleanliness of Equipment

The Licence Holder must ensure that equipment, machinery and PPE are washed with freshwater and/or thoroughly airdried before deployment and before moving between locations.

Reason: To minimise the risk of spread of invasive non-native species.

Activity-specific Conditions

3.18 Biosecurity Risk Assessment and Management Plan

3.18.1 The Licence Holder must submit a Biosecurity Risk Assessment and Management Plan to the Licensing Authority for written approval at least 6 weeks prior to commencement of the Licensed Activities. No Licensed Activities may be undertaken prior to written approval from the Licensing Authority.

3.18.2 The Licence Holder must ensure that any actions outlined in the documents detailed in condition 3.18.1 are implemented as approved in writing by the Licensing Authority. Any proposed changes to the actions outlined in the documents must be submitted to, and approved in writing by the Licensing Authority prior to any changes being enacted.

Reason: To ensure the spread of invadive non-native species are limited.

3.19 Construction Environment Management Plan

3.19.1 The Licence Holder must submit a CEMP to the Licensing Authority for written approval at least **6 weeks** prior to commencement of the Licensed Activities. The CEMP must incorporate the mitigation detailed within '*Appendix F Habitat Regulation Assessment*'. No Licensed Activities may be undertaken prior to written approval from the Licensing Authority.

3.19.2 The Licence Holder must ensure that any actions outlined in the documents detailed in condition 3.19.1 are implemented as approved in writing by the Licensing Authority. Any proposed changes to the actions outlined in the documents must be submitted to, and approved in writing by the Licensing Authority prior to any changes being enacted.

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Reason: To ensure appropriate pollution prevention, mitigation to reduce impact to protected habitat and noise mitigation are adhered to.

3.20 Misplaced Rock

The Licence Holder must ensure that any rock misplaced below Mean High Water Springs that cannot be recovered is located, and its position notified to the Welsh Government Marine & Fisheries Division (Control & Enforcement Branch) and the Licensing Authority within **48 hours**.

Reason: To ensure the safety of navigation.