

Marine Licensing Variation Decision

The Marine and Coastal Access Act (2009)

Applicant: ***Denbighshire County
Council***
Application reference no: **CML2152v1**

Central Rhyl Coastal Defences Scheme

Raising and widening of the central Rhyl promenade (Denbighshire) with the inclusion of flood gates and beach access points and the construction of concrete stepped revetment, scour protection and concrete repairs.

21 April 2023

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OUR DECISION

Based on all the information available and having regard to all relevant considerations NRW has decided to grant the variation to the Existing Marine Licence (see Annex 2) sought by the Variation Application.

This decision document:

- explains how the Variation 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 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 person or organisation set out below: Organisation name: Denbighshire County Council Address: Smithfield Road, Denbigh, Denbighshire, Wales, LL16 3RJ
Variation Application reference number	CML2152v1
Existing Marine Licence reference number	CML2152
Date Variation Application was duly made	10 February 2023
Description of variation	Marine Licence variation to extend the licence expiry date by 12 months to 31 December 2026 and to amend the quantities of deposited materials as set in Table 1, Activity 1.
Proposal[s] covered by the Variation Application	<i>Central Rhyl Coastal Defences Scheme (the Project)</i> The central Rhyl coastal defences scheme seaward of Mean High Water Springs includes the raising and widening of the existing Promenade with a new concrete stepped revetment along the seaward side of the existing Promenade with beach access points and an access ramp. New rock scour protection along the toe of the existing revetment is also required to provide protection to the existing defence. Repairs to the existing seawall and revetment as required.
Licensable marine activities	Licensed Activities taking place seaward of MHWS include the following: • Construction of a new concrete stepped revetment along the seaward side of the Promenade from the SeaQuarium to the Drift Park area, bounded by the coordinates in Table 2 of the licence. The slope of the revetment is to be 1 in 2 and is to reduce overtopping risk to the frontage.

	- Construction of new rock scour protection area along the toe of the existing stepped revetment to provide protection to the existing defence from Splash Point to the SeaQuarium, bounded by the coordinates in Table 2 of the licence. - Repairs to the existing sea wall and revetment - Construction of stepped access points between the beach and the promenade, a pedestrian access ramp and extension of existing access points across the new rock scour protection. - Outfalls and pipes within the existing defences will be extended through the proposed revetment and rock scour protection. (the Proposed Activities)	
Marine Plan area	Welsh inshore region and Welsh offshore region	
Variation Application documents:	CML2152v1 Application Form.pdf	10/02/23
	CML2152-V01 - CRMMD00ZZDRSC7002.pdf	10/02/23
	CML2152-V01 - CR-MMD-00-ZZ-DR-SC-7003.pdf	10/02/23
	CML2152-V01 - CRMMD00ZZDRSC7101Stepped Revetment Sections Sheet 1.pdf	10/02/23
	CML2152-V01 - CRMMD00ZZDRSC7102Stepped Revetment Sections Sheet 2.pdf	10/02/23
	CML2152-V01 - CRMMD0000TNEN3097_Carbon review technical note.pdf	10/02/23
	CML2152-V01 - CRMMD00ZZDRSC7001 General Arrangement Sheet 1.pdf	10/02/23
	CML2152-V01 - CML2152 Variation Request Letter.pdf	10/02/23

2 VARIATION APPLICATION PROCEDURE

2.1 The Variation Application

The Variation Application was accepted by Natural Resources Wales (**NRW**) considered duly made on 10 February 2023. 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 Publicity and advertising

Due to the limited change to the project, with the construction methods and licensable area remaining unchanged, NRW PS are satisfied that there were no requirements to conduct a public consultation.

3 CONSULTATION

3.1 Consultees

NRW considered it appropriate to consult the bodies listed in the table below on 17 March 2023, due to their particular expertise. These bodies were consulted for a period of 14 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	31 March 2023

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.

The Marine Licence application required for the original 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 14 February 2022. NRW is satisfied that the information incorporated in the EIA Consent Decision is up to date at the time of this decision.

The variation application was supported by the documents listed in section 1 including a statement on the implications of the proposed changes to the Licence, including the assessment of the change of materials used in the project.

NRW PS are content that the changes fall within the project design envelope assessed within the original ES and that the conclusion of the EIA Consent Decision dated 14 February 2022 remain valid.

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 2009 Act.

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

- the need to protect the environment (see sub-section 5.1);
- the need to protect human health (see sub-section 5.2);
- the need to prevent interference with legitimate uses of the sea (see sub-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 sub-sections 5.1 to 5.5 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 5.1 to 5.5 below); and
- such other matters as it thinks relevant (see sub-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

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

(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 Transitional waterbody

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 project has no potential to cause deterioration of any water body or prevent a water body or WFD Protected Area from meeting its objectives, taking into account any conditions or restrictions as applicable, either alone or in combination with other activities. NRW Advisory was consulted on the WFD assessment.

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 when undertaken in accordance with appropriate conditions, i.e. requirement for a CEMP (as set out in section 5.1.1 of Annex 2). The CEMP will ensure that appropriate pollution prevention measure are implemented.

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

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 Sites:

- Liverpool Bay/Bae Lerpwl Special Protection Area (SPA) UK9020294- (300m to the North of the Project)
- Dee Estuary/Aber Dyfrdwy SPA UK9013011 (5.1km East of the Project)
- Dee Estuary Ramsar (5.1km East of the Project)
- Dee Estuary Special Area of Conservation (SAC) UK0030131 (5.1km East of the Project)
- North Anglesey Marine/Gogledd Mon Forol SAC UK0030398 (approx. 18km west of the Project)

Due to the mobile nature of all Annex II marine mammal features of Special Areas of Conservation (SACs) all SACs within a Marine Mammal Management Unit (MMMU) are considered to be 'functionally linked'. The following SACs have therefore also been considered for their marine mammal features only:

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- West Wales Marine/ Gorllewin Cymru Forol (SAC) UK0030397
- Bristol Channel Approaches/ Dynesfeydd Môr Hafren (SAC) UK0030396
- Llyn Peninsula and the Sarnau/ Pen Llŷn a'r Sarnau (SAC) UK0013117
- Cardigan Bay / Bae Ceredigion (SAC) UK0012712
- Pembrokeshire Marine / Sir Benfro Forol (SAC) UK0013116

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

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 are therefore satisfied that the Proposed Activities, either alone or in combination with other plans or projects, will not adversely affect the integrity of European Site(s) when undertaken in accordance with appropriate conditions, i.e. requirement for a CEMP to be submitted approval prior to commencement of works (as set out in section 5.1.1 of Annex 2).

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

Please refer to section 5.1.4(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.

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 distance of the works (Denbighshire, North Wales) from Skomer.

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

Please refer to section 5.1.6(b) of Annex 2.

5.1.7 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 5.1.7(b) of Annex 2

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

Please refer to section 5.1.8(b) of Annex 2

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

Please refer to section 5.1.9(b) of Annex 2

5.2 The need to protect human health

Please refer to section 5.2 of Annex 2

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

Please refer to section 5.3 of Annex 2

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.

Please refer to section 5.4 of Annex 2

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

Please refer to section 5.5 of Annex 2

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.

(b) Our determination

UK Marine Policy Statement 2011

Please refer to section 5.6 of Annex 2

Welsh National Marine Plan

Please refer to section 5.6 of Annex 2

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) 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 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 5 and 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.

AUTHORISATION

Report by: Chris Roscoe Position: Permitting Officer	Date: 19 April 2023	Signed: 
Authorised by: Emmer Litt Position: Permitting Team Leader	Date: 21 April 2023	Signed: 

ANNEX 1

Changes to Marine Licence include;

- Section 1.3; Licence validity where it states Licence End Date;

	Change from	Change to
Licence End Date	31 December 2025	31 December 2026

- Table 1 Activity 1 where it states 'Quantities/Dimensions';

	Change from	Change to
Quantities/Dimensions	Material quantities being deposited: <u>Concrete stepped revetement</u> • Up to 882 precast concrete units • Up to 1713m³ of concrete binding • Up to 4895m³ of 6N fill in the revetment, • Up to 7188m³ of drainage layer in the revetment, • Up to 4440m² of sheet piles, • Up to 1110m³ of in-situ concrete, • Up to 230 tonnes of reinforcement in the revetment, and • Up to 270 gabion baskets which will be filled with 304 m³ of rock.	Material quantities being deposited: • Up to 13,950m³ of concrete (including precast units), • Up to 33,922m³ of aggregate fill, • Up to 7,522m² of sheet piles, • Up to 1,390 tonnes of steel reinforcement (including within precast concrete), • Up to 17,352m³ of rock graded 1 – 3 tonnes, and • Up to 22,672m² of geotextile

	<u>Rock scour protection</u> • Up to 27,480m³ of rock graded 1 – 3 tonnes • Up to 13,740m² of geotextile, • Up to 169.65m³ of mass concrete foundation, 360m² of mesh and 12nr 8 tonne precast step units will form the access steps.	
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ANNEX 2

Marine Licence Decision Document CML2152, 11 February 2022