

**Marine Licensing Variation Decision**

The Marine and Coastal Access Act (2009)

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**Applicant: Amalgamated Construction Ltd.**

**Application reference no: CML2227v1**

**Dovey Junction Viaduct, Dovey Junction to Pwllheli  
Line**

**Dovey Junction Viaduct Refurbishment**

***14 August 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 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:<br><br>Company name: Amalgamated Construction Limited<br><br>Company number: 00995892<br><br>Address: 3175 Century Way, Thorpe Park, Leeds LS15 8ZB                                                                                                                                                                                       |
| Variation Application reference number           | CML2227v1                                                                                                                                                                                                                                                                                                                                                                             |
| Existing Marine Licence reference number         | CML2227                                                                                                                                                                                                                                                                                                                                                                               |
| Date Variation Application was duly made         | 29/06/2023                                                                                                                                                                                                                                                                                                                                                                            |
| Description of variation                         | The marine licence has been varied to include the additional refurbishment activities as follows: <ul style="list-style-type: none"><li>• Replacement of corbels and main deck beams</li><li>• Replacement of timber deck walkway</li><li>• Replacement of associated metal fixings</li><li>• Replacement of existing hand railing</li><li>• Track renewal and re-alignment</li></ul> |
| Proposal[s] covered by the Variation Application | Dovey Junction Viaduct Refurbishment (the <b>Project</b> )                                                                                                                                                                                                                                                                                                                            |
| Licensable marine activities                     | Refurbishment construction works to Dovey Junction Viaduct and Painting and Grit Blasting (the <b>Proposed Activities</b> )                                                                                                                                                                                                                                                           |
| Marine Plan area                                 | Welsh inshore region and Welsh offshore region                                                                                                                                                                                                                                                                                                                                        |
| Variation Application documents:                 | CML2227-V01 - Variation Application Form - 27 June 2023<br><br>CML2227 - IW01412 - Dovey Junction Phase 2B Lighting Management Plan V2 - 03 July 2023                                                                                                                                                                                                                                 |

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|  | <p>CML2227-V01 - IW01412 _ Dovey Junction Phase 2B Access Plan - 27 June 2023</p> <p>CML2227-V01 - Dovey Junction Phase 2B Construction Methodology - 27 June 2023</p> <p>CML2227-V01 - Dovey Junction Viaduct - Comparison between Phase 1 &amp; Phase 2 Works - 27 June 2023</p> <p>CML2227-V01 - Dovey Junction Viaduct No1 - Saltmarsh Habitat Assessment - 2023 - Rev 2 - 27 June 2023</p> <p>CML2227-V01 - IW01412 - Dovey Junction Phase 2B ERA - 27 June 2023</p> <p>CML2227-V01 - IW01412 _ Dovey Junction Phase 2B _ Environmental Mitigation Measures - 27 June 2023</p> <p>CML2227v1 Dovey Phase 2B Annotated Aerial Photo - 04 August 2023</p> <p>CML2227v1 Dovey Phase 2B Dark Area Activities listed - 04 August 2023</p> |
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## **2 VARIATION APPLICATION PROCEDURE**

### **2.1 The Variation Application**

The Variation Application was accepted by Natural Resources Wales (**NRW**) considered duly made on **29 June 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 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 13 July 2023, due to their particular expertise and the responses received from them during the original consultation. These bodies were consulted for a period of 14 days.

| <b>Consultee</b> | <b>Response received (Y/N)</b> | <b>Date(s) of receipt</b>                                |
|------------------|--------------------------------|----------------------------------------------------------|
| NRW              | Y                              | 27 July 2023<br><br>03 August 2023<br><br>11 August 2023 |

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 seabed and the seashore, 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 **CML2227 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.

### **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**

Impacts on the listed species *Lutra lutra* (otters) have been fully considered under section 4.1.3. 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 variation application sought to add additional refurbishment activities to the licence and provided an updated lighting management plan to mitigate any adverse effects on otters (*Lutra lutra*) within the vicinity of the works.

The original HRA was updated to include the additional refurbishment activities and was subsequently submitted to NRW for review, alongside the updated lighting management plan. The conclusion of the previous assessment remained unchanged in the updated HRA.

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 Site(s) when undertaken in accordance with appropriate conditions, i.e. the implementation of the actions outlined in the Lighting Management Plan, as per Condition 3.21.

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#### **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 **CML2227 Decision Document** for conclusions on European Protected Species. These conclusions have not been affected by this variation application and therefore are still considered valid.

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 **CML2227 Decision Document** for conclusions on Sites of Special Scientific Interest (SSSIs). These conclusions have not been affected by this variation application and therefore are still considered valid.

Applicant has been informed that the marine licence does not preclude them from the requirements under other legislation for the activities associated with this licence outside the marine licensable area.

#### **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**

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

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

Please refer to **CML2227 Decision Document** for conclusions on environmental matters. These conclusions have not been affected by this variation application and therefore are still considered valid.

**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 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**

No comments or representations were received in relation to the need to protect human health and no other concerns in this regard have been identified.

**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 **CML2227 Decision Document** for conclusions on interference with legitimate uses of the sea. These conclusions have not been affected by this variation application and therefore are still considered valid.

**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

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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.

**4.4 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 WNMP 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**

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**

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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**

|                                                                                    |                                |                                                                                                         |
|------------------------------------------------------------------------------------|--------------------------------|---------------------------------------------------------------------------------------------------------|
| <b>Report by:</b> Jack Thompson<br><br><b>Position:</b> Permitting Officer         | <b>Date:</b><br>08 August 2023 | <b>Signed:</b><br> |
| <b>Authorised by:</b><br>Emmer Litt<br><br><b>Position:</b> Permitting Team Leader | <b>Date:</b><br>14 August 2023 | <b>Signed:</b><br>  |

**ANNEX 1**

**Additional conditions imposed and reasons for those conditions**

Condition 3.21: Lighting Plan has been updated following the submission of an updated lighting management plan. It now reads as follows:

“Any proposed changes to the actions outlined in the Lighting Management Plan must be submitted to, and approved in writing by, the Licensing Authority prior to any changes being enacted”.

**Additional activities**

**Table 1          Licensed Activities**

| <b>Activity 1          Refurbishment construction works to Dovey Junction Viaduct</b> |                                                                                                                                                                                                                                                                                                                                                                                 |
|---------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Type of Licensed Activity                                                             | Construction, Alteration or Improvement                                                                                                                                                                                                                                                                                                                                         |
| Description                                                                           | Change horizontal and diagonal wailings, changing steel ties, protecting existing services to the structure by split ducting, installation of scaffolding, replacement of piles, replacement of corbels and main deck beams, replacement of timber deck walkway, replacement of associated metal fixings, replacement of existing hand railing, track renewal and re-alignment. |
| Material types to be removed or deposited                                             | Timber, Iron/ Steel                                                                                                                                                                                                                                                                                                                                                             |
| Quantities/Dimensions                                                                 | 19 piles, 11 lower horizontal wailings, 19 diagonal wailings                                                                                                                                                                                                                                                                                                                    |

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## **ANNEX 2**

### **Existing Marine Licence Decision Document**

See document entitled "CML2227 Decision Document".

### **Original conditions prior to variation**

#### **3.21 Lighting Plan**

The Licence Holder must ensure that any actions outlined in the Lighting Plan submitted **15 September 2022** are implemented. Any proposed changes to the actions outlined in the documents must be submitted to and agreed in writing by the Licensing Authority prior to any changes being enacted.

### **Original activities prior to variation**

**Table 1      Licensed Activities**

| <b>Activity 2      Refurbishment construction works to Dovey Junction Viaduct</b> |                                                                                                                                                                                  |
|-----------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Type of Licensed Activity                                                         | Construction, Alteration or Improvement                                                                                                                                          |
| Description                                                                       | Change horizontal and diagonal wailings, changing steel ties, protecting existing services to the structure by split ducting, installation of scaffolding, replacement of piles. |
| Material types to be removed or deposited                                         | Timber, Iron/ Steel                                                                                                                                                              |
| Quantities/Dimensions                                                             | 19 piles, 11 lower horizontal wailings, 19 diagonal wailings,                                                                                                                    |