

# Marine Licensing Decision

The Marine and Coastal Access Act (2009)

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**Applicant:** Welsh Water

**Application reference no:** RML2351

Central pumping station outfall clearance  
work, Cardiff East

***28 November 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 marine licence sought by the Application subject to the conditions set out in Annex 1.

This decision document:

- explains how the application has been determined, having regard to the relevant legal framework outlined in section 4;
- 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:<br><br>Organisation name: Welsh Water<br>Company number: 02366777<br>Address: Linea, Fortran Road, St. Mellons, Cardiff, CF3 0LT                                                                                                                                                                                                                                                        |
| Application Reference Number           | RML2351                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Date Application was duly made         | 10 October 2023                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Proposal[s] covered by the application | Central pumping station outfall clearance work, Cardiff East (the <b>Project</b> )                                                                                                                                                                                                                                                                                                                                                       |
| Licensable marine activities           | Clearance/removal of beach material in and around outfalls (the <b>Proposed Activities</b> )                                                                                                                                                                                                                                                                                                                                             |
| Marine Plan area                       | Welsh inshore region and Welsh offshore region                                                                                                                                                                                                                                                                                                                                                                                           |
| Application documents:                 | RML2351 Application Form - 04/09/2023<br><br>RML2351 Images - 04/09/2023<br><br>RML2351 Navigation Safety Approval for band 1 Marine licensing activity - Cardiff, CF10 4LJ - 04/09/2023<br><br>RML2351 Scope Plan - Cardiff Treatment Works, Outfall - 04/09/2023<br><br>RML2351 Consent to carry out notifiable operations_C0033261_21082023 - 04/09/2023<br><br>RML2351 Excavate Silt at Cardiff Outfall (Rev 1)27-10-23 - 30/10/2023 |

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|  |                                         |
|--|-----------------------------------------|
|  | RML2351 Coordinates - 15/09/2023        |
|  | RML2351 WAT Correspondence - 10/10/2023 |

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## **2 APPLICATION PROCEDURE**

### **2.1 The Application**

The Application was accepted by Natural Resources Wales (**NRW**) and considered duly made on 10 October 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 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 that 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 Notice**

As required by s. 68 of the Marine and Coastal Access Act 2009 (the 2009 Act), notice was given to Cardiff Council on 30 October 2023. NRW considered that notice of this application should not be published.

## **3 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 4 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 3.1)
- the need to protect human health (see section 3.2)
- the need to prevent interference with legitimate uses of the sea (see section 3.3)
- 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 3.1 to 3.5 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 3.1 to 3.5 below)
- such other matters as it thinks relevant (see section 3.5 below)

### **3.1 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 in particular considered the relevant environmental legislation set out below.

### **3.1.1 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 that proposals for development that would worsen the status of a body of water, or jeopardise its attainment of 'good' surface water status should be rejected.

Under the Water Environment Regulations, NRW must exercise its relevant functions so as 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:

- Severn Lower - GB530905415401

A NRW is satisfied 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.

### **3.1.2 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.

### **3.1.3 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.

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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, however Ramsar status is considered by NRW as a matter of policy in its decision-making.

**b) Factors relevant to our determination**

The Project is located in the following European Protected Sites:

- Severn Estuary SPA
- Severn Estuary SAC

The Project is located in the following Ramsar Site:

- Severn Estuary Ramsar

A HRA was conducted to determine whether the works would detrimentally impact the sites listed above. A long-arm excavator will be used to remove stone, silt and shingle (approximately 1m in depth) from the channel obstructing discharge from the asset and during this excavation, there is potential for sediment to be displaced and redistributed, potentially smothering habitat features. Turbid waters can also have detrimental impacts on birds as they decrease their ability to find food or detect predators and prey and may also smother food sources as well as suitable spawning habitats. However, given the small scale and short term nature of the works, no likely significant effect is expected.

Concerns regarding noise, both above and below water, and the potential pollution risk due to the use of plant were noted. Following discussions with the applicant, a number of mitigation measures have been included within their method statement:

- Plant will be inspected prior to use and then weekly to ensure it is fit for use.
- Any re-fuelling that is required at site will be completed away from any water course or open water.
- Spill kits will be available in case of any spillages.
- Ensure that the tides are checked and monitored prior to any works commencing, works are to be carried out at low water and ideally during a neap tide.
- Work to only take place during periods of low tide, avoiding (+/- 2hours) from high tide.
- Visual inspection of the area to be undertaken before work starts, and at a regular interval (approximately every 2 hours) during the operation recording findings (date, time, comments and photographic evidence).
- If any birds or wildlife identified in working area, work to be halted and escalated to NRW immediately.

Standard pollution prevention conditions such as the use of bunded storage facilities and ensuring equipment, machinery and PPE are washed prior to use will also be applied to the licence,

NRW advisory were consulted and agreed with the conclusions of the HRA and were content with the mitigation proposed. 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 the European Sites or Ramsar Site when undertaken in accordance with appropriate conditions.

**3.1.4 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.

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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 when undertaken in accordance with appropriate conditions.

**3.1.5 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 the Proposed Activities do not impact on:

- Severn Estuary SSSI

when undertaken in accordance with appropriate conditions. A separate SSSI assent has been granted.

**3.1.6 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 when undertaken in accordance with appropriate conditions.

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

**IN SUMMARY**, having considered the need to protect the environment, including the matters set out in 3.1.1 to 3.1.6 and all other matters relevant to 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.

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

### **3.3 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.

**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.

### **3.4 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**

This decision has been taken in accordance with marine policy as set out in the MPS and the WNMP.

### **3.5 Other matters NRW thinks relevant**

#### **3.5.1 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.

#### **3.5.2 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.

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**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.

**3.6 Conclusions and Recommendations**

Based on all the information available, and having regard to all relevant considerations, 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 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.

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**AUTHORISATION**

|                                                                         |                                     |                                                                                                    |
|-------------------------------------------------------------------------|-------------------------------------|----------------------------------------------------------------------------------------------------|
| Report by: Jack Thompson<br><br>Position: Marine Licencing Officer      | Date: 17<br>November<br>2023        | Signed:<br><br> |
| Authorised by: Emmer Litt<br><br>Position: Marine Licensing Team Leader | Date:<br><br>24<br>November<br>2023 | Signed:<br><br>  |

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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**

- 3.1.1** The Licence Holder must notify the Licensing Authority no less than **5 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 **5 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 **5 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 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.*

##### **3.3 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 **zone27@hmcg.gov.uk**.

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*Reason: To ensure the safety of navigation.*

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

### **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 Licensed activities 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 the authorised 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.*

### **3.8 Accident or Emergency**

- 3.8.1** 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.*

- 3.8.2** 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.

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

### **3.9 Distribution of Copies of this Licence**

The Licence Holder is required to ensure that a copy of this Licence and any special conditions thereto is given to:

- All agent(s), contractor(s) and sub-contractor(s) whose names have been provided to the Licensing Authority pursuant to condition 3.2; and
- The Masters of any vessels and transport managers responsible for the vehicles employed in the pursuance of this Licence whose details have been submitted to the Licensing Authority pursuant to condition 3.4.

*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.*

### **3.10 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 agents, contractors, subcontractors 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**

### **3.11 Notified Contractors, Vessels and/or Vehicles only to Carry out Licensed Activities**

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(s), contractor(s), sub-contractor(s) vessels 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*

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

### **3.12 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.*

### **3.13 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**

### **3.14 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 not 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**

### **3.15 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.*

### **3.16 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.*

### **3.17 Coatings**

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The Licence Holder must ensure that any coatings/treatments used in carrying out the Licensed Activities are suitable for use in the marine environment and are used in accordance with best environmental practice.

*Reason: To ensure hazardous chemicals that may be toxic, persistent or bio-accumulative are not released into the marine environment and to minimise the risk of marine pollution incidents by adopting best practice techniques.*

### **3.18 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 Works must cease immediately.

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

### **3.19 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**

### **3.20 Removal Activity – Artefacts**

The Licence Holder must ensure that any artefacts found during the Licensed Activities are reported through the Marine Portable Antiquities Scheme.

*Reason: To ensure all archaeological finds are reported.*