



Marine Licensing Variation Decision

The Marine and Coastal Access Act (2009)

Applicant: Dyer & Butler Ltd

Application reference no: CML2280v2

Pwll Sea Wall Maintenance

Lougher Estuary

16 October 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 variation to the Existing Marine Licence (see Annex 2) sought by the Variation Application subject to the additional conditions set out in Annex 1.

This decision document:

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

1 APPLICATION DETAILS

1.1 The Variation Application

Applicant name and address	The Applicant is the company set out below: Company name: Dyer & Butler Ltd Company number: 01450372 Address: Abel Smith House, Gunnels Wood Road, Stevenage, Hertfordshire, England, SG1 2ST
Variation Application reference number	CML2280v2
Existing Marine Licence reference number	CML2280v1
Date Variation Application was duly made	06 September 2023
Description of variation	Marine licence varied to update methodology to include the filling of voids using concrete poured from a vehicle.
Proposal[s] covered by the Variation Application	Pwll Sea Wall Maintenance (the Project)
Licensable marine activities	• Masonry Repairs • Vegetation Clearance - <i>removal of saplings from masonry</i> • Repairs of a minor nature (e.g., reseating loose concrete embankment material) • Filling of voids using concrete poured from a vehicle (the Proposed Activities)
Marine Plan area	Welsh inshore region and Welsh offshore region

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Variation Application documents:	CML2280-V02 - Variation Application Form - 01 September 2023 CML2280-V02 - Appendix D - TBS001 - Pwll – Void - 01 September 2023 CML2280-V02 - Pwll Sea Defences - 1801 - EV000864-AA-HRA-2023 – 3 - 11 October 2023
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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 06 September 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 11 September, due to their particular expertise and the responses received from them during the original consultation. These bodies were consulted for a period of 28 days. Those bodies have responded to the consultation an 'Y' can be found in the response received column, those who did not respond to consultation an 'N' can be found in the response received column:

Consultee	Response received (Y/N)	Date(s) of receipt
NRW	Y	2 responses received between 25 September and 09 October

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

4 BASIS FOR OUR DECISION

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

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

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

4.1 The need to protect the environment:

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

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

4.1.1 Water Framework Directive, Groundwater Directive and Water Environment Regulations

(a) The legal framework

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

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

(b) Factors relevant to our determination

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In addition to the conclusions outlined in CML2280 Decision Document, NRW has considered additional impacts of this variation application on the following WFD waterbodies:

- Bury Inlet Outer (GB641008180000)

A Water Framework Directive Compliance Assessment has been updated for the Proposed Activities and taken into account in this decision. A WFD stage 1 screening assessment has been completed and the activities have been ruled out as not requiring any further 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.

Further details are described within the Water Framework Directive Compliance Assessment and licence CML2280 Decision Document (Annex 2).

4.1.2 Biodiversity and resilience of ecosystems duty

(a) The legal framework

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

(b) Factors relevant to our determination

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

4.1.3 European Protected Sites and Ramsar Sites

(a) The legal framework

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

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

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

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

(b) Factors relevant to our determination

The Project may affect the following European Protected Sites:

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- Carmarthen Bay SAC
- Burry Inlet and Carmarthen SPA
- Bury Inlet RAMSAR

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

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

During consultation, NRW Advisory were concerned that due to the change in methodology, and the fact that works were now extending over the winter, there was potential to disturb overwintering birds. NRW Advisory noted that the applicant had agreed to work at low tide; however, to ensure this was enforceable and that appropriate mitigation was implemented, they advised a condition will be needed to ensure that no works should take place within 2 hours either side of high tide between September to March inclusive.

The Licence Holder was informed of the proposed condition to determine whether the timing restrictions were suitable for the works being conducted. The Licence Holder indicated that it would be difficult to comply with the 2 hour buffer as the tide is going out as they need to set up equipment and pour the concrete as soon as possible to ensure maximum cure time. They could, however, comply with the 2 hour buffer as the tide was coming in.

NRW Advisory agreed with the condition limiting the works within 2 hours of high tide as the Licensed Activities are short term and small scale. NRW Advisory were content that impacts to the European Protected sites will be small and that an appropriate mitigation in the form of timing restriction has been implemented (see Annex 1).

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. licence condition 3.20 (which ensures a toolbox talk is carried for European Otter out prior to commencement of Licensed Activities) and 3.21 (which limits the timing of Licensed Activities)

Further details are described within the Habitats Regulations Assessment and licence CML2280 Decision Document (Annex 2).

4.1.4 European Protected Species

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.

(a) Factors relevant to our determination

Please refer to section 4.1.4(b) of CML2280 Decision Document (Annex 2).

4.1.5 Marine Conservation Zones

(a) The legal framework

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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

Please refer to section 4.1.5(b) of licence CML2280 Decision Document (Annex 2).

4.1.6 Sites of Special Scientific Interest (SSSIs)**(a) The legal framework**

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

(b) Factors relevant to our determination

Please refer to section 4.1.6(b) of licence CML2280 Decision Document (Annex 2).

4.1.7 The Waste (England and Wales) Regulations 2011**(a) The legal framework**

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

(b) Factors relevant to our determination

Please refer to section 4.1.7(b) of licence CML2280 Decision Document (Annex 2).

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

Please refer to section 4.1.8(b) of licence CML2280 Decision Document (Annex 2).

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

Please refer to section 4.1.9(b) of licence CML2280 Decision Document (Annex 2).

4.2 The need to protect human health

Please refer to section 4.2 of licence CML2280 Decision Document (Annex 2).

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

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Please refer to section 4.3 of licence CML2280 Decision Document (Annex 2).

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

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

Please refer to section 4.4 of licence CML2280 Decision Document (Annex 2).

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

Please refer to section 4.5 of licence CML2280 Decision Document (Annex 2).

4.4 Marine Policy Documents**(a) The Legal framework**

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

UK Marine Policy Statement 2011 (MPS)

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

Welsh National Marine Plan (WNMP)

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

(b) Our determination**UK Marine Policy Statement 2011**

Please refer to section 4.6 of licence CML2280 Decision Document (Annex 2).

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

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

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

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

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

(b) Our determination

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

5 Conclusions and Recommendations

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

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

AUTHORISATION

Report by: Jack Thompson Position: Marine Licencing Officer	Date: 11 October 2023	Signed: 
Authorised by: Emmer Litt Position: Marine Licensing Team Leader	Date: 13 October 2023	Signed: 

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ANNEX 1

Additional conditions imposed and reasons for those conditions

Condition 3.21 Timing Restrictions

The licence holder must ensure that no works are conducted within 2 hours prior to high tide, without prior written approval from the Licensing Authority.

Reason: To minimise disturbance impacts to overwintering birds.

ANNEX 2

Existing Marine Licence Decision Document

CML2280 Decision Document:

<https://publicregister.naturalresources.wales/Search/Download?RecordId=134606>