

To: Natural Resources Wales

Ref: RML2420

From: ABPmer, BCLP, Quod on behalf of ABP

Date: 14 August 2024

Subject: Technical Note 2: Future Port Talbot Ground Investigations Marine Licence Application (RML2420) response to comments from Natural Resources Wales

Overview

This second Technical Note in relation to marine licence application RML2420, provides additional information as requested by Natural Resources Wales (NRW) following receipt of a Marine Advice Memo from the NRW Marine Area Management and Advice Team (memo dated 26 July 2024).

Following receipt of the Marine Advice Memo two meetings were held with NRW on 31 July and 2 August 2024. It was agreed there that all issues raised by NRW advisory team had been resolved with the exception of the justification for the proposed borehole (BH) location BH122 and CPT (Cone Penetration Testing¹) locations CPT 105, 109 and 110 that give rise to potential impacts on the peat and clay exposures designated under Section 7 of the Environment (Wales) Act 2016 as Habitats of Principle Importance to Wales.

This Technical Note addresses the comments raised and provides details on an alternative sampling methodology for the BH and CPTs located on the peat and clay exposures habitat. It also sets out the needs case and justification for sampling within the wider legal and planning context in which the marine licence application is made and determined. This includes demonstrating the process which has been followed by Associated British Ports (ABP) in adhering to the mitigation hierarchy in line with the relevant policies of the Welsh National Marine Plan.

ABP has reviewed the main aspects of the policy context that applies to the determination of the marine licence in response to the NRW request for ABP to outline the “exceptional circumstances” that exist in relation to the marine licence application, and which would support its approval. That exercise and its conclusion has to be considered in the wider context of the marine licence and the Ground Investigation (GI) works it authorises, being a critical initial stage of site investigation to be able to properly assess the implications for the design and development of the ABP Floating Offshore Wind (‘FLOW’) proposals at Port Talbot.

In April 2015 the Welsh Assembly (now known as the Welsh Parliament or ‘Senedd Cymru’) passed into law The Wellbeing of Future Generations (Wales) Act, (the ‘WFG Act’) which is primary legislation requiring all Wales’ based public bodies – including NRW, local authorities, etc - to put long-term sustainability at the forefront of their thinking, and to work with other organisations and the public to prevent and tackle ongoing social, environmental, and economic problems.

As previously discussed with NRW, the ABP FLOW proposals are critical to the Welsh Government's (WG) ambitions to deliver 4.5GW of FLOW capacity in the Celtic Sea by 2030. Without the GI information, the FLOW project cannot be designed and developed and hence cannot be delivered, significantly impacting on WG net zero ambitions. Planning Policy Wales (PPW) is clear that all parties

¹ Samples will be collected at CPT sample stations using a Mostap sampler.

need to consider at an early stage how to minimise and mitigate environmental impacts, with encouragement towards collaboration between applicants and NRW. Clearly, the proposed GI works are vital to ensuring appropriate consideration can be given. For the reasons set out in this Technical Note, exceptional circumstances clearly apply to enable the granting of the marine licence application. Any prevention in the granting of a marine licence application would be contrary to significant aspects of policy and impact significantly on the WG's ability to meet their renewable energy targets and would at the very least delay delivery of significant investment, including job creation, at Port Talbot.

Key Issue

Comment

The following comment was provided by NRW:

NRW (A) advise that the applicant revise the proposed methodology and present options to sample the survey area intertidally rather than subtidally (with the use of a jack-up barge), taking into account the mitigation measures previously identified in Table 3 of the FPT Ground Investigations Method Statement, in order to protect the habitat during the survey operations. Whilst we acknowledge the risks associated with working intertidally, we believe this is a viable option which would then avoid the irreversible damage to 18.10m² of peat and clay exposures as intertidal sampling could be undertaken via traversal of other substrate types on the shore.

Alternative sampling methodology and proposed plant

The engineering design team, contractor appointed to undertake the GI works and an EcoW (Ecological Clerk of Works) from ABPmer met on site on 6 August 2024 to conduct a walkover to assess feasibility of sampling intertidally using a tracked CPT rig. The team considered the locations of the CPT locations 105, 109 and 110 and location of BH122 on the northern foreshore in relation to the peat and clay exposures habitat in order to determine the optimum method for sampling, taking into account 1) the need to avoid sensitive habitat as far as possible; and 2) operational (tidal) and plant constraints. This has resulted in changes to the proposed sampling methodology for the GI works.

The updated positions of sample stations and access routes are shown in Figure . The following adjustments to the sampling methodology have been made:

- BH122 has been removed and a new borehole location added (BH123). One CPT sample (CPT102) will be collected from the same location as BH123. The contractor will aim to position the spud legs of the jack-up barge so that only 2 of the 4 legs are positioned on the peat and clay exposures habitat.
- Stations CPT105 and CPT109 have been moved to the edge of the peat and clay exposures to avoid tracking over the habitat and will be sampled intertidally using a tracked CPT rig.
- Stations CPT103, CPT107, CPT110 and CPT111 have been moved away from the peat and clay habitat. These stations will be carried out using a jack-up barge as previously described.
- The following CPT stations which were already located outside the peat and clay exposures habitat will now be sampled using the tracked CPT rig accessing the foreshore area from the land—CPT104, CPT106 and CPT108.

The review of the sample locations has determined that there is no other feasible methodology for sampling the one borehole that is required other than by using a jack-up barge. The contractor has considered the use of CPT rig for boreholes but has concluded that due to the narrow tidal window in

which the works can be undertaken (4 to 5 hours) the time pressure for undertaking the borehole is too great and hence represents an unacceptable risk to the health and safety of operatives and plant. This is because of the time required to set up on site and to drill to the required depth and to leave a sufficient time to enable removal of equipment prior to the tidal window closing. The possibility of multiple visits to achieve the required borehole depth was considered but given the buffer of time required to demobilise safely it was considered that it would place unacceptable time pressure on operations and that abandonment mid-drilling would compromise data collection.

The representative from the engineering design team confirmed that all other location options for the borehole had been considered. However, having one borehole to full depth in the peat and clay area is vital to determine the geotechnical properties (strength and stiffness) of the substrate materials in order to understand how they will behave, what the impacts may be and what mitigation strategies may be available.

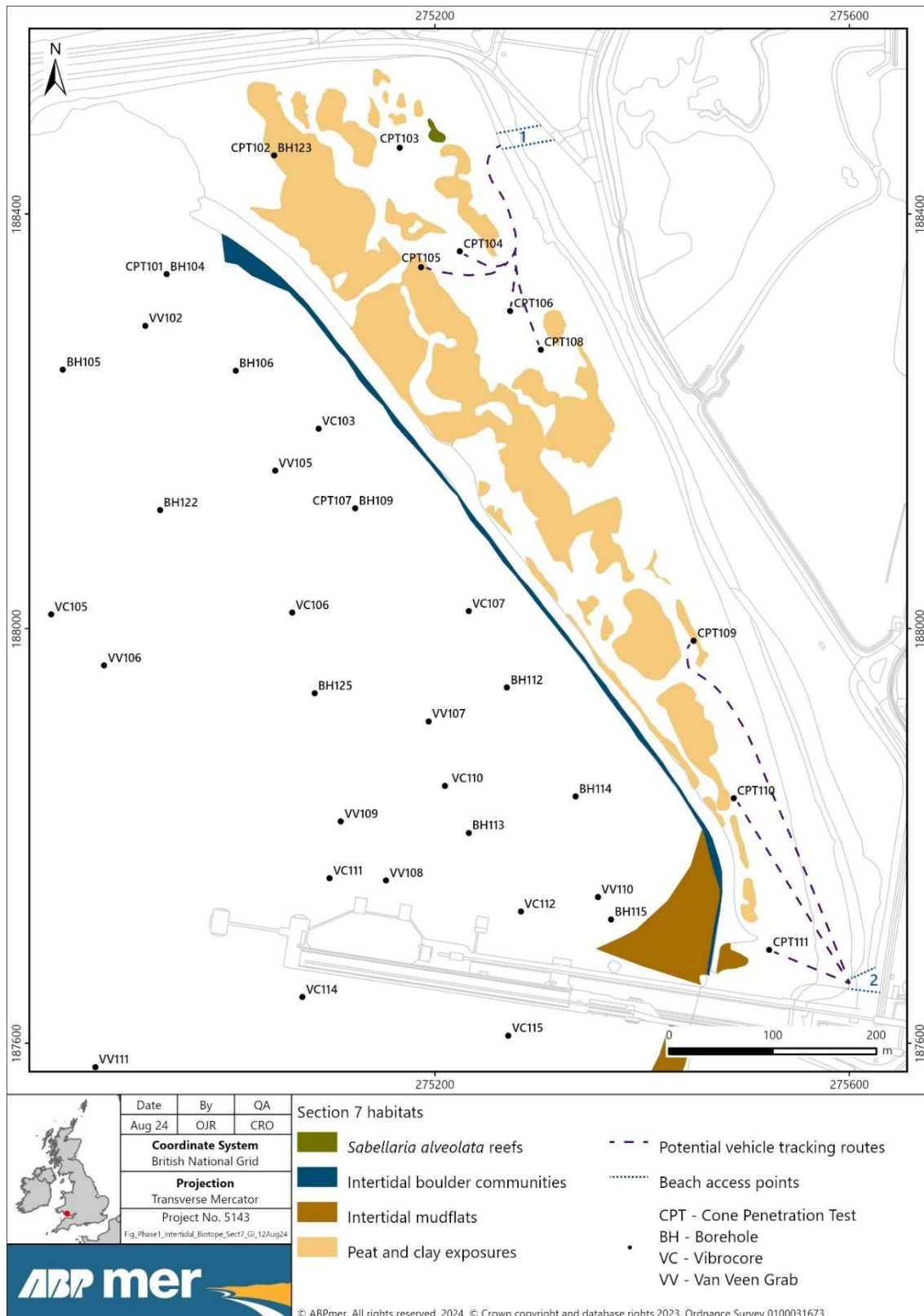


Figure 1: Revised location of Ground Investigation sampling stations on the northern foreshore and access routes.

Plant details are shown in Table 1. BH123 and CPT102 are programmed to be carried out by the shallow-draft jack-up barge *Causeway Giant 1*. The two CPT sampling stations (CPT105 and CPT109) will be carried out using the tracked CPT rig.

Table 1: Details of plant.

Type	Name	Details
Jack-up barge	Causeway Giant 1	15 m x 18 m C5, 28 m jack legs.
20 tonne CPT track mounted rig	CPT007	Vehicle = 7 m x 2.8 m. 2 No. tracks. Dimensions of each track = 4.5 m x 0.85 m (area = 3.825 m ²).

BH123 will be positioned at the edge of peat and clay so that 1 or 2 of the jack-up legs will not be located on the peat and clay. However, for the purposes of this note a worst case has been assumed where all legs are located on the habitat.

CPT sampling from land using the track mounted rig requires the sample to be collected from the centre of the vehicle. The two CPT stations located on peat and clay (CPT105 and CPT109) have been moved to the edge of the habitat and sampling has been planned to minimise the area of the CPT rig in contact with the peat and clay through careful positioning and by placing matting as shown in Figure 2.

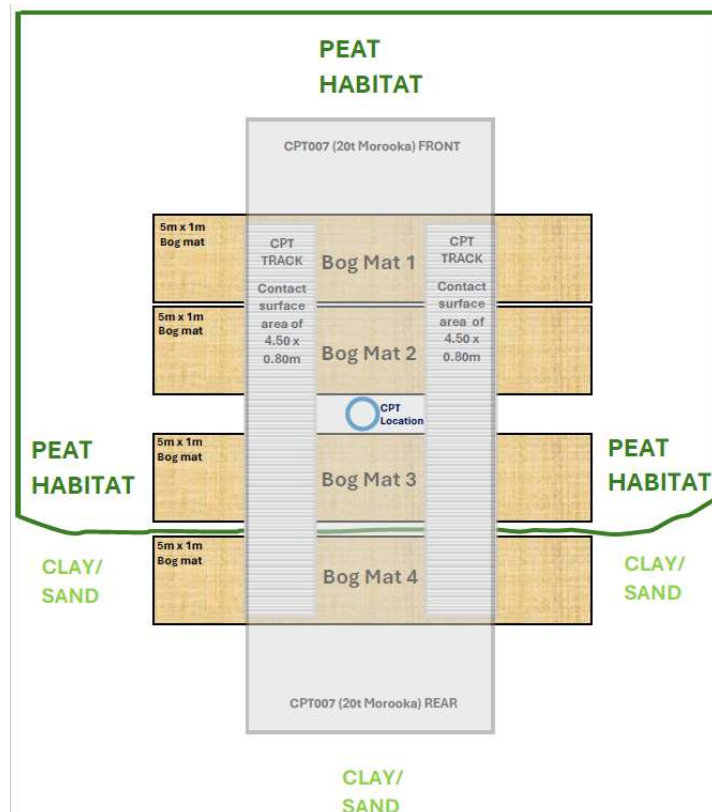


Figure 2: Planned position of the CPT rig and matting at stations CPT105 and CPT109.

The advantage of using a tracked CPT rig is that the load is lower compared to the loading of the spud legs of the jack-up barge² and therefore the impact on the peat and clay would be reduced. Once the tracked rig has been removed then recovery of the habitat would occur³. Track matting will be placed using a 13t tracked excavator which will be positioned away from the edge of the peat and clay using a boom to place the mats in position.

The initial calculation of the footprint on peat and clay exposures habitat from sampling all stations (i.e. 1 No. borehole and 3 No. CPT locations) subtidally was calculated as 18.12 m²⁴. The revised extent of the footprint on the habitat using the alternative method of sampling intertidally for CPTs and jack-up barge is shown in Table 2. The total has been reduced by 5.92 m² to 12.20 m². The footprint associated with the CPT rig (7.65 m²) would also be subjected to less compaction compared with sampling from the jack-up barge.

The total footprint of the works equates to 0.022% of the total area of peat and clay on the foreshore at Port Talbot.

Table 2: Revised footprints on peat and clay habitat.

Sample station	No. of samples	Footprint of sample (m ²) (Note 1)	Plant (Note 2)	Footprint of plant (m ²)	Total footprint in peat and clay exposures habitat (m ²)	Total area of peat and clay mapped at Port Talbot (m ²) (Note 3)	Footprint as a % of the mapped habitat
BH123	1	0.018	Jack-up barge	4.524	4.542	54,721	0.022
CPT102	1	0.003	Jack-up barge	0.000 (Note 2)	0.003		
CPT105 CPT109	2	0.007	CPT rig	7.650	7.657		
Totals	4	0.028		12.174	12.202		

Note 1: Based on the maximum diameter of a borehole of 150 mm and of diameter of CPT Mostap sampler of 65 mm.

Note 2: BH123 and CPT102 are co-located with both samples being taken from Causeway Giant 1 which remains at one station for both samples (i.e. no additional footprint for CPT102).

Note 3: Habitat extents are based on 2023 survey in ABPmer (2024)⁵.

² The ground bearing pressure of the tracked CPT rig is approximately 35kPa. The bearing pressure of the jack-up barge will vary depending on the deck loading but is approximately 1225kPa per leg, due to the weight which is supported over the relatively small contact surface area of the legs with the seabed.

³ Surface abrasion may remove algae and surface infauna and may result in the loss of some piddocks and damage to the clay or peat substratum (Tillin and Budd, 2008; Tillin *et al.*, 2020). The use of matting minimises abrasion and the spread of the vehicle load across the surface layer minimises compaction of peat and clay and provides potential for recolonisation by piddocks and other characterising species from the adjacent habitat.

⁴ See Technical Note submitted to NRW on 9 July 2024 from ABPmer titled 'Response to comments from Natural Resources Wales in relation to the Future Port Talbot Ground Investigations Marine Licence Application (RML2420)'.

⁵ ABPmer (2024). *Port Talbot Marine Ecology Surveys, Summary Report*, ABPmer Report No. R.4292.

Access ramp to enable alternative sampling methodology

To enable the CPT rig to track onto the foreshore track matting will be placed on the foreshore at two access points and some small boulders will be relocated using a small excavator. The planned access points are shown in Figure 1 and are outside the boundaries of Section 7 habitats. The EcoW would be on site during the establishment of access points.

Policy and Legislative Context of the Marine Licence Application

ABP has reviewed the main aspects of the policy and legislative context that applies to the determination of the marine licence in response to the NRW request for ABP to outline the “exceptional circumstances” that exist in relation to the marine licence application, and which would support its approval. That exercise and its conclusion has to be considered in the wider context of the marine licence and the GI works it authorises with these being a critical initial stage in the site investigation to be able to properly assess the implications for the design and development of the ABP FLOW proposals at Port Talbot. As previously discussed with NRW, the ABP FLOW proposals are critical to the WG ambitions to deliver 4.5GW of FLOW capacity in the Celtic Sea by 2030. Without the GI information, the FLOW project cannot be designed and developed and hence cannot be delivered, significantly impacting on WG net zero ambitions.

The impact on the peat and clay as a result of the GI works is exceptionally small, and when seen in the wider context of what the outcome of the GI works will enable, that is a further important consideration in determination of the marine licence application and presenting a clear and compelling case for approval of the marine licence application.

As explained below, ABP has achieved compliance with the requirements of the WNMP in respect of the marine licence application. There are no considerations that indicate approval of the marine licence for the GI Works should not be granted. Further there are other important considerations outside the WNMP that point strongly in favour of the GI Works being approved. Notably the use and upgrading of the existing port infrastructure at Port Talbot is an important opportunity recognised in the Local Development Plan and is strongly supported by WG planning policy as set out in Future Wales and Planning Policy Wales.

PPW is clear that all parties need to consider at an early stage how to minimise and mitigate environmental impacts, with encouragement towards collaboration between applicants and NRW. The locational considerations for the proposed GI works are such that it is not possible to avoid the peat and clay habitats, but the impacts of the works have been minimised as far as practicable by including a new methodology for sampling and by micro siting the Borehole and CPT locations. Clearly, the proposed GI works are vital to ensuring appropriate consideration can be given to the habitat in design and development of FLOW proposals at NPT, and the associated potential benefits of the associated works that may be consented would clearly outweigh the likely environment impacts for the reasons explained below. For the reasons set out below exceptional circumstances clearly apply to enable the granting of the marine licence application. Any prevention in the granting of a marine licence application would be contrary to significant aspects of policy and impact significantly on the WG’s ability to meet their renewable energy targets and would at the very least delay delivery significant investment, including job creation, at Port Talbot.

Wales National Marine Plan (November 2019)(“WNMP”)

The decision on the marine licence application should be undertaken *“in accordance with the appropriate marine policy documents, unless relevant considerations indicate otherwise”* (section 58(1) of the Marine and

Coastal Access Act 2009). To the extent that the decision relates to a marine plan area, any marine plan which is in effect for that area is an “appropriate marine policy” document (section 59(3) of the 2009 Act).

The WNMP is the marine plan for the marine area in which the GI works included in the marine licence application are located, and in accordance with which the marine licence should be determined, unless relevant considerations indicate otherwise. The WNMP guides the sustainable development of Wales’ marine areas to support economic, social, cultural and environmental objectives by setting out how proposals will be considered by decision makers, and how developers should have regard to the WNMP in developing their proposals in accordance with the WNMP.

There are a number of policies that are important in the context of the determination of the marine licence application. This includes the policies described below.

WNMP Policy GEN_01 sets out a clear presumption in favour of sustainable development in the WNMP area in order to contribute to Wales’ well-being goals. This is coupled with Policy GEN_02 which states that public authorities should take a proportionate, risk based approach to the application of relevant marine planning policies in decision making.

WNMP Policy ECON_01 compliments and backs up GEN_01 and GEN_02. ECON_01 provides that economically sustainable activities are to be encouraged particularly where they meet a number of factors including contributing to:

- the sustainable management of natural resources and supporting ecosystem resilience;
- a more resilient economy and employment opportunities particularly for coastal communities;
- protection and creation employment at all levels; and
- tackling poverty by supporting deprived coastal communities.

In this context Policy SOC_02 indicates that proposals that contribute to the well-being of coastal communities should also be encouraged.

As a significant infrastructure project ABPs FLOW proposals at Port Talbot present a very significant and substantial opportunity to deliver for Wales’s future Floating Offshore industry utilising the renewable natural resource represented by the wind in a sustainable manner over the longer term in line with WG energy and climate change policies. It also offers the opportunity to transform the local and regional community and their economy through the provision of investment, training and employment and the environment through bespoke biodiversity measures in a positive and cohesive manner to the benefit of stakeholders at all levels. The FLOW proposals at Port Talbot comply with the policies in the WNMP that are covered above.

As far as the environment is concerned WNMP Policy ENV 01 is directly relevant to the marine licence application ENV_01 states:

“Proposals should demonstrate how potential impacts on marine ecosystems have been taken into consideration and should, in order of preference:

- a) **avoid** adverse impacts; and/or*
- b) **minimise** impacts where they cannot be avoided; and/or*
- c) **mitigate** impacts where they cannot be minimised.*

If significant adverse impacts cannot be avoided, minimised or mitigated, proposals must present a clear and convincing case for proceeding.

Proposals that contribute to the protection, restoration and/or enhancement of marine ecosystems are encouraged."

ABP has complied with the policy. It has looked to avoid adverse impacts and where that has not been possible it has minimised them in so far as is reasonably practical whilst still achieving the objectives of the GI works (see further below). Following receipt of the NRW Marine Advice Memo dated 7 June 2024 that first raised concerns in relation to impacts of the GI works on the peat and clay habitat, ABP worked closely with the engineering design team for the GI and its appointed contractor to relocate as many sampling stations as possible to avoid impacts on the habitat. Using the mapped habitat extent⁶ each sample station was considered individually to determine whether it was essential to sample in that location, or whether it could be relocated. Wherever possible sampling stations have been moved to avoid impact on the peat and clay habitat.

Specifically, Borehole 122 that was located on the peat and clay habitat has been removed from the GI works. However, it remains the case that one borehole through the peat and clay habitat is essential as an absolute minimum to inform the design of the FLOW proposals. That borehole will be BH123 which can only be drilled from a jack up barge (as explained above). That borehole has been located with the aim that only 1 or 2 of the 4 legs of the jack up barge from which the borehole will be drilled will be located on the peat and clay habitat. Further CPT locations 105 and 109 will be sampled by CPT rig as opposed to jack-up barge which minimises the impact on the habitat. They have also been moved to the edge of the peat and clay habitat which also minimises the impact on the habitat. CPTs 107, 110 and 111 have been moved off the habitat to avoid any impact on it.

To provide reassurance that habitats would not be impacted by stations located in the northern part of the foreshore at Port Talbot a suitable precautionary buffer zone has been established (see Technical Note 1). The contractor is confident in achieving this buffer given the accuracy of the barge geopositioning system which has a tolerance of 1 m.

Through these actions it can be seen that ABP has sought to avoid impact on the peat and clay habitat wherever possible and where that has not been possible it has minimised the impact as far as reasonably practical. Having minimised the impacts mitigation is not required further to paragraph (c) of Policy ENV_01.

Having achieved compliance with the WNMP, in the view of ABP there are no relevant considerations that indicate the marine licence application should be determined otherwise than in accordance with the plan. It is noted that the peat and clay represent a Section 7 Habitat of Principle Importance but the relevant policy of WNMP, ENV_01, does not prohibit marine works from occurring on such habitat it requires that the effects are minimised or mitigated (if they cannot be minimised). It is noted that the WNMP post-dates the Environment (Wales) Act 2016, if the practical effect or intent of policy ENV_01 was to prohibit marine works in section 7 habitats then you would expect the policy to state that, it does not and hence whilst the importance of Section 7 habitat is acknowledged it does not represent a total constraint to works within such areas. In that context it is noted that the loss of habitat arising from the GI works is exceptionally small and for the reasons explained above and below, notably the fact the GI works are a critical initial stage in the

⁶ Mapped layers of Section 7 habitats are based on the extents in ABPmer (2024). *Port Talbot Marine Ecology Surveys, Summary Report*, ABPmer Report No. R.4292.

development of the FLOW proposals at Port Talbot, its loss is not a reason to determine the marine licence application otherwise than in accordance with the WNMP. It is noted that Section 7 itself is not prohibitive – the duty is to take all reasonable steps to maintain and enhance the living organisms and types of habitat included in any list. It is wholly reasonable to carry out initial assessment work to inform the design and development of the wider FLOW proposals in the circumstances

Ultimately the marine licence application for the GI works must be considered and determined in the wider context of the FLOW proposals at Port Talbot having regard to the compliance with WNMP that has been achieved as explained above and the further “Other relevant policy” that is described below. The GI works are a critical initial stage of site investigation to be able to properly assess the implications for the design and development of the ABP FLOW proposals. Without the GI works the design of the proposals and the assessment of their effects cannot be undertaken. The practical consequence of refusing the marine licence application and preventing the GI works going ahead will be to put in place a major barrier to ABPs ability to deliver the FLOW proposals. This will in turn have very significant implications on the ability of the WG to achieve renewable energy and climate change targets and will at the very least delay the significant investment into Port Talbot that ABP is wishing to undertake. That will have significant implications for all relevant stakeholders at local, regional and national level. That consequence needs to be considered and understood in the context of the exceptionally small impact on the peat and clay habitat that arises from the GI works and that as explained above are critical for the design of the FLOW proposals. Those proposals will ultimately be determined against the relevant marine and planning policy including the WNMP having regard to the impacts and benefits the proposals have and determining this marine licence application should not be seen as an early judgement on the determination of applications to be made in the future. The marine licence application can be justified on its own merit as a critical initial stage in the development of FLOW proposals at Port Talbot.

Other relevant policy

(i) Future Wales: The National Plan 2040 (February 2021)

Future Wales ('FW') was published by Welsh Government in February 2021 and constitutes the national development framework, setting out the direction of development in Wales to 2040 and represents the highest tier of the development plan in Wales. Alongside the Neath Port Talbot Local Plan (see below) it forms the development plan against which applications for planning permission at Port Talbot must be determined.

FW addresses key national priorities, including sustaining and developing a vibrant economy, achieving decarbonisation and climate-resilience and improving the health and well-being of communities. Future Wales is strongly influenced by PPW which established key principles for the planning system. As the most recent expression of national planning policy and as the highest tier, FW has primacy in the planning policy hierarchy.

FW recognises the dual climate and nature emergency as well as the inherent need to reenergise the Welsh economy in a sustainable way. The WG through FW and the Future Generation Commission seek to face these challenges and set out the direction or growth both in terms of investment in Infrastructure and undertaking development for the greater good of Wales and its people.

FW does not contain statements on all land use planning issues as set out in PPW, however importantly, it does state that (p.15): “deciding where to locate renewable energy generation technology is a spatial issue of such significance that national ambitions are unlikely to be achieved without national planning policies”. With regards to renewable energy, Future Wales notes:

“Wales can become a world leader in renewable energy technologies. Our wind and tidal resources, our potential for solar generation, our support for both large and community scaled projects and our commitment to ensuring the planning system provides a strong lead for renewable energy development, mean we are well placed to support the renewable sector, attract new investment, and reduce carbon emissions.” (p.48)

Future Wales also has a focus on the need to protect natural resources and states (page 48) that there is a need “to reverse biodiversity decline and assist nature recovery which is seen as being of imperative importance in its own right.”

Section 3 of FW sets out the expected WG outcomes that are “collectively a statement of where we want to be in 20 years’ time. Every part of Future Wales [...] is concerned with achieving the outcomes”.

Outcome 11 of FW states that “*decarbonisation commitments and renewable energy targets will be treated as opportunities to build a more resilient and equitable low-carbon economy*” and an aspiration that “*a Wales where people live [...] in places which are decarbonised and climate resilient*”.

FW is clear it aims to ensure that the planning system will help Wales “*lead the way in promoting and delivering a competitive, sustainable decarbonised society*” (p.56).

Policy 1 (Where Wales Will Grow) of FW identifies three National Growth Areas for Wales, which are complemented by Regional Growth Areas. One of the National Growth Areas is Swansea Bay and Llanelli, which includes the Port of Port Talbot.

Policy 17 is absolutely clear that WG “strongly supports the principle of developing renewable and low carbon energy from all technologies and at all scales to meet our future energy needs” and that “decision-makers must give significant weight in the need to meet Wales’s international commitments [...] by renewable means by 2030 in order to combat the climate emergency”.

The ABP FLOW proposals align very strongly with FW’s aim for Wales to become a world leader in renewable technologies, support investment and reduce carbon emissions. FW is clear that there is strong in principle support for renewable and low carbon energy proposals.

(ii) Neath Port Talbot Local Development Plan (2011 to 2026) (January 2016)

The Local Development Plan (‘LDP’) guides the future development for NPTC, and sets out where, when, and how much new development can take place during the plan period (2011 to 2026). Policy TR4.2 of the LDP identifies the site, including the peat and clay habitats, as a central part of a wider ‘Safeguarded Freight Facility’ at Port Talbot Docks, see Figure 3 below.

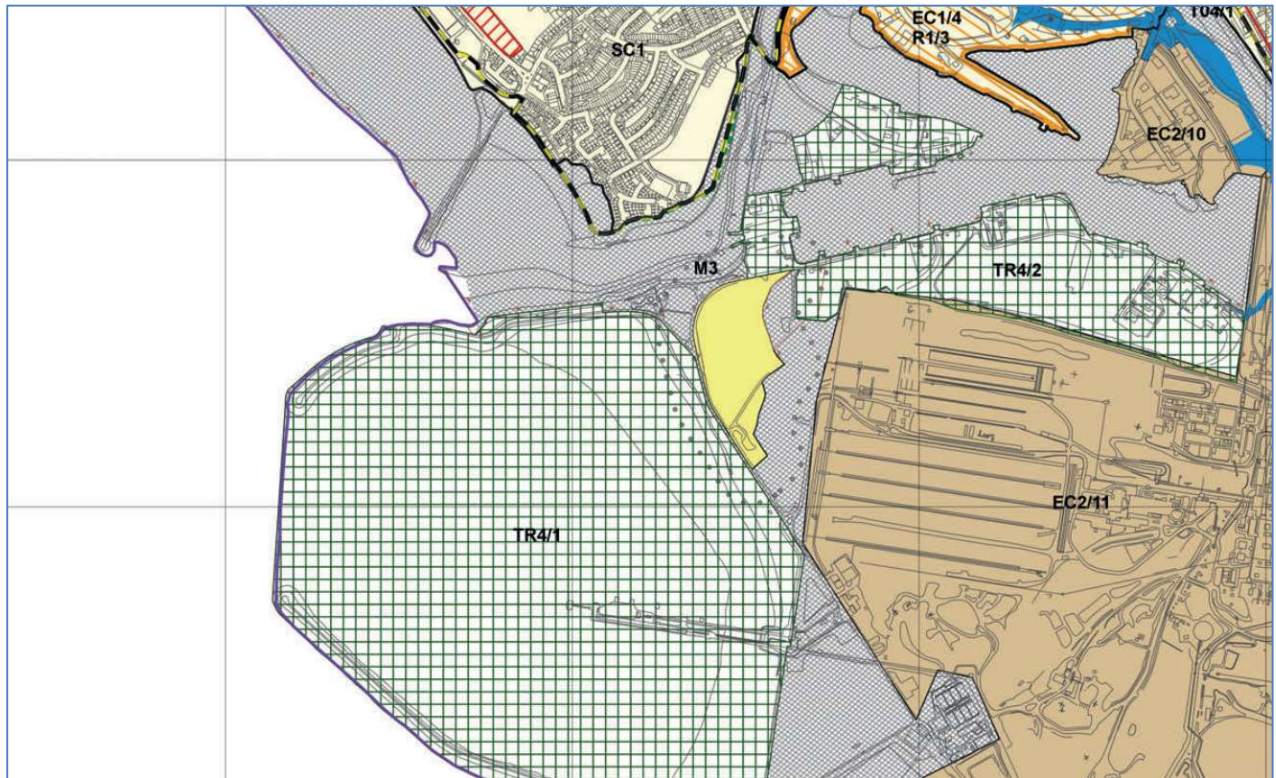


Figure 3: LDP Proposals Map (2016) Inset 44

Policy TR4.2 is clear that the Port Talbot Docks will be “safeguarded for the transportation of freight” to ensure adequate provision of facilities in recognition of the important role in supporting the local economy allowing goods to be transported by means other than road. This establishes the principle of future development at the Port, subject to addressing other relevant policy considerations.

It is notable further support for the ABP FLOW proposals is provided by Policy SP1 (Climate Change), SP4 (Infrastructure), SP5 (Development in the Coastal Corridor Strategy Area), SP6 (Development in the Valleys Strategy Area), SP11 (Employment Growth), EC3 (Employment Area Uses) and Policy SP18 (Renewable and Low Carbon Energy).

(iii) Planning Policy Wales (PPW) (Edition 12, February 2024)

PPW Edition 12 sets out the land use planning policies of the WG. The primary objective of PPW is to ensure that the planning system contributes towards the delivery of sustainable development and improves the social, economic, environmental and cultural wellbeing of Wales, as required by the Planning (Wales) Act 2015, the Wellbeing of Future Generations Act and other key legislation.

Of utmost importance in decision making is that the social, economic, environmental and cultural benefits are considered and assessed in accordance with the five ways of working to ensure a balanced assessment is carried out to implement the Well-being of Future Generations Act 2015. There will be occasions where benefits of a development outweigh others, with “a need to maximise contributions [of development] against all the well-being goals”.

The WG declared a climate emergency in 2019. The planning system plays a key role in tackling the climate emergency through the decarbonisation of the energy system and the sustainable management of natural resources.

Paragraph 5.9.1 sets out *"Local authorities should facilitate all forms of renewable and low carbon energy development and should seek cross-department co-operation to achieve this. In doing so, planning authorities should seek to ensure their area's full potential for renewable and low carbon energy generation is maximised and renewable energy targets are achieved."*

Paragraph 5.9.14 further sets out there *"should be a presumption in favour of [renewable and low carbon energy] development in identified areas, including an acceptance of landscape change, with clear criteria-based policies setting out detailed locational issues to be considered at the planning application stage"*.

Paragraph 5.9.19 notes that in decision making, planning authorities should take into account the contribution a proposal will make to meeting identified Welsh and UK targets; the contribution to cutting greenhouse gas emissions; and the wider environmental, social and economic benefits and opportunities from renewable and low carbon energy development while noting the need for proposals to take account of impact on the natural and historic environment.

Paragraph 6.4.4. notes the importance of biodiversity and ecosystem resilience, and the need to consider this at an early stage through consultation and collaboration with bodies such as NRW, setting out that *"all reasonable steps must be taken to maintain and enhance biodiversity and promote the resilience of ecosystems and these should be balanced with the wider economic and social needs of business and local communities. Where adverse effects on biodiversity and ecosystem resilience cannot be avoided, minimised or mitigated/restored, and as a last resort compensated for, it will be necessary to refuse planning permission"*.

It is acknowledged that paragraph 6.4.15 of PPW advocates for a step wise approach in relation to habitats that are considered to be irreplaceable, which should be safeguarded. However, PPW is not absolute in this regard and paragraph 6.4.43 does allow for either complete loss or deterioration of habitats in very exceptional circumstances. Those circumstances are clearly identifiable in the current situation.

(iv) Wales: Climate Change and Energy Legislation and Policy

The Wellbeing of Future Generations (Wales) Act 2015

In April 2015 the Welsh Assembly (now known as the Welsh Parliament or 'Senedd Cymru') passed into law The Wellbeing of Future Generations (Wales) Act, (the 'WFG Act') which is primary legislation requiring all Wales' based public bodies - such as NRW, local authorities, health boards etc - to put long-term sustainability at the forefront of their thinking, and to work with other organisations and the public to prevent and tackle ongoing social, environmental, and economic problems. The WFG Act was decided upon following an extensive consultation period known as the National Conversation. It passed into law in April 2015. The circumstances of the marine license application are wholly in accordance with the aims of the 2015 Act.

The Environment (Wales) Act 2016

In addition to the Section 7 duty listed above the Environment (Wales) Act 2016 set in place an obligation on the Welsh Government to reduce greenhouse gas emissions by 80% against 1990 levels by 2050. The

legislation also contains a duty (in Section 6) on public bodies to seek to maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions. Again the duty is not absolute and does not preclude the activity for which the marine licence is sought.

Prosperity for All: A Low Carbon Wales (2019)

WG published the document 'Prosperity for All: A Low Carbon Wales' in March 2019. The document outlines the Welsh Government's proposed approach to emissions reductions and transitioning to a low carbon economy in accordance with the required carbon cuts enshrined in the Environment (Wales) Act 2016. The marine licence application accords with the aims of this policy

(v) International Commitments

In addition to consideration of material UK and WG energy and climate policy and legislative provisions, appropriate weight must be given to international binding agreements in place to address the climate crisis.

The Paris Agreement (2016)

In December 2015, 195 countries adopted the first ever universal, legally binding global climate deal at the Paris Climate Conference ('COP21'). The Paris Agreement within the United Nations Framework Convention on Climate Change sets out a global action plan towards climate neutrality with the aims of stopping the increase in global average temperature to well below 20C above pre-industrial levels, and to pursue efforts to limit global warming to 1.5°C.

Moving to a low carbon economy is a globally shared goal and will require absolute emission reduction targets. The UK Government's commitment under the Paris Agreement links through to the Committee on Climate Changes' ('CCC') advice to both the UK and Welsh Governments on 'net zero' targets which have now, at both the UK and Welsh Government levels, been translated into new legislative provisions and targets leading to Net Zero by 2050.

While the Paris Agreement does not itself represent Government policy in the UK or Wales, the purpose of domestic and renewable energy and greenhouse gas reduction targets, which would be facilitated by the project, is to meet the UK's commitment in the Paris Agreement.

(vi) Summary of Planning Policy and Legislative Position

The key and clear themes of all levels of planning policy is strong support for projects which seek to promote decarbonisation, sustainability, sustainable economic growth, natural environment, amenity, and design. The ABP FLOW proposals remain at an early stage, with ABP seeking to engage collaboratively with NRW and other key stakeholders to influence design and ensure environmental impacts are minimised and mitigated as far as possible. The GI works that are the subject of the marine licence application are critical to that activity.

National legal commitments to achieving decarbonisation form an important framework against which this marine licence application should be considered. Prevailing national and local policy is supportive of the outcomes of the project, and there is clear existing safeguarding of the identified location for freight related activities.

The ABP FLOW proposals are absolutely critical to the WG's ambitions to deliver 4.5 GW of sustainable energy in the Celtic Sea by 2030, while the use and upgrading of the existing port infrastructure in the designated coastal corridor is an important opportunity recognised in the LDP, and strongly supported by WG, FW and PPW. The ABP FLOW proposals are also key to achieving WG climate change commitments.

The circumstances of this marine license application are clearly wholly exceptional and in accordance with policy and legislative requirements.

References

Tillin, H.M and Budd, G. (2008). *Ceramium* sp. and piddocks on eulittoral fossilised peat. In Tyler-Walters H. and Hiscock K. (eds) *Marine Life Information Network: Biology and Sensitivity Key Information Reviews*, [on-line]. Plymouth: Marine Biological Association of the United Kingdom. [cited 01-07-2024]. Available from: <https://www.marlin.ac.uk/habitat/detail/369>

Tillin, H.M., Marshall, C.M., & Garrard, S. L. (2020). *Mytilus edulis* and piddocks on eulittoral firm clay. In Tyler-Walters H. and Hiscock K. (eds) *Marine Life Information Network: Biology and Sensitivity Key Information Reviews*, [on-line]. Plymouth: Marine Biological Association of the United Kingdom. [cited 01-07-2024]. Available from: <https://www.marlin.ac.uk/habitat/detail/95>