

Sent by e mail to Phillip Rowell
cc All Consultation Bodies

20th December 2018

Dear Phillip,

**SCREENING AND SCOPING OPINION UNDER THE MARINE WORKS
(ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2007 (as amended)**

NEWPORT DOCKS PORT RELOCATION

I am writing further to your request for a screening and scoping opinion, dated 5th October 2018, made in accordance with The Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended) ("The Regulations").

The purpose of the Environmental Impact Assessment (EIA) screening procedure is to determine whether the proposed works require an Environmental Impact Assessment and submission of an Environmental Statement (ES). The purpose of the scoping procedure is to determine what information should be provided in the ES.

In reaching our Screening Opinion we have considered the proposed works against Schedule A1 and A2 of the above regulations. In reaching our scoping opinion we have had regard to the information provided in the "Newport Docks: Port Relocation Proposals Scoping Report", dated 5th October 2018, and considered the requirements of Schedule 3 of the Marine Works Regulations. We have also consulted with the bodies that we consider have an interest in the project by reason of their environmental responsibilities, or local or regional competences, as required by the above regulations, and had regard to their comments.

Screening Opinion

It is our opinion that the works fall within the categories of project listed within Schedule A2, paragraph 63 (Construction of harbours and port installation including fishing harbours (unless included in Schedule A1)) of the above regulations and a statutory Environmental Impact Assessment is required by virtue of the scale of the project and the likely significant impacts of the project, specifically with regard to the proximity of the project to designated sites. As the works are being carried out as part of the M4 Corridor around Newport compensatory measures, the project could also be considered within Schedule A1, paragraph 11. Construction of motorways and express roads, of the above regulations,

and is therefore considered to be a relevant project regarding Environmental Impact Assessment.

The Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended)

Scoping Opinion (SC1813)

Summary of the proposal

The Newport Docks Port Relocation Proposals encompass both land based civil engineering works to relocate existing commercial premises impacted by the motorway (M4CaN) scheme and marine engineering works in the South Dock and at Junction Cut (which forms the marine channel access from the Port's South Dock into North Dock). The Port Relocation Proposals have been designed to mitigate the serious detriment that would otherwise be caused to ABP's Port of Newport because of the construction and operation of the proposed motorway through the middle of the Port. In determining the overall package of measures, the overriding principle has been, and remains, one of equivalence, such that the Port is neither better nor worse off because of the construction and operation of the new section of motorway and its River Usk Crossing.

In summary the works comprise the following elements:

- 1) The relocation of existing facilities occupied by various port tenants who will be impacted by the construction and operation of the new section of motorway to the south of South Dock;
- 2) The provision of new ABP Central Workshops, Stores and Medical Centre, to replace those impacted by the construction of the new section of motorway;
- 3) The provision of various 'common-user' cargo storage areas;
- 4) The reconfiguration of the existing premises of various other port tenants;
- 5) New Quay works consisting of 303m of new quay and associated tie-ins on the north side of South Dock and associated dredging within South Dock together with appropriate disposal of dredged material;
- 6) The 'repurposing' of 250m of existing quay apron on the south side of South Dock, effectively providing this area with new heavy duty concrete paving;
- 7) The construction of a new swing bridge across a narrowed access to North Dock (the narrowing to occur as part of the M4CaN Scheme) to enable mobile harbour cranes and other port traffic to access both the eastern and western side of South Dock; and
- 8) The provision of necessary utilities infrastructure, comprising access roads and the provision of electricity, water and communications infrastructure.

The relocation proposals have two principal parts, namely:

- Land based Civils which includes building new premises on unoccupied land within the docks as set out by elements (1) to (4) above; and
- Marine Civils, which comprise elements (5) to (7) above.

Location

Newport Docks is located to the south of Newport on the western side of the River Usk. The docks consist of the North Dock and the South Dock which are connected via a channel known as Junction Cut. Vehicular access to Newport Docks is via East Way Road and West Way Road providing access to the east and west sides of the docks respectively.

Consultation Responses Received

In considering the scoping report, the Natural Resources Wales Permitting Service (NRW PS) consulted with various consultation bodies. The consultation bodies that responded are listed below:

- Natural Resources Wales Technical Experts (NRW TE)
- Maritime and Coastguard Agency (MCA)
- Royal Yachting Association (RYA)
- Trinity House Lighthouse Service (THLS)
- The Crown Estate
- Glamorgan Gwent Archaeological Trust
- Cadw
- NATS Safeguarding
- Newport City Council

0. General comments

- 0.1. Marine and coastal guidance produced by NRW that may provide useful information to help with your project is available here:
<https://naturalresources.wales/guidance-and-advice/business-sectors/marine/marine-and-coastal-guidance/?lang=en>
<https://naturalresources.wales/media/684594/gn13-scoping-an-environmental-impact-assessment-for-marine-developments.pdf>
- 0.2. The ES submitted should demonstrate consideration of the points raised in this scoping opinion. It is recommended that a table is provided in the ES summarising the scoping opinion comments and how they are addressed in the ES.
- 0.3. Where possible, NRW PS comments have been provided in relation to the specific sections, paragraphs and tables of the EIA Scoping Report entitled Newport Docks: Port Relocation Proposals: Environmental Statement Scoping Report, Request for Scoping Opinion under The Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended) ABPDK-DJV-EGN-ZG_GEN-RP-EN-0005.
- 0.4. The submitted ES must include information about:
 - A non-technical summary.
 - Project Description
 - Characterisation of receptors and assessment of impacts
 - Sources of natural environmental effects

- Existing information and data sources
- Cumulative and in-combination effects
- Biodiversity and nature conservation
- Statutory protected Nature Conservation Sites
- European Sites (SAC, SPA and Ramsar Sites)
- Sites of Special Scientific Interest (SSSI)
- European Protected Species
- Nationally Protected Species
- Section 7 of the Environment Act (Wales) 2016
- Landscape and seascape
- Cultural Heritage
- Physical Processes
- Flood and Coastal erosion risk
- Water, land and air quality.

1. Non-technical Summary

1.1. NRW has no comments to make regarding the Non-Technical Summary

2. Introduction to the project

2.1. NRW PS note that the same Scoping Report has also been submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. NRW PS previously provided a consultation response to Newport City Council recommending that a Scoping report be prepared and submitted under the Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended) to ensure that risks associated with the marine environment can be fully considered by the appropriate experts through formal consultation. NRW PS are pleased that this advice has been taken.

3. Geographical boundaries

3.1. NRW PS is generally satisfied with the provision of information relating to the location of the scheme as described in Chapter 2 of the scoping report and has no further comments.

4. The Port Relocation Proposals (Chapters 2.4 – 2.5 of Scoping Report)

4.1. **Flood Risk – 2.4.10 – 2.4.17.** It is unclear from the Scoping Report whether 'ground raising' is proposed to occur in any intertidal areas. The ES must consider the potential for loss of saltmarsh and other intertidal habitats and assess it appropriately. If there is a potential loss of intertidal habitat resulting from the proposed ground raising required by the scheme, impacts of coastal squeeze and the need for habitat creation will need to be considered. The ES must clearly demonstrate all areas where ground raising/flood defence schemes will occur, along with an assessment of its effects and any proposed mitigation.

- 4.2. **New swing bridge – 2.4.33 – 2.4.35.** Our understanding is that all preparatory construction works to support the swing bridge are to be part of the overhead bridge protection measures and therefore part of the M4CaN works. It appears that the relocation works only involve the actual placement of the swing bridge by crane onto the protection ‘build-outs’. The ES must assess the potential for debris to fall into the docks during the placement of the swing bridge and include mitigation measures if necessary.
- 4.3. **Construction of new quay - 2.5.3 – 2.5.12** The Environmental Statement must consider how the construction works can have an impact upon both species and habitat feature through direct, indirect, permanent or temporary loss of habitat or species, resulting from construction works. This must include consideration of habitat loss and impact upon species sensitive to noise and disturbance created through the piling programme and placement of jack up barges.
- 4.4. **Dredging of South Dock - 2.5.12 – 2.5.14** It is noted that sediment samples have been chemically analysed and assessed for suitability for at-sea disposal; the ES must present the results of the analysis along with assessment of the potential impacts to determine whether the material is suitable for disposal at sea. The ES must also consider and assess potential alternatives to sea disposal.
- 4.5. Potential impacts from each proposed dredge method must be assessed within the Environmental Statement.
- 4.6. The Environmental Statement must provide confirmation of the maximum amount of material that is proposed to be dredged and disposed as part of the project. This must be assessed against the capacity of the disposal site and considered cumulatively with other disposal operations to determine the suitability for disposal at the site.
- 4.7. The Environmental Statement must include an assessment of any plume effects and sediment dispersion, settling, fugitive behaviour from any dredging and construction activities along with any proposed mitigation.
- 4.8. **Repurposing of existing quay – 2.5.15 – 2.5.17.** The ES must assess the potential for material to enter the dock and propose mitigation measures if necessary.

5. Approach to EIA (Chapter 4 of scoping report)

- 5.1. The ES must include:
- A description of the likely significant effects of the project, whether direct, indirect, secondary, cumulative, transboundary, short-term, medium-term, long-term, permanent, temporary, positive and negative.
 - The assessment must include assessment of impacts from: the construction and existence of the project and regulated activity, use of natural resources, emissions (pollutants, noise, light, vibration), risk to human health, cultural

heritage or the environment (including accidents and natural disasters), impacts of the project on climate, technologies and substances used

- A description of the methods used to make the assessment of the significant effects and difficulties encountered in compiling the information, and uncertainties involved.
- A description of measures to avoid, prevent, reduce or offset identified significant adverse effects, and proposed monitoring arrangements.
- A description of the expected significant adverse effects of the project on the environment resulting from the vulnerability of the project to risks of major accidents or disasters

5.2. Section 4.4.9 onwards describes assessments of effects. NRW PS is largely supportive of the approach proposed. However, a matrix (or similar) of significance/scale should be included in the ES.

5.3. Where possible, other environmental assessments should be coordinated with the EIA process. However, it is important to note that HRA and WFD (and any other assessment) are separate processes to the EIA.

6. Policy and Legislation

6.1. Section 4.4.4 Legislation and Policy. The report fails to reference the Environment (Wales) Act 2016 and how the project contributes to the Sustainable Management of Natural Resources in Wales and further, how the project contributes to the achievement of the well-being goals in section 4 of the Well-being of Future Generations (Wales) Act 2015. This must be included in the ES.

6.2. The report fails to identify how the project fits in with the UK Marine Policy Statement and does not consider the draft Welsh Marine Plan (WNMP). The purpose of the WNMP is to guide the sustainable development of our marine area. Once the plan has been adopted NRW PS must make decisions in accordance with the marine plan, unless relevant considerations indicate otherwise. In preparation for the adoption of the plan, we recommend that any EIA undertaken reviews the contents of the draft Welsh National Marine Plan, and the Environmental Statement considers how the project complies with the draft Policies, or the final policies once the plan is adopted.

7. Scope of the Assessment (Chapter 5 of scoping report)

7.1. Section 5 on the scope of the assessment includes Table 5.1: Environmental Statement Structure. NRW PS are generally supportive of the proposed structure but note that there does not appear to be a chapter on navigation. The ES must include an assessment on navigation.

8. Ecology and Nature Conservation (Chapter 19)

8.1. NRW PS note the intention to produce a Statement to Inform an Appropriate Assessment. Please note that the proposed works have the potential to affect both

the Severn Estuary Special Area of Conservation (SAC)/Special Protection Area (SPA)/Ramsar Wetland of International Importance and the River Usk SAC.

- 8.2. The impacts upon features which are not included within the European Site designations, particularly for the River Usk SSSI, must also be included within the ES. The River Usk SSSI supports additional features which are not within the SAC designation, notably, saltmarsh.
- 8.3. NRW PS note that fish species which use the estuary are likely to occur in the Docks by entering when lock gates are open. NRW PS note at paragraph 5.4.8 that migratory fish are excluded from this section of the scoping report and are described as unlikely to occur within Newport Docks. Consideration should be made for transitory migratory fish in the same manner as is provided for the estuarine species.
- 8.4. It is noted that there is no mention of Ornithology features in relation to the Marine Works. NRW PS note that the proposed works are very close to the Severn Estuary SPA. The ES must assess whether the works will have an impact upon ornithological features.
- 8.5. The Environmental Statement must show that consideration has been given to the following potential impacts:
- Pollution from onshore works and accidental spillages during both construction and operation
 - Loss of habitat during construction, as some habitat loss will be permanent
- 8.6. Baseline studies are discussed from paragraph 5.4.9 – 5.4.13. Certain assumptions are made without a detailed baseline environment. A thorough description of the baseline environment must be provided in the ES to inform these assumptions.
- 8.7. NRW PS notes that whilst there is a commitment to a full marine ecology and nature conservation desk-based assessment being undertaken, the proposed data sources are not provided. Data sources must be provided in the ES along with the methodology used.
- 8.8. Regarding Habitats Regulations Assessment (HRA), please be aware of a ruling made on the 12th April 2018 by the Court of Justice of the European Union, widely referred to as the 'People over Wind' ruling. This ruling amended how mitigating measures are taken into account by stating that *"in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment...it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site"*.

9. Human environment (Chapters 20 – 23)

Chapter 20 – Cultural Heritage

- 9.1. The Scoping Report states that a full-desk based assessment will be undertaken which will include a review of documentary and cartographic sources, data collected through the M4CaN EIA, information contained in the Historic Environment Record and National Monuments Record and site visits. The work will be conducted in accordance with the Standards and Guidance of the Chartered Institute for Archaeologists and Cadw's Setting of Historic Assets in Wales (2017). Details of this further assessment must be included in the ES to identify any likely threats to historic environment assets and indicate if further archaeological investigation or mitigation is required.

Chapter 21 - Materials

- 9.2. The associated quayside furnishings that will be used should be chosen with consideration of the effects on the marine environment if damaged/discarded in any way.
- 9.3. The Environmental Statement must consider both inert waste arising from the project dredging and other waste streams arising from the development during construction. This should include consideration of the impact on permitted waste sites as well as cumulative impacts of other projects in the area.

Chapter 22 Noise and Vibration

- 9.4. The scoping report does not consider if there could be an effect on any species outside of the Docks due to underwater noise and vibration. NRW PS are not sure what attenuation lock gates provide, nor effects of any works being carried out whilst lock gates are opened to allow vessel access. This must be considered in the ES.
- 9.5. ABP did not require us to seek advice from external advisors regards the Scoping Report and underwater noise at this stage. NRW PS advised that external advisors will be consulted on receipt of a marine licence application specifically regarding underwater noise and vibration. Should we receive advice indicating the ES is insufficient in terms of considering impact on these matters there may be a delay to the determination of an application whilst these matters are addressed.

Chapter 23: Hydrology

- 9.6. It is noted that both surface and treated foul water will be discharged into either the dock or the River Usk, or both. The ES should consider the impact of constructing new outfall structures on the river plus the resultant impacts on water quality from discharges to both dock and river.
- 9.7. From the mean low water mark up to one nautical mile from shore, the sea is protected under the Water Framework Directive (WFD). A Water Framework Directive Assessment must be provided with the Marine Licence application.

10. Cumulative impacts and in-combination effects (Chapters 24 and 25)

10.1. The cumulative assessment should include Marine Licences and Marine Licence applications. Information on marine licence applications can be found on the Welsh Government Marine Planning Portal¹ or downloaded from Lle². The assessment should also include developments allocated within the statutory development plan, and in the draft Welsh National Marine Plan (each of which is supported by an Environmental Report and Habitats Regulations Assessment). Regard should also be given to Natural Resources Wales' emerging Area Statements (Marine and South East Wales Areas), when published.

10.2. The following data sources may provide useful information on other projects for the assessment of cumulative effects:

- The Nationally Significant Infrastructure Projects register:
<https://infrastructure.planninginspectorate.gov.uk/projects/register-of-applications/>
- The Developments of National Significance Register:
<http://gov.wales/docs/desh/publications/180312-dns-register-en.pdf>
- Planning Policy E.g. Local Development Plans, Transport Plans (National and Local) and National Policy Statements.

11. Topics not included for assessment

11.1. The Environmental Statement must include a Navigational Risk Assessment (NRA) providing details of the possible impact on navigational issues for both commercial and recreational craft, specifically:

- Collision Risk
- Navigational Safety
- Visual intrusion and noise
- Risk Management and Emergency response
- Marking and lighting of site and information to mariners
- Effect on small craft navigational and communication equipment

11.2. The NRA should address safe Under Keel Clearance (UKC) for the maximum drafts of vessel both observed and anticipated, from which a realistic UKC assessment should be undertaken.

11.3. It is not clear if all the works would take place within Newport Dock's Statutory Harbour Authority jurisdiction, and it is not clear whether a Harbour Revision Order would be required. A detailed chapter considering potential impacts to existing maritime operations within the port during both construction and operation of the new facility must be included.

¹ <http://lle.gov.wales/apps/marineportal/>

² <http://lle.gov.wales/home>

11.4. A detailed assessment of the works must be considered under the existing Safety Management System (SMS) as per the Port Marine Safety Code and it's Guide to Good Practice.

11.5. The following topics have been scoped out of assessment:

- Community Assets
- Greenhouse Gases and Climate
- Health – health assessments will be considered as part of the assessment of socio economics, geology and soils, traffic, air quality and terrestrial noise.
- Radiation and Heat

11.6. Section 5.6.9 - Accidents and disasters. It is stated that there will not be any significant accident or disaster risk, however it goes on to say “*nevertheless, due consideration will be given to the likelihood of accidents occurring as a result of these proposals*”. This causes confusion, accidents and disasters must be scoped in and included in the ES.

12. Summary

12.1. The scoping report does not always clearly demonstrate how all conclusions have been arrived at. For the avoidance of doubt, The ES must clearly demonstrate how conclusions have been derived.

Yours sincerely



Marine Licensing Team
Natural Resources Wales

Cc Consultation Bodies