

Ein cyf/Our ref: ORML1938

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Graham Morley
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5 June 2020

Dear Graham,

Marine Licence Application ORML1938 – Morlais Tidal Array Review of Further Information

Thank you for your additional submission of further information on the 22 May 2020.

We are content that most of the information requested in our letters of 2 March 2020 and 16 April 2020 has been provided within your additional submission. The provision of signposting matrices has facilitated the review process and provided greater clarity around how the consultee comments have been considered within your response.

However, there are several key issues which still need to be resolved prior to the further information submission being considered complete. We have provided detail on each of the issues below and would be happy to discuss these further at our next scheduled meeting on the 12th June.

Non-Technical Summary (NTS)

As detailed in our letter of 2 March 2020, it is essential that, where appropriate, changes made to your Environmental Statement (ES) and supporting marine licence application documents are reflected in the Non-Technical Summary (NTS) and the ES summary chapter (Chapter 27). These changes should reflect the recommendations and requirements made by NRW and other consultees, as appropriate.

On 22 May we received *MOR/RHDHV/DOC/0136 Supplementary Note to Update the NTS and Chapter 27*. We previously requested (2 March 2020 and 16 April 2020) that the NTS be updated accordingly and note that the submitted document (*DOC/0136*) does not sufficiently address the concerns raised.

The requirements for a NTS are detailed in Schedule 3, paragraph 10 of the Marine Works (EIA) Regulations. At present, we do not consider that the NTS meets these requirements.

The NTS is designed to provide a description of the EIA and its findings in a manner that is appealing and easily understood by the general public. It should ensure that the assessment conclusions are clearly defined. However, it is considered that the submitted version of the NTS does not adequately describe the potential impacts on marine birds and marine mammals. Assessment terminology should also be avoided, and non-technical language used.

The NTS should summarise the key mechanisms attributable to reducing environmental impacts. Therefore, as both the phasing of the development and the implementation of the EMMP will be fundamental to the avoidance and reduction of significant adverse effects it is essential that these measures are described within the NTS. Certain topics such as offshore archaeology and cultural heritage, summarise mitigation whereas others (e.g. marine ornithology; marine mammals etc.) do not provide any indication of the key mitigation measures.

Accordingly, we request that the NTS is updated including a fuller description of the impacts especially in light of the latest information, the proposed phasing of the works and a description of other key measures envisaged to avoid, reduce or mitigate significant adverse effects. This would be best addressed through the provision of an updated NTS, rather than as a supplementary note.

Environmental Mitigation and Monitoring Plan (EMMP)

We acknowledge and welcome that engagement with NRW Advisory on the EMMP has taken place since 16 April 2020. Whilst your updated Outline EMMP received on 22 May 2020 contains some of the detail required to underpin confidence in the HRA, additional detail and commitment within the application is needed. Such detail is required to provide certainty that mitigation and monitoring measures are realistic, effective, sufficient, deliverable and follow appropriate due process.

We have previously highlighted areas of the Outline EMMP that require development (16 April 2020) such as defining the phasing, the consideration of real-time monitoring and detailing realistic and effective trigger points. Although an increased level of detail has been provided on the use of trigger points and monitoring within the Outline EMMP, further detail is still required. Trigger levels must be identified for relevant species within the outline EMMP.

It is essential to understand how the monitoring and mitigation is going to be implemented. The need for this is made clear when considering Bottlenose Dolphin, where the Potential Biological Removal (PBR) value used is 0.7. Understanding that a single collision event with a Bottlenose Dolphin could exceed this value it is strongly recommended that careful consideration is given to how deployment in all phases could be achieved and in what way adaptive management measures are utilised to reduce the risk. Thus, sufficient information must be presented in order for us to determine, beyond reasonable scientific doubt, that an adverse effect on these features can be ruled out.

The EMMP has stated that the results of monitoring work would be subject to regular review. However, recognising the significance of a single collision event upon a bottlenose dolphin it is essential that the EMMP makes clear whether the monitoring has a live/real time feedback mechanism or if the intention is only to review monitoring outputs at particular intervals.

It should be noted that if there remains the potential for measures to be triggered after an adverse effect on site integrity (AEOSI) has occurred then the project should only proceed if a derogation under Article 6(4) of the Habitat Directive can be secured.

Within the latest version of the EMMP, a high level framework for tiered mitigation is detailed along with a broad description of indicative trigger points. As part of the further work we would recommend that detail is provided on how these measures align with one another, possibly providing a detailed example of how these steps would be realistically applied and the benefits of their implementation.

In addition to the above, we have noted that the Outline EMMP has a different value (MW) for the first phase of deployment in section 25 from that indicated in Table 7-1. This value should be consistent throughout and should provide the maximum value for the first phase of deployment that is being proposed.

There is some confusion within the current version of the document, further clarification is required whether it is being proposed that monitoring methods will be tested prior to deployment, prior to operation of device or once device is operational, this should be made clear.

Section 11 of the EMMP states that the Outline EMMP (document submitted) will be revised to a working EMMP post-consent. Please could you clarify the proposed difference between both these documents, and advise when the working EMMP will become available. It appears at this stage that many sections of the Outline EMMP are indicative examples subject to change within the working EMMP, which you propose to submit post consent. As detailed in our letter dated 16 April 2020, it is important that all further information which provides essential evidence in support of your application is provided to enable us to complete our assessment. The provision of further information at a later date may require additional consultation which will extend the determination timeline of your application.

We also note that an Advisory Group is referred to throughout the Outline EMMP document (version F4.0). A clear distinction must be made between the role of any advisory group which the applicant seeks to form, and the role of the regulator. Although we would actively encourage you to engage with relevant stakeholders and experts during the formation of the EMMP and its implementation, we do need to highlight that it is not appropriate for NRW's Regulatory function, to form part of this group, or comment on its membership. As the regulator we fulfil several statutory roles and are responsible for conducting separate and independent consultation with relevant stakeholders as required during the determination process.

As the Advisory group cannot replace the statutory decision making responsibility of the regulator, we would recommend reference to this group is removed from the EMMP to avoid any misunderstanding of respective roles and responsibilities with stakeholders and the public.

The EMMP is described as a 'live' document which will be regularly updated. It is important to note that any changes to approved documents would have to be agreed with the regulator prior to those changes being implemented.

The proposed mitigation, monitoring and management measures outlined within the EMMP are fundamental to the assessment conclusions of both the HRA and the EIA. At this time, detail within the Outline EMMP is not yet sufficient to provide confidence in the suitability of this process as an adequate mitigation tool and therefore to be relied upon within the HRA. To facilitate development of the EMMP we would advise further engagement with NRW.

Marine Mammals

We are content that most clarification requests in relation to marine mammals have been answered, either through direct acknowledgement or through the provision of further information. However, we require clarification around the sensitivity assigned to individual features. It is unclear how suggestions by NRW Advisory that 'sensitivity' should be higher than that assigned have been considered.

Coastal processes

Although we are grateful for your Wave Model Clarification note (*MOR/RHDHV/DOC/0143*) there is a discrepancy between the worst-case provided in the PDE matrix (*MOR/RHDHV/DOC/0127*) and that used for modelling. Please could you clarify.

Fish

Within the relevant signposting document (MOR-RHDHV-DOC-0114) there does not appear to be any acknowledgement of several clarification points raised (Ref no. 143-145; 147-149 in MOR/RHDHV/DOC/0129). These points should be addressed.

NRA

There is some confusion around the NRA and its level of completion. Although we appreciate that some aspects may require revisiting post-consent, once technologies are confirmed, it is recommended that such justification is clearly laid out in the NRA.

We have noted that documents *MORMMDOC0011* (Ref no. 36) details that supplementary information is still to be provided to address an additional item for the impact assessment therefore it appears that the NRA is incomplete. The NRA should be updated to include the supplementary information referenced. This is required as part of the further information request.

Confidentiality of documents

We require clarification as to why the Chough figures (Figures F.1) and the NRA document (marked confidential in footnote from page 57 onwards) submitted as part of the 'request for further information' process are marked as Confidential. As detailed within letter dated 16 April 2020, clear reasoning for any claim of confidentiality should be provided for our consideration. If elements of the NRA are considered confidential a redacted version of the document must also be provided.

Cumulative Impacts

We are grateful for the matrix as this provides an indication of those projects which have been screened in or out of the assessment. However, indication of the relevant impact pathways to each receptor (or receptor group) should also be provided.

Survey outputs

As previously mentioned in our e-mail of 22 May 2020, we are aware that a further terrestrial survey is planned for June 2020. The outputs of this survey will be used to support the terrestrial ecology assessment and the potential for direct impact on the features of the Holy Island Coast SAC, thus informing your shadow HRA and our own HRA. As the HRA is a key supporting document to the marine licensing process of this proposal, the terrestrial survey and its conclusions are particularly relevant.

Consequently, please provide the outputs from this survey as part of your further information submission. It would be premature to commence a consultation with the knowledge that further information is pending and would also create the need for further consultation which would add a further step and time to the determination (the law requires these consultations must run for a minimum of 42 days).

If there is an intention to carry out targeted benthic, or other, surveys to alleviate previous concerns raised by consultees on the evidence used to support the assessments, then we would similarly advise that the outputs are provided as part of the further information submission for the same reason specified above.

Please provide the information requested above by 4 July 2020. If NRW has not received this information by this date, application ORML1938 will be treated as having been withdrawn. Please contact me as soon as possible if additional time is required.

In the meantime, should you have any immediate queries, please do not hesitate to contact me, or we look forward to further dialogue with you on 12th June.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Peter Morrison'.

Peter Morrison
Marine Licensing Team
Natural Resources Wales