



Ein cyf/Our ref: ORML1938

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19 May 2021

REQUEST FOR CLARIFICATION and AMMENDMENTS - THE MARINE WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2007 (AS AMENDED)

Dear Graham Morley,

Marine Licence Application ORML1938 – Morlais Tidal Array

We have reviewed your Further Information submission dated 19 February 2021 and the representations we have received in response to the public consultation which ended 28 April 2021. Although some of concerns previously raised have now been addressed, there remain matters that require clarification in order for them to be concluded.

Detailed below are the clarification points and consultee responses which require your attention. To help expedite our determination it would be helpful if you could again provide us with a signposting matrix with your response to individual consultee comments. Where you consider comments have been addressed in previous submissions, can you please reference the applicable document and section.

We would not expect you to provide additional information to that which has already been provided. Should additional information be provided, we may consider the need for this to be publicised in accordance with the regulations. We do, however, expect minor changes to be made to the oEMMP document, as detailed below.

Outline Environmental Monitoring and Mitigation Plan (oEMMP) – Advisory Group

Within our letter dated 14 October 2020, we requested that detail surrounding the Advisory Group should be removed from the oEMMP. An updated oEMMP (v. 9), submitted on 19 February 2021, keeps the reference to the Advisory Group; however, we note the inclusion of some additional text which seeks to make the distinction between the Advisory Group and the role of the Regulator. However, it is our view that further amendments are required throughout the document, as some references remain inaccurate and would lead to a misunderstanding of the Advisory Group's role if the application were positively determined.

It is important that you clearly document;

- i) that the formation of any Advisory Group is to support and provide advice to the applicant/licence holder with the post-licence implementation of the EMMP.
- ii) It will not provide regulatory advice or advice directly to the Regulator.

There are references within the document which suggest that NRW (as the Regulator) will seek advice directly from the Advisory Group post-consent, however, this is not an action we would initiate. We would continue to use established consultation and engagement procedures with our internal Advisors and relevant external stakeholders, as and when required.

It is, however, beneficial for you to engage with relevant stakeholders before making any post-consent submission(s) to us, and we recognise the benefits of you doing this through the establishment of an Advisory Group. We also appreciate that you may request representation from NRW's Advisory function on the Advisory Group. Given their separate functional role between NRW Permitting Service and NRW Advisory, this option is viable but would be entirely at their discretion.

Membership of the Advisory Group and selection of an independent chairperson does not require approval of NRW and is entirely a matter for the applicant/licence holder. However, we note that several consultees have expressed an interest in being part of the group including JNCC, NRW (Advisory), RSPB and North Wales Wildlife Trust. As stated above, it should be clear to all parties involved that the Advisory Group's remit and purpose is to support and provide advice to the applicant/licence holder with the implementation of the EMMP.

The decision to discharge any post-licence conditions remains the responsibility of NRW as the Regulator, and we would continue to follow our formal consultation procedures with the relevant consultees, including those that may have membership of the applicants/licence holders Advisory Group.

We, therefore, require changes to be made to the oEMMP to reflect the above requirements. To assist with the required changes we have provided edits and comments on the oEMMP (v.9) which need to be carried out at this stage in the determination process.

EMMP

Should the application be positively determined, it is important to recognise that a considerable amount of additional detail will be required within the detailed EMMP. This will include aspects such as the scale of deployment, monitoring and mitigation of collision, and monitoring and mitigation of underwater noise disturbance. Advice on the content of the detailed EMMP has been provided by various consultees within their most recent consultation responses, including NRW Advisory, JNCC and RSPB.

We would also draw your attention to comments made by NRW Advisors who agree with the commitment within the oEMMP to limit the scale of deployment based on the marine mammal species collision limits. NRW Advisors highlight that based on the current collision risk for the indicative phase 1, the level of deployment would need to be further reduced to fall below the trigger level for harbour porpoise.

Sub-zones

Within *MDZ_A16.7 MMC446 MOR-WSP-DOC-0020 Morlais Mitigation Route Map*, it notes proposed mitigation to avoid landscape and visual impacts so that no visually prominent devices would be placed in subzones 1, 2, and 3, as well as the northern parts of subzones 4 and 8. There is also reference within document *MOR/RHDHV/DOC/0143 Wave Model Clarification note* page 4 which details that the Project Design Envelope sets a 30MW limit on each subzone. This limit is again referred to in NRW Advisors response on coastal processes.

Clarity is required regarding these points, as within chapter 4 of the ES the subzone locations are described as indicative and likewise there is suggestion within point 33 of chapter 4 that an array may be greater than 30MW.

Further to the issue around clarity of subzones and zones, we note the embedded mitigation measures (see *MMC011 MOR-ESI-DOC-0001 Draft Marine Licence Conditions*)

- Devices >8m minimum UKC below CD to be deployed within the blue zone; &
- Devices >20m minimum UKC below CD deployed within the purple zone.

However, within the NRA it notes 'Devices >20m below CD to be deployed within Zones 1,2 and 8'; in contrast to the ES which suggests this for zone 1, not 2 or 8. The confusion between zones/subzones is further increased by the NRAA which refers to both zones and subzones but only provides a figure (Figure 1) for the *coloured* zones, which we understand to be the final zonal layout for the site. Clarity around these issues is essential at this stage in the determination process.

Coastal Processes

Within document *MMC599 MOR-RHDHV-DOC-0170 Menter Mon comments on NRW Request for further information*, you agree to explore potential options to address NRW

Advisor's request to monitor impact of works on coastal processes. However, there appears to be considerable difference between the monitoring/survey which are proposed within MMC599 *MOR-RHDHV-DOC-0170 Menter Mon comments on NRW Request for further information* and monitoring requested by NRW Advisory. We request that you discuss this with NRW Advisory, determine whether it is possible to agree suitable monitoring pre-consent and communicate this to NRW PS. The issue of coastal process modelling validation has also been raised by other consultees including the RYA and Snowdonia Canoe Club.

Navigation

The commitment to update the wider NRAA every two years and provide a deployment specific NRA before each deployment is noted. Should the marine licence be granted, the MCA has highlighted that the data used in the NRAA will be several years old, and will thus require updating using relevant data immediately following consent.

We also draw your attention to post-consent requirements requested by the MCA, a number of these would be relevant to the Device Deployment Protocol, as well as the deployment specific Navigational Risk Assessment. We would highlight the requirement for vessel traffic monitoring and periodic hydrographic surveys, which should be used to inform future NRA(s).

Table 13.1 of document *MDZ_A2815 MMC196 MOR-MCO-DOC-001 Navigational Risk Assessment* provided additional mitigation to reduce risk to navigation. We draw your attention to comments received from the MCA regarding the proposed mitigation, specifically we would remind you that an application for Safety Zones during construction activities would need to be made to BEIS or the Welsh Ministers. Table 13.1 of the same document, considers the need for restricted navigation areas, no fishing zones, and no anchoring areas, MCA do not consider that these risk controls are required. It should, however, be noted that restricted navigation area, no fishing zones and no anchoring areas are outside the jurisdiction of any marine licence determination, and any application for such area should be made to the appropriate authorities.

Consultation with other relevant bodies is a pre-requisite of an NRA and, therefore, we would remind you to continue to engage with relevant stakeholders to carry out this process, as appropriate, should the marine licence application be positively determined.

We request that you respond to all the points raised by the consultees, regarding navigation issues, in response to the recent consultation.

Ornithology

We note that the RSPB still have significant concerns around the assessment methodology used; the monitoring proposed; and the effectiveness of mitigation. We request that comment is provided on all of the points raised by RSPB, with suitable reference to any previously submitted documents.

Please could we request that a response is received by 9 June 2021.

In the meantime, should you have any queries please do not hesitate to contact me.

Yours sincerely

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

Peter Morrison
Marine Licensing Team
Natural Resources Wales