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Wales

Marine Licensing Decision

The Marine and Coastal Access Act (2009)

Applicant: Network Rail Infrastructure Projects

Application reference no: 02904587

Cottage Viaduct, River Einion

Maintenance works to the Cottage viaduct that spans across the River Einion

21 May 2021

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OUR DECISION

Based on all the information available, and having regard to all relevant considerations NRW has decided to grant the marine licence sought by the Application subject to the conditions set out in Annex 1.

This decision document:

- explains how the 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 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 Application.

Application Number: CML2054**1 APPLICATION DETAILS**

Applicant Name and Address	The Applicant is the company set out below: Company name: Network Rail Infrastructure Projects Company number: 0290458 Address: 1 Everholt Street, London, NW1 2DN
Application Reference Number	CML2054
Date Application was duly made	05 January 2021
Proposal[s] covered by the application	Maintenance works to the Cottage viaduct that spans across the River Einion.
Licensable marine activities	Maintenance repair works on Cottage Viaduct. <ul style="list-style-type: none">• Scaffold tower will be erected;• pontoons will be launched at pre-arranged locations and tied off while not in use; and• pontoons will be managed by a water rescue team, who will be on site at all times for emergency procedures and to re-position pontoons safely when required.• Crosshead replacement of trestle 4;• Trestle 2 and 3 pile splice repair or packed at scarf joint;• Lateral restraint diagonal replacement on trestle 1, 3, 4 and 5;• Corbel replacement or packed on trestle 1, 2, 3 and 4;• Change of TA bolts on trestle 4; and• Replacement of SA1 straps on trestle 4.
Marine Plan area	Welsh National Marine Plan
Application documents:	Cottage Viaduct Viaduct marine licence application Band 2, dated 09 December 2020 Cottage Viaduct Maintenance Work HRA 0.03, dated 18 March 2021 Cottage Viaduct WFD_0.03, dated 19 March 2021 Cottage Method Statement V2.Dec 2020, dated 17 December 2020 Lighting Plan Cottage Viaduct rev 02, dated 07 May 2021

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2 APPLICATION PROCEDURE

2.1 Application Acceptance

The Application was accepted by Natural Resources Wales (**NRW**) considered duly made on 05 January 2021. 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 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 by consultees as NRW considered relevant.

2.3 Commercial Confidentiality

The Applicant made no claim that any information forming part of the Application was subject to commercial confidentiality and we have not received any information in relation to the Application that appears to be commercially confidential.

2.4 Publicity and advertising

As required by s. 68 of the Marine and Coastal Access Act 2009 (the 2009 Act), notice was given to Ceredigion County Council on 08 January 2021.

As required by s. 68 of the 2009 Act NRW has required the Applicant to publish notice of the Application.

Public notice advertising the Project was placed in Daily Post Wales West on 13 January 2021. The application documents were made available to the public at <https://publicregister.naturalresources.wales/> and they could also be requested from Natural Resources Wales Marine Licensing Team, Ty Cambria, 29 Newport Road, Cardiff, CF24 0TP.

The public were given a period of 28 days from the date of the Public Notice to provide comments on the application.

No public responses were received in response to the Public Notice.

2.5 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.

The Application was not considered by NRW to constitute a development requiring EIA under the Regulations.

3 CONSULTATION

3.1 Consultees

NRW considered it appropriate to consult the bodies listed in the table below on 08 January 2021, due to their particular expertise. These bodies were consulted for a period of 28 days. Those bodies have responded to the consultation a '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
The Crown Estate	Y	20 January 2021
NRW	Y	09 February 2021
MoD - Safeguarding Defence	Y	13 January 2021
Maritime & Coastguard Agency	Y	10 February 2021
Trinity House	Y	03 February 2021
Royal Yachting Association	Y	12 January 2021
Local Biodiversity Officer	Y	04 February 2021
Local Planning Authority	N	
Local Harbour Authority	N	
Local Port Authority	N	
Royal Society for the Protection of Birds (RSPB)	N	
Welsh Government Marine Enforcement Officers	N	
Welsh Archaeological Trust	Y	22 January 2021
Royal Commission on Historic Monuments Wales	N	
Cadw	Y	03 February 2021
Department for Transport (DFT)	N	
Chamber of Shipping	N	
NERL Safeguarding	Y	13 January 2021

Consultees who did not provide a response were assumed to have no comment.

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 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 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

NRW has considered the potential effect of the Proposed Activities on the following WFD waterbodies:

- **Dyfi & Leri Transitional**

A Water Framework Directive Compliance Assessment has been undertaken for the Proposed Activities and taken into account in this decision. This assessment concludes that There is no risk of deterioration or prevention of the water body achieving its objectives as a result of the proposal, either alone or in combination, and no further consideration under the Water Framework Directive/Regulations is required in order to determine the application.

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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 [when undertaken in accordance with appropriate conditions.

Further details are described within the Water Framework Directive Compliance Assessment.

4.1.2 Biodiversity and resilience of ecosystems duty

(a) The legal framework

Section 6 of the Environment (Wales) Act 2016 places a duty on public authorities to seek to maintain and enhance biodiversity in the exercise of their functions, and in so doing promote the resilience of ecosystems, having regard to biodiversity lists published under section 7, the State of Natural Resources Report and any area statement published under section 11.

(b) Factors relevant to our determination

NRW has considered its duties under section 6 of the 2016 Act and is satisfied that the Proposed Activities would not reduce biodiversity when undertaken in accordance with appropriate conditions.

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:

- **Pen Llyn a'r Sarnau SAC**
- **Cors Fochno & Dyfi SAC & RAMSAR**
- **Dyfi Estuary SPA**
- **North Cardigan SPA**
- **West Wales Marine SAC**

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

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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.

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 Sites when undertaken in accordance with appropriate conditions, i.e. to ensure works do not interfere with overwintering season for Greenland White-Fronted Geese (*Anser albifrons*), Licence conditions 3.22 and 3.23 ensure no licenced activities take place between 01 December and 14 April or any nighttime activities take place between the 01 November and 30 November, and that mitigation plans and monitoring methods are agreed and implemented should licenced activities be carried out between 19 October and 30 November. To ensure the works do not have a likely significant effect on European Otter (*Lutra lutra*), Licence conditions 3.25 and 3.26 have also been included to ensure agreed lighting plans are adhered to and that a toolbox talk and survey is conducted by a qualified ecologist.

Further details are described within the Habitats Regulations Assessment.

4.1.4 European Protected Species

(a) 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.

(b) Factors relevant to our determination

NRW considers that the following protected species are likely to be impacted by the Project:

- **European otter (*Lutra lutra*)**

NRW has taken into account the requirements for issuing an EPS licence in making this decision and for the reasons set out below is satisfied on the basis of the information it has considered that:

it is not unlikely that an EPS licence would be granted for the Project.

Any determination made as part of this decision are without prejudice to the consideration NRW is required to give an EPS licence application as the body with a statutory responsibility for its determination and do not constrain or bind NRW in exercising this function. Should an application for an EPS licence in relation to the Project be made it will be determined by NRW based on all the relevant information available to NRW at that time.

4.1.5 Marine Conservation Zones

(a) The legal framework

Marine Conservation Zones 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 Marine Conservation Zone 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

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NRW is satisfied that there is no significant risk of the Proposed Activities on the Skomer Marine Conservation Zone due to the distance between the site and the Licensed Activities.

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

NRW has considered the impact of the Project on the following sites:

- Dyfi SSSI

NRW is satisfied that the Proposed Activities do not have the potential to impact on Dyfi SSSI when undertaken in accordance with appropriate conditions, i.e. licence conditions 3.25 and 3.26 detailed in Annex 1.

4.1.7 Waste (England and Wales) Regulations 2011 (as amended)

(a) The legal framework

The Waste (England and Wales) Regulations 2011 (2011/988) establishes a legal framework for treating waste in the EU. 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 Directive establishes 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

NRW is satisfied that the Proposed Activities meet the requirements of the Waste (England and Wales) Regulations 2011 (as amended).

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

To ensure the works do not have an impact on nesting birds, licence condition 3.24, detailed in Annex 1, has been included to ensure a nesting bird survey is agreed and implemented should the works take place between 01 March and 15 August.

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

IN SUMMARY, having considered the need to protect the environment, NRW does not consider that any impacts of the Project on the environment (either alone or in combination with other plans or projects) are sufficient on their own to justify refusal of the application.

4.2 The need to protect human health

No comments or representations were received in relation to the need to protect human health and no other concerns in this regard have been identified.

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

IN SUMMARY, having considered the need to protect human health, NRW does not consider that any impacts of the Project (either alone or in combination with other plans or projects) are sufficient on their own to justify refusal of the application.

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.

Following consultation, a response was received by the Maritime and Coastguard Agency requesting licence conditions to be included. All licence conditions has been included in the licence as standard. These conditions are detailed in the licence as licence conditions 3.1.3, 3.5 and 3.17.

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

IN SUMMARY, having considered the need to protect interference with legitimate uses of the sea, NRW does not consider that any impacts of the Project (either alone or in combination with other plans or projects) are sufficient on their own to justify refusal of the application.

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.

(b) Our determination

This decision has been taken in accordance with marine policy as set out in the UK Marine Policy Statement 2011.

Welsh National Marine Plan

This decision has been taken in accordance with marine policy as set out in the Welsh National Marine Plan.

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.

In particular:

- The application meets the needs of present generations by maintaining transport infrastructure in Wales (e.g. the application meets a need for energy, for the maintenance of existing and heavily used marine infrastructure); and
- The application when carried out in accordance with the terms of the Licence, including conditions, would not have any significant impact on the environment.

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.

In particular, NRW acknowledges that it is a principle of sustainable management of natural resources to take action to prevent significant damage to ecosystems. NRW is satisfied, for the reasons set out in paragraphs 4.1.2 to 4.1.4 that appropriate action will be taken as part of the Project, when implemented in accordance with the conditions in Annex 1, to comply with this principle.

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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 marine licence sought by the 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.

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6 AUTHORISATION

Report by: Joe Thomas Position: Permitting Officer	Date: 21 May 2021	Signed: 
Authorised by: Position: Permitting Team Leader	Date: 21 May 2021	Signed: 

ANNEX 1

3.22 Greenland White-Fronted Geese (*Anser albifrons*) Timing Restrictions

3.22.1 The Licence Holder must ensure that no Licensed Activities take place between **01 December** and **14 April** inclusive, to avoid the overwintering season for Greenland White-Fronted Geese (*Anser albifrons*), without prior written approval from the Licensing Authority.

3.22.2 The Licence Holder must ensure that no Licensed Activities take place between **01 November** and **30 November** inclusive during **night time hours**, to avoid the overwintering season for Greenland White-Fronted Geese (*Anser albifrons*), without prior written approval from the Licensing Authority.

3.23 Greenland White-Fronted Geese (*Anser albifrons*) Monitoring Method and Mitigation Plan

3.23.1 The Licence Holder must submit a Greenland White-Fronted Geese (*Anser albifrons*) monitoring method and mitigation plan to the Licensing Authority for written approval at least **6 weeks** prior to commencement of the Licensed Activities taking place between **19 October** and **30 November** inclusive during **day time hours**.

3.23.2 No Licensed Activities may be undertaken between **19 October** and **30 November** during **day time hours** prior to written approval from the Licensing Authority. All actions outlined in the method and plan detailed in condition 3.23.1 must be implemented as approved by the Licensing Authority.

3.23.3 The Licence Holder must submit a Greenland White-Fronted Geese (*Anser albifrons*) monitoring method and mitigation plan to the Licensing Authority for written approval at least **6 weeks** prior to commencement of the Licensed Activities taking place between **19 October** and **31 October** inclusive during **night time hours**.

3.23.4 No Licensed Activities may be undertaken between **19 October** and **31 October** during **night time hours** prior to written approval from the Licensing Authority. All actions outlined in the method and plan detailed in condition 3.23.3 must be implemented as approved by the Licensing Authority.

3.24 Nesting Birds Survey Method and Mitigation Plan

3.24.1 The Licence Holder must submit a survey method and mitigation plan to the Licensing Authority for written approval at least **6 weeks** prior to commencement of the Licensed Activities taking place between **01 March** and **15 August** inclusive.

3.24.2 No Licensed Activities may be undertaken between **01 March** and **15 August** prior to written approval from the Licensing Authority. All actions outlined in the method and plan detailed in condition 3.24.1 must be implemented as approved by the Licensing Authority.

3.25 Ecological Clerk

The Licence Holder must ensure that a European otter (*Lutra lutra*) survey and toolbox talk is conducted by a Ecological Clerk of Works (suitably qualified ecologist) prior to the commencement of works, to ensure there is no entrapment and/or disturbance risk to European otter.

3.26 Lighting Plan

The Licence Holder must ensure that any actions outlined in the Lighting Plan dated **11 May 2021** are implementd. Any proposed changes to the actions outlined in the documents must be submitted to, and agreed in writing by the Licensing Authority prior to any changes being enacted.