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Resources**
Wales

Marine Licensing Decision

The Marine and Coastal Access Act (2009)

Applicant: Network Rail
Application reference no: CML2145

Kidwelly, Carmarthenshire

Kidwelly Viaduct Refurbishment Phase 1

03/09/2021

Application Number: CMLL2145

Contents

Our decision

1. Application Details
 2. Application Procedure
 - 2.1 The Application
 - 2.2 Documents considered
 - 2.3 Commercial Confidentiality
 - 2.4 Notice
 3. Basis for our Decision

The Marine and Coastal Access Act 2009

 - 3.1 The need to protect the environment
 - 3.1.1 Water Framework Directive, Groundwater Directive and Water Environment Regulations 2017
 - 3.1.2 Biodiversity and resilience of ecosystems duty
 - 3.1.3 European Protected Sites and Ramsar Sites
 - 3.1.4 Marine Conservation Zones
 - 3.1.5 SSSIs
 - 3.1.6 Waste Framework Directive
 - 3.1.7 Other matters considered relevant to the need to protect the environment
 - 3.2 The need to protect human health
 - 3.3 The need to prevent interference with legitimate uses of the sea
 - 3.4 Marine Policy Documents
 - 3.5 Other matters NRW thinks relevant
 - 3.5.1 Well-being of Future Generations Act 2015
 - 3.5.2 Sustainable Management of Natural Resources
 4. Conclusions and Recommendations
- ANNEX 1: Conditions and Reasons

Application Number: CMLL2145

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;
- 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.

1 APPLICATION DETAILS

1.1 The Application

Applicant Name and Address	The Applicant is the person or organisation set out below: Company name: Network Rail Company number: 0440220 Address: 1 Eversholt Street, London NW12DN
Application Reference Number	CML2145
Date Application was duly made	18 August 2021
Proposal[s] covered by the application	Kidwelly Viaduct Refurbishment Phase 1
Licensable marine activities	<ul style="list-style-type: none">• construction, alteration or improvement of works in or over the sea or on or under the sea bed
Marine Plan area	Welsh inshore region and Welsh offshore region
Application documents:	<ul style="list-style-type: none">• CML2145 Application form, 16/08/21, Version 1• CML2145 Method Statement, 16/08/21, Version 1• CML2145 MCA Correspondence, 18/08/21, Version 1• CML2145 TH Correspondence, 18/08/21, Version 1

Application Number: CMLL2145

2 APPLICATION PROCEDURE

2.1 The Application

The Application was accepted by Natural Resources Wales (**NRW**) and considered duly made on **18 August 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 that 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 Notice

As required by s. 68 of the Marine and Coastal Access Act 2009 (the 2009 Act), notice was given to Carmarthenshire County Council Planning Department on 25 August 2021. NRW considered that notice of this application should not be published.

3 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 **Marine and Coastal Access Act 2009 (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 3.1 to 3.5 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 3.1 to 3.5 below)
- such other matters as it thinks relevant (see sub-section 4.5 below)

3.1 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

Application Number: CMLL2145

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 in particular considered the relevant environmental legislation set out below.

3.1.1 Water Framework Directive, Groundwater Directive and Water Environment Regulations 2017

(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 that proposals for development that would worsen the status of a body of water, or jeopardise its attainment of 'good' surface water status should be rejected.

Under the Water Environment Regulations, NRW must exercise its relevant functions so as 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:

- Tywi & Taf & Gwendraeth – Three rivers estuary

A NRW is satisfied 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.

3.1.2 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 the Marine 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.

3.1.3 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.

Application Number: CMLL2145

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, however Ramsar status is considered by NRW as a matter of policy in its decision-making.

(b) Factors relevant to our determination

The Project is located in/near the following European Protected Site(s)

- Carmarthen Bay and Estuaries SAC (project is within SAC boundaries)
- Carmarthen Bay SPA (project is near the SPA)

NRW is satisfied that the Proposed Activities, either alone or in combination with other plans or projects, will not adversely affect the integrity of European Site(s) when undertaken in accordance with appropriate conditions.

The Project does not affect a Ramsar site.

NRW is satisfied that any impacts of the Proposed Activities on the Ramsar site(s) are not sufficient to justify refusal of the application when implemented in accordance with appropriate conditions.

3.1.4 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

NRW is satisfied that there is no significant risk of the Proposed Activities on the Skomer Marine Conservation Zone when undertaken in accordance with appropriate conditions.

3.1.5 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 is satisfied that the Proposed Activities do not impact on:

- Pembrey Coast SSSI

when undertaken in accordance with appropriate conditions.

Application Number: CMLL2145

3.1.6 The Waste (England and Wales) Regulations 2011

(a) The legal framework

The Waste (England and Wales) Regulations 2011 (as amended) establish a legal framework for treating waste. 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 Regulations describe 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 when undertaken in accordance with appropriate conditions.

3.1.7 Other matters considered relevant to the need to protect the environment

IN SUMMARY, having considered the need to protect the environment, including the matters set out in 3.1.1 to 3.1.6 and all other matters relevant to 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 provided that the Proposed Activities are implemented in accordance with the conditions set out in Annex 1.

3.2 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 provided that the Proposed Activities are implemented in accordance with the conditions set out in Annex 1.

3.3 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.

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 provided that the Proposed Activities are implemented in accordance with the conditions set out in Annex 1.

3.4 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.

Welsh National Marine Plan (WNMP)

Application Number: CMLL2145

The WMNP is the Marine Plan for the Welsh inshore region and the Welsh offshore region and sets out the Welsh Government's policies for and in connection with the sustainable development of this area.

- (b)** Our determination

This decision has been taken in accordance with marine policy as set out in the MPS and the WNMP.

3.5 Other matters NRW thinks relevant

3.5.1 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

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.

3.5.2 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.

4 Conclusions and Recommendations

Based on all the information available, and having regard to all relevant considerations, 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. The reason for the inclusion of each condition is set out with the conditions.

Application Number: CMLL2145

5 AUTHORISATION

Report by: Emma Lowe Position: Permitting Officer	Date: 27/08/2021	Signed: <i>E. Lowe</i>
Authorised by: Wendy Dodds Position: Permitting Team Leader	Date: 03/09/2021	Signed: <i>W. J. Dodds</i>

Application Number: CMLL2145

ANNEX 1

Conditions imposed and reasons for those conditions

Activity-specific conditions

3.22 Scaffolding and Access Towers

The Licence Holder must ensure that safe and normal navigation is not impeded by the Licensed Activities. If there is a likely risk to navigation, or the navigational channel is reduced (including height) the Licence Holder must consult with the Maritime and Coastguard Agency and Trinity House to agree appropriate mitigation measures.

Reason: To ensure that the Licensed Activities do not interfere with safe navigation.

3.23 Use of Render and Concrete

3.23.1 The Licence Holder must ensure that no waste concrete slurry or wash water from the use of concrete or cement are discharged into the marine environment. Concrete and cement mixing and washing areas should be contained and sited at least 10 metres from any watercourse or surface water drain to minimise the risk of runoff entering a watercourse.

3.23.2 The Licence Holder must ensure that if concrete is to be sprayed in the vicinity of the marine environment (e.g. bridges, retaining walls, etc.), suitable pollution prevention measures are taken to prevent rebounded or windblown concrete from entering the water environment.

Reason: To minimise risk of damage to the marine environment by wet concrete contamination

3.24 Replacement of Single Pile OR Placement of Posts Using Piling

The Licence Holder must ensure that vibro-piling is used when inserting piles.

Reason: To minimise the level of man-made impulsive noise in the marine environment.

3.25 Sand or Grit-blasting

The Licence Holder must ensure that, if sand- or grit-blasting is undertaken as part of the Licensed Activities, no waste material arising from this process is discharged into the marine environment.

Reason: To avoid release of waste into the marine environment and to minimise the risk marine pollution incidents.

Sensitive Area Conditions

3.26 Vehicular Access

The Licence Holder must ensure that vehicular access across coastal habitats that form part of the interest features of a Sensitive Area, is not used unless specified in the Sensitive Area Method Statement.

Reason: To minimise the impact to the features of interest of a Sensitive Area.

Application Number: CMLL2145

3.27 Equipment and Materials

The Licence Holder must ensure that any equipment or materials used do not enter the marine environment within the interest features of a Sensitive Area, unless specified in the Sensitive Area Method Statement.

Reason: To minimise the impact to the features of interest of a Sensitive Area.

Application Number: CMLL2145