

Marine Licensing Decision

The Marine and Coastal Access Act (2009)

Applicant: M & J Cosgrove Construction Ltd
Application reference no: CML2102

St Cuthberts, Cardiff

**Construction of headwall and outfall pipe into the
River Taff**

05 July 2021

Application Number: CML2102

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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.

1 APPLICATION DETAILS

1.1 The Application

Applicant Name and Address	The Applicant is the person or organisation set out below: Company name: M & J Cosgrove Construction Ltd. Company number: 925464 Address: Grove House, 215 Whitchurch Road, Cardiff CF14 3JR
Application Reference Number	CML2102
Date Application was duly made	22 March 2021
Proposal[s] covered by the application	Construction of headwall and outfall structure to allow discharge of surface water into the River Taff
Licensable marine activities	Construction of headwall and outfall pipe Construction of a 150mm diameter below ground pipe as final section of drainage for surface water from development site. This will have a precast concrete headwall at its termination point fitted with a tidal controlled flap valve. Construction of a 10m deep suspended, open quay structure from steel tubular bearing piles and a precast concrete deck
Marine Plan Area	Welsh National Marine Plan
Application documents:	• CML2102 Updated application form, submitted 19 March 2021, version 1 • CML2102 Method Statement for headwall, submitted 19 January 2021, version 1 • CML2102 Revised Headwall Plan Part 1 19.489-04B, submitted 26 May 2021, version 1 • CML2102 Revised Headwall Plan Part 2 19.4389-04B, submitted 26 May 2021, version 1 • CML2102 Applicant WFD Assessment - St Cuthberts Redevelopment, submitted 19 January 2021, version 1

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2 APPLICATION PROCEDURE

2.1 The Application

The Application was accepted by Natural Resources Wales (**NRW**) considered duly made on 22 March 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 Cardiff City Council on 12 April 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 South Wales Echo on April 28, 2021. The application documents were made available on the public register 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.

Having considered the Application NRW has determined that it does not 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 12 April 2021, due to their particular expertise. These bodies were consulted for a period of 28 days. Those bodies have responded to the consultation an '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	N	
NRW	Y	2 responses received on 10 May 2021 and 8 June 2021
MoD - Safeguarding Defence	Y	15 April 2021
Maritime & Coastguard Agency	Y	12 May 2021
Trinity House	Y	29 April 2021
Royal Yachting Association	N	
Local Biodiversity Officer Cardiff City Council	N	
Local Planning Authority Cardiff City Council	Y	19 May 2021
Local Harbour Authority Cardiff City Council	N	
Local Port Authority Cardiff City Council	N	
Royal Society for the Protection of Birds (RSPB)	N	
Welsh Archaeological Trust	Y	1 June 2021
Cadw	Y	23 April 2021
NERL Safeguarding	Y	15 April 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:

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- Cardiff Bay Lake
- Taff – confluence Rhondda R to Castle Street
- Severn Lower

A Water Framework Directive Compliance Assessment has been undertaken for the Proposed Activities and taken into account in this decision. This assessment concludes that in light of the conclusions of a detailed compliance assessment (Stage 3), and taking account of the advice received from technical specialist advisors, it has been established that the activity/project has no potential to cause deterioration of any water body or prevent a water body or WFD Protected Area from meeting its objectives, taking into account any conditions or restrictions as applicable, either alone or in combination with other activities.

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 illustrated in Annex 1.

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 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 illustrated in Annex 1.

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

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

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 Site(s) due to the distance between the project and the protected sites when undertaken in accordance with conditions illustrated in Annex 1.

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 no protected species are likely to be impacted by 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

NRW is satisfied that there is no significant risk of the Proposed Activities on the Skomer Marine Conservation Zone.

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

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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 there is no impact pathway to any SSSI.

4.1.7 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.

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

No comments or representations were received in relation to other matters considered relevant to the need to protect the environment.

4.1.8.1 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 provided that the Proposed Activities are implemented in accordance with the conditions set out in Annex 1. NRW Technical Experts made a request via their consultation response that no bankside vegetation within 7m of the watercourse is to be removed unless strictly necessary. In such cases, trees/shrubs should be limbed or coppiced, and the root base to be left intact. They also advised that tree/shrub felling and scrub removal should take place outside the breeding bird period (March to August inclusive). Vegetation removal within this period will require a survey for nesting birds. Breeding birds are protected under the Wildlife and Countryside Act 1981 (as amended). These responses have been considered and captured in an advisory note, as part of the cover letter sent to the Licence Holder.

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.

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.

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. The MCA made a request via their consultation response that the site is within port limits and the applicant should gain the approval/agreement of the responsible local navigation authority or the Harbour Authority/Commissioners/Council. They may wish to issue local warnings to alert those navigating in the vicinity to the presence of the works, as deemed necessary. This request has been considered and captured within an advisory note, as part of the cover letter sent to the Licence Holder.

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.

Welsh National Marine Plan (WNMP)

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

UK Marine Policy Statement 2011

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.

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(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.

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.

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. The reason for the inclusion of each condition is set out with the conditions.

AUTHORISATION

Report by: Emma Lowe Position: Permitting Officer	Date: 22/06/21	Signed: 
Authorised by: Wendy Dodds Position: Permitting Team Leader	Date: 05/07/2021	Signed: 

ANNEX 1

Conditions imposed and reasons for those conditions

Pollution Control

3.17 Spillage of Pollutants

The Licence Holder must ensure bunding, storage facilities and spill kits are employed where appropriate to contain and prevent the release of excavated material, fuel, oils, and chemicals associated with the plant, refuelling and construction equipment into the marine environment.

This is to reduce the likelihood of materials entering the waterbody and polluting the environment.

Activity-specific Conditions

3.23 Use of Concrete

- 3.23.1** The licence holder must ensure materials used are suitable for use in the marine environment and Licensed activities should be timed to ensure maximum concrete cure time before the next high tide.

This is to reduce impacts on the environment from concrete materials.

- 3.23.2** The Licence Holder must ensure that no waste concrete slurry or wash water from concrete or cement works 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.

This is to reduce potential for pollution of the watercourse.

3.24 Working Hours

The Licence Holder must ensure that no Licenced Activities take place during **night time** hours, to avoid disturbance to European otter (*Lutra lutra*), without prior written approval from the Licensing Authority. As otters may be present, all work should be restricted to daylight hours only.

This is to reduce disturbance to otters in the area.