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Resources**
Wales

Marine Licensing Variation Decision

The Marine and Coastal Access Act (2009)

Applicant: Pembrokeshire Coastal Forum CIC
Variation application reference no: *DEML1875v1*

Milford Haven Waterway

To provide 5 marine energy test sites within Milford Haven waterway to facilitate the testing and development of marine energy devices, their components and subassemblies, ancillary activities and equipment.

09 February 2022

Contents

- Our decision
- 1. Variation Application Details
- 2. Variation Application Procedure
 - 2.1 The Variation Application
 - 2.2 Documents considered
 - 2.3 Commercial Confidentiality
 - 2.4 Publicity and advertising
 - 2.5 Environmental Impact Assessment
- 3. Consultation
 - 3.1 Consultees
- 4. Basis for our Decision
 - The Marine and Coastal Access Act 2009
 - 4.1 The need to protect the environment
 - 4.1.1 Water Framework Directive, Groundwater Directive and Water Environment Regulations 2017
 - 4.1.2 Biodiversity and resilience of ecosystems duty
 - 4.1.3 European Protected Sites and Ramsar Sites
 - 4.1.4 European Protected Sites and Species
 - 4.1.5 Marine Conservation Zones
 - 4.1.6 SSSIs
 - 4.1.7 Waste Framework Directive
 - 4.2 The need to protect human health
 - 4.3 The need to prevent interference with legitimate uses of the sea
 - 4.4 Marine Policy Documents
 - 4.5 Other matters NRW thinks relevant
 - 4.5.1 Well-being of Future Generations Act 2015
 - 4.5.2 Sustainable Management of Natural Resources

Application Number: DEML1875v1

5. Conclusions and Recommendations

ANNEX 1: Conditions and Reasons

ANNEX 2: Existing Marine Licence

Application Number: DEML1875v1

OUR DECISION

Based on all the information available, and having regard to all relevant considerations NRW has decided grant the variation to the Existing Marine Licence (see Annex 2) sought by the Variation Application.

This decision document:

- explains how the Variation 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 Variation 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 Variation Application.

1 APPLICATION DETAILS

1.1 The Variation Application

Applicant name and address	The Applicant is the person or organisation set out below: Company/organisation name: Pembrokeshire Coastal Forum CIC Company number (if available): 8447094 Address: Marine Energy Hub, 2nd Floor, Pier House, Pembroke Dock, SA27 6TR
Variation Application reference number	DEML1875v1
Existing Marine Licence reference number	DEML1875
Date Variation Application was duly made	01 December 2021
Description of variation	The existing dolphins, as originally applied for, cannot sustain the stress incurred by the new and more powerful Irish Ferries passing the area. The application is for: <ul style="list-style-type: none">• Changes to the way the pontoons are secured and connected to the existing dolphins which will require the use of 10 monopiles installed preferably by rotary piling with down-hole hammering if encountering hard layers.• Changes to the size of pontoons to make them all the same size (5x25m).
Proposal[s] covered by the Variation Application	Deposit and subsequent removal: marine energy devices, subassemblies and components, buoys and anchoring/mooring options including pontoons. The detail of the maximum project envelope parameters of substances or articles authorised for deposit and removal are detailed in annex 2.

Application Number: DEML1875v1

	<p>The material of which may consist of Timber, Iron/Steel, Concrete, Biocides and other chemicals approved for use in the marine environment, Stone and rock, plastic and synthetics.</p> <p>(the Project)</p>
<p>Licensable marine activities</p>	<p><i>Deposit and removal activities as detailed in Annex 1 (of marine licence) which includes the following categories of activity:</i></p> <ul style="list-style-type: none"> • <i>Dip testing of subassemblies, components, monitoring and research equipment.</i> • <i>Short duration dip testing of full scale devices.</i> • <i>Testing of deployment and retrieval methodologies of subassemblies, components, monitoring and research equipment.</i> • <i>Testing of vessel approach and recovery methodologies.</i> • <i>Testing of Health & Safety procedures.</i> • <i>Operational testing of instruments, components and subassemblies, monitoring and research equipment.</i> • <i>Pontoon deployment at the Ferryside location with the installation of ten new monopiles to which the pontoons will be attached, will require the use of monopiles with rotary piling and down-hole hammering if encountering hard layers. There will be five pontoons made the same size to 5 m x 25 m. (the Proposed Activities)</i>
<p>Marine Plan area</p>	<p>Welsh inshore region and Welsh offshore region</p>
<p>Variation Application documents:</p>	<p>EOME0506_EOR0808_PDI_META Phase 1 ML Variations - Implications for Assessment_Rev02.pdf 24/11/2021 v1</p> <p>EOR0808 META P1 Variation Environmental Appraisal Rev02.pdf 24/11/2021 v1</p> <p>EOR0808 META Phase 1 ML Variation Cover Letter.pdf 24/11/2021 v1</p> <p>DEML1875v1 Variation Application Form 24/11/2021 v1</p>

Application Number: DEML1875v1

2 VARIATION APPLICATION PROCEDURE

2.1 The Variation Application

The Variation Application was accepted by Natural Resources Wales (**NRW**) considered duly made on 01 December 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 Variation 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 during any consultation, that NRW considered relevant.

2.3 Commercial Confidentiality

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

3 CONSULTATION

In determining this Marine Licence Variation Application, NRW Permitting Service carried out a consultation on the 06 December 2021 with NRW Technical Experts (NRW TE), Trinity House and the Marine and Coastguard Agency for a period of 21 days. NRW TE responded to the consultation on 05 January 2022 with some comments regarding coastal processes and an attached Form 2. Trinity House responded on 17 December 2021 and Marine Coastguard Agency on the 14 December 2021 with standard licence conditions.

NRW PS 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 marine licence variation application, NRW has taken regard of the decisions made during the determination of the original marine licence, issued on 10 June 2019.

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

- Milford Haven Inner
- Milord Haven Outer

A Water Framework Directive Compliance Assessment has been updated 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.

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.

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

4.1.2 Biodiversity and resilience of ecosystems duty

(a) The legal framework

Application Number: DEML1875v1

Section 6 of the Environment Wales Act 2016 requires that we seek to maintain and enhance biodiversity in the exercise of our functions, and in so doing promote the resilience of ecosystems, in a manner that is consistent with the proper exercise of our functions.

(b) Factors relevant to our determination

NRW is satisfied that in this case, we have taken into account and had due regard to this duty in so far as it is consistent with the function of determining an application for a Marine Licence under the Marine and Coastal Access Act 2009.

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 Marine Licence Variation Application dated 01 December 2021 requested an alteration of the sizes of pontoons used to make them the same size and a change to the methods to make them more secure, this includes the use of 10 rotary piles with down-hole hammering if encountering hard layers.

Following consultation with NRW Technical Experts (NRW TE), no concerns were raised regarding the alteration of the method and size of the pontoons and its impacts on a European Protected Site.

Further information is outlined within DEML1875v1 HRA.

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

NRW TE requested further clarifications on the coastal processes assessment submitted with the application regarding changes to tidal flows. This has been resubmitted by the applicant (28 January 2022) and NRW TE are now content with the information provided.

4.1.5 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 Variation Application.

Application Number: DEML1875v1

4.2 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.

Trinity House and the Marine and Coastguard Agency responded requesting standard licence conditions including notifications before commencement of works and suitable bunding and storage facilities to be used.

4.2.1 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.

4.3 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].

4.4 Other matters NRW thinks relevant

4.4.1 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

Application Number: DEML1875v1

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.

4.4.2 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


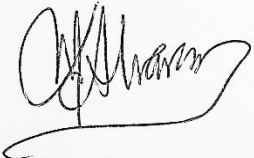
NRW is satisfied that this decision, when implemented in accordance with the attached conditions, is consistent with its general purpose of pursuing the sustainable management of natural resources in relation to Wales, and applying the principles of sustainable management of natural resources.

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 variation to the Existing Marine Licence sought by the Variation 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: Jodie Pullen Position: Permitting Officer	Date: 19 January 2022	Signed: 
Authorised by: Maria Alvarez Position: Lead Specialist	Date: 09/02/2022	Signed: 

Application Number: DEML1875v1

ANNEX 1 – Changes to Marine Licence

Set out below are the changes made as set out by this decision.

- 1 Changes to condition 2.1 (Table 1) to allow deployment of five instead of four pontoons of larger size, and for the installation of ten monopiles.

DEML1875 condition 1.2 reads:

Details of the works requiring the deposit and removal of the substances or articles as specified at paragraph 1.1 of this Schedule are:-

Deposit and removal activities as detailed in Annex 1 which includes the following categories of activity:

Dip testing of subassemblies, components, monitoring and research equipment.

Short duration dip testing of full scale devices.

Testing of deployment and retrieval methodologies of subassemblies, components, monitoring and research equipment.

Testing of vessel approach and recovery methodologies.

Testing of Health & Safety procedures.

Operational testing of instruments, components and subassemblies, monitoring and research equipment.

Pontoon deployment at the Ferryside location.

DEML1875v1 condition 2.1 (Table 1) reads:

Deposit and removal activities as detailed in Annex 1 which includes the following categories of activity:

Dip testing of subassemblies, components, monitoring and research equipment.

Short duration dip testing of full scale devices.

Testing of deployment and retrieval methodologies of subassemblies, components, monitoring and research equipment.

Testing of vessel approach and recovery methodologies.

Testing of Health & Safety procedures.

Operational testing of instruments, components and subassemblies, monitoring and research equipment.

Application Number: DEML1875v1

Pontoon deployment at the Ferryside location with the installation of ten new monopiles to which the pontoons will be attached. There will be five pontoons made the same size to 5 m x 25 m.

- 2 Condition 8.1 regarding notification to the HM Coastguard has been changed to condition 3.4 with an updated email address **zone28@hmcg.gov.uk**.
- 3 Condition 8.5 has been replaced by the standard licence condition 3.17 regarding cleanliness of equipment.
- 4 Condition 8.6 has been replaced by the standard licence condition of 3.1.3 regarding notice to local mariners.
- 5 Condition 8.7 has been replaced by the standard licence condition 3.15 regarding the spillage of pollutants.
- 6 Condition 8.8 has been replaced by the standard licence condition 3.14 regarding pollution prevention.
- 7 Condition 8.11 has been replaced by the standard licence condition 3.11 regarding refuelling of plant and equipment.