

Regulatory decision document

Marine and Coastal Access Act 2009: Part 4 – Marine Licensing

Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended)

Marine Aggregate Extraction in area 526 – Culver Extension

Application reference: MMML1670v1

Applicant: Hanson Aggregates Marine Ltd.

Cemex UK Marine Ltd.

Tarmac Marine Ltd.

Location: Area 526, Severn Estuary

1. Introduction

- 1.1 This document constitutes a decision regarding regulatory approval in accordance with The Marine Works Environmental Impact Assessment) Regulations 2007 (as amended) and Part 4 of the Marine and Coastal Access Act 2009.
- 1.2 The Natural Resources body for Wales acting on behalf of the Licensing Authority ("NRW") has considered the application for a variation to Marine Licence MMML1670 under The Marine and Coastal Access Act 2009 (MaCAA) and The Marine Works Environmental Impact Assessment) Regulations 2007 (as amended) (MWR).

2. Project Description and Regulating Regimes

- 2.1 The applicant is applying for a variation to Marine Licence MMML1670, marine aggregate extraction from Area 526 Culver Extension, in the Outer Bristol Channel.
- 2.2 Marine Licence MMML1670 was issued under the Marine and Coastal Access Act 2009 on 02 November 2017 by Natural Resources Wales acting on behalf of the Licensing Authority, for all marine licensable activity taking place in Welsh waters
- 2.3 A Marine Licence under the Marine and Coastal Access Act 2009, was granted by the Marine Management Organisation (MMO), for all activity taking place in English waters.
- 2.4 The proposed project comprises:
 - Trailer suction hopper dredging, at all times of year
 - Total extraction of 30 million tonnes over 15 years; maximum of 2 million tonnes per year across total area (Area 526)
 - Penetration depth 1.5 to 3 metres; variable total depth to leave 0.5 metres capping layer across dredged area.
 - Hopper washing of 20 to 50 m³ material per washout
 - Grab and core sampling as required for monitoring purposes
- 2.5 At the time of application for variation, Marine Licence MMML1670 includes condition 4.2, restricting the permitted annual tonnage removal in the Welsh region to 16,666 tonnes per Licence Holder (50,000 tonnes total).
- 2.6 Marine Licence MMML1670 is subject to a maximum 7 year dredging period.

2.7 The variation application comprises:

- To remove the tonnage restriction in Condition 4.2 of MMML1670 and allow the full tonnage originally applied for (666,666 tonnes per year per Licence Holder; 2 million tonnes total annually) to be taken from across the whole of Extraction Area 526.
- To extend the licence period from the current 7 year dredging period to a 15 year period.
- This would accordingly increase the maximum total tonnage permissible for removal over the entire duration of the licence to be 10,000,000 tonnes per operator.

3 EIA Screening Opinion issued by NRW as Appropriate Authority

3.1 As the Appropriate Authority, in accordance with the MWR, NRW has considered whether the application for a variation to Marine Licence MMML1670 is a project requiring EIA under the MWR. NRW has issued a screening opinion to the applicants, dated 7 August 2018.

3.2 The screening opinion sets out that the proposed works fall under Schedule A2 (89) of the MWR:

Any change to, or extension of, development of a description listed in paragraphs 1 to 87 of Schedule A2 where the development is already authorised.

The authorised development falls under Schedule A2 (10) of the MWR:

Extraction of minerals by fluvial or marine dredging

3.3 The screening opinion further sets out that NRW, as Appropriate Authority, has determined that, in accordance with regulation 10(1)(b) of the MWR, EIA is not required in relation to the project, as assessment of any significant effects on the environment of the project (the variation in tonnage and licence period) in question has been carried out by NRW in the determination process for MMML1670, and that this is sufficient to meet the requirements of the EIA Directive.

4 Representations in response to consultation made by Consultation Bodies – MWR Regulations 17(1)(a)(iv)

4.1 The Marine Licence variation request was consulted upon on 27 March 2018 for 28 days. It was sent to the following consultation bodies:

- The Crown Estate (CE)
- Natural Resources Wales Technical Experts (NRW TE)
- Ministry of Defence
- Maritime & Coastguard Agency
- Trinity House (TH)
- Royal Yachting Association
- Local Authority Biodiversity Officers
- Local Planning Authority (Cardiff, Vale of Glamorgan, Bristol, North Somerset, Monmouthshire)
- Local Harbour Authority
- Royal Society for the Protection of Birds (RSPB)
- Marine Enforcement Officers and Welsh Government Fisheries
- Royal Commission on the Ancient and Historical Monuments of Wales
- The Wildlife Trust
- Natural England (NE)
- Historic England
- Marine Management Organisation (MMO)
- Environment Agency (EA)
- Local Ports (Barry, Penarth, Newport, Bristol Port Company, Gloucester Harbour Trustees)
- Chamber of Shipping
- Shellfish Association of Great Britain (SAGB)
- National Federation of Fisherman Organisation (NFFO)
- NERL Safeguarding
- Devon & Severn IFCA
- Welsh Government Departments (Planning, Marine, Department of Transport)

4.2 The following organisations submitted comments: TH, CE, Bristol Port Company, Welsh Government Marine Branch, EA, MMO, Historic England, NE, Monmouthshire Council, Marine Enforcement Officers and Welsh Government Fisheries.

4.3 Details of the issues raised by the Consultation Bodies and how they have been addressed is set out in section 5.

- 4.4 Consultees who did not provide a response were assumed to have no comment.
- 4.5 This variation request is for parameters that were applied for in the original application (MMML1670) but which were not permitted in the original licence due to a policy position at the time. The duration and tonnage that have been applied for in this variation have therefore been fully assessed in the original marine licence determination. Therefore NRW PS consider it is not necessary to publicise the variation request under the MWR. No public representations were made during the original MMML1670 consultation.

5 Issues arising and relevant considerations for the Marine Licence variation request – MWR 10(4E)(c)

- 5.1 The application for variation to Marine Licence MMML1670 included a request to extend the licence period to allow 15 years dredging period and an annual tonnage rate of 2 million tonnes.
- 5.2 The tonnage restriction and duration of the licence in Welsh Waters had been constrained by the interim Marine Aggregates Dredging Policy (2004) (iMAD-P). The draft Welsh National Marine Plan (WNMP) has now been consulted upon and does not place the same restriction on aggregate dredging in the Severn Estuary. Therefore, the applicant has requested that NRW PS make an appropriate consideration of the WNMP in the determination of the variation request.
- 5.3 The Environmental Statement (ES) submitted with the original marine licence application covered the full project extent in both English and Welsh regions. NRW as Appropriate Authority for the Welsh Marine Licence had considered the Environmental Impact Assessment for the entirety of Culver Extension site (Area 526) including the tonnage applied for at both sites during the original marine licence application.
- 5.4 The tonnage and duration of the licence applied for under the variation are the same as those applied for in marine licence MMML1670. The EIA consent decision for MMML1670 had considered the full tonnage and 15 year period stated above during the determination of the application.
- 5.5 The tonnage restriction and duration of marine licence MMML1670 were constrained by the interim Marine Aggregates Dredging Policy (2004) (iMAD-P), specifically section SP5 regarding the tonnage cap within the Severn Estuary and Inner Bristol Channel and SP7 regarding duration of a licence set to a maximum of seven years in a "Precautionary Sediment Environment"

(which is later outlined in Map 4). The location of Culver Sands is within a "Precautionary Sediment Environment as defined by iMAD-P.

- 5.6 Following public consultation on the Welsh National Marine Plan, NRW PS considers the amended aggregate policy to be a relevant consideration for the determination of this particular Marine Licence variation. The draft Welsh National Marine Plan does not place the same restrictions for this particular site. AGG_01 allows a permitted tonnage limit to be defined for an area following the necessary assessment and decision making processes, this is then defined as the Seven Estuary (therefore removing the cap for the Inner Bristol Channel). In addition, paragraph 418 of the draft WNMP gives provision for aggregate licences to be issued for a period of fifteen years with five-yearly reviews of monitoring results. We consider that this site is well understood due to previous monitoring results at the adjacent Culver Sand Bank Area 472 aggregate extraction site in English Waters, and note that no concerns have been raised in consultation regarding a longer licence term.
- 5.7 WG Marine Branch responded to the consultation to note that whilst the WNMP policies are not final, these policies are substantially more current than the policies within iMAD-P. WG Marine Branch stated that consultation responses to the WNMP included comments referring to the proposed aggregates policy and iMAD-P. An initial screening conducted by WG Marine Branch did not indicate any strong objections regarding either the extension of potential licence terms to 15 year, or a removal of the tonnage cap in the Bristol Channel region. WG Marine Branch noted that several responses to the WNMP proposed aggregates policies were favourable.
- 5.8 NRW TE responded to note that the proposed annual extraction rate had been given due consideration during the determination process for MMML1670 and stated that NRW TE have no objections to the proposed variations.
- 5.9 NE raised a query regarding the reasoning for the tonnage restriction in Marine Licence MMML1670. NRW PS responded to state that the tonnage restriction was related to iMAD-P only. NE stated that they had no further concerns.
- 5.10 Following the consultation response from Welsh Government, NRW does not anticipate changes to the Draft Welsh National Marine Plan policies relating to the provision for the extension term or the removal of the total tonnage cap in iMAD-P. Given that the reasoning for the tonnage cap and short term licence were only included within the licence due to iMAD-P, and there is no reasoning to do so under protection of the environment, human health and prevention of interference with other legitimate sea uses, NRW PS consider that in this case the draft WNMP should have more weight than the iMAD-P policy.

6 European Protected Sites

- 6.1 The proposal is located within the Severn Estuary SAC, Severn Estuary SPA and Severn Estuary RAMSAR.
- 6.2 A Habitat Regulations Assessment (HRA) was carried out during determination of MMML1670, considering the full tonnage and 15 year period. A test of likely significant effect (TLSE) was undertaken and likely significant effects on features of the European Sites listed above could not be ruled out. It was concluded that the proposal, when considered alone and in-combination, will not adversely affect the integrity of the European site(s) concerned.
- 6.3 As the variation application is for the same works as applied for during MMML1670, the HRA carried out during determination of MMML1670 is considered to be still applicable. The variation is to remove the tonnage restriction and increase the duration of the licence in Welsh Waters which were constrained due to the interim Marine Aggregates Dredging Policy (2004) (iMAD-P) and not as a result of the HRA. A HRA has been completed concluding that this project is a renewal of a current permission which complies with NRW agreed criteria for ruling out significant effects of a renewal without conducting a project-specific LSE test. Therefore it is considered not likely to have a significant effect on any Natura 2000/Ramsar sites, either alone or in-combination with other plans and projects.

7 Changes to MMML1670

- 7.1 Licence duration has been extended to allow 15 years of dredging and allowance to carry out post works discharge of conditions.
- 7.2 Condition 3.3 has been varied to ensure that operation under the licence ceases after 15 years rather than 7 years as conditioned in MMML1670.

*3.3 All dredging operations permitted under this licence must cease by **05 August 2033**.*

- 7.3 Condition 4.1 of MMML1670 has been amended increasing the total tonnage to be extracted over the duration of the licence, reflecting the extended duration of the licence from 7 to 15 years.

*4.1 The total quantity of material to be extracted over the duration of this Licence, from the date of commencement of dredging, must not exceed **10,000,000 tonnes** across the whole of the Crown Estate Area 526, as detailed in Table 1.1 and 1.2.*

- 7.4 Condition 4.2 of MMML1670 has been removed from MMML1670v1 and condition 4.3 of MMML1670 (condition 4.2 of MMML1670v1) has been amended, removing the annual tonnage restriction set by iMAD-P.

- 7.5 Condition 11.2 has been amended to reflect the longer duration of the licence, and to ensure that the monitoring is carried out with five yearly reviews of monitoring results as required by the draft WNMP.

*11.2 The Licence Holder must submit a substantive review of the dredging operations that have taken place under the Marine Licence to NRW acting on behalf of the licensing authority. The substantive review must be submitted within **9 months** of the start of the **5th** and **10th years** following the date of commencement of dredging within the marine licence area, The report must summarise the results of the monitoring undertaken to date and detail:*

- (i) The impact of dredging operations on the marine environment;*
- (ii) The effectiveness of the conditions imposed on the dredging operations and recommending any variations to the dredging operations as may be necessary to protect the environment; and*
- (iii) Any recommendations of variations to the monitoring programme as may be necessary to ensure that effective environmental monitoring of the dredging is maintained.*

8 Regulatory Decision – MWR Regulations 10 (4) and 10 (4A) - 10 (4E)

- 8.1 In accordance with Regulation 10(4) of the MWR, NRW considers that regulatory approval of the variation request would be compatible with the measures to comply with the EIA Directive outlined in the EIA Consent Decision produced by NRW dated 20 September 2017.
- 8.2 Paragraph 14 of the EIA Consent Decision, dated 20 September 2017, provides a summary conclusion that the environmental impacts of the activities under the application have been adequately identified, described and assessed and that mitigation can be secured. As required by Regulations 10(4) and 10 (4A)(a) of the MWR, NRW PS considers that regulatory approval for the requested variation would be compatible with this conclusion.
- 8.3 There are a number of requirements outlined in Section 12 of the EIA consent decision. NRW considers that the licence variation contains relevant conditions to comply with these conditions.
- 8.4 In compliance with MWR Regulation 10(4A)(c), the following features of the project are envisaged to avoid, prevent, reduce or offset likely significant effects of the project on the environment:

- Exclusion from dredging of regions within the resource area with a resource thickness of less than 0.5m
- Dredging will be restricted to include a 0.5m capping layer to create recolonization opportunities.
- Active dredge zones will be in place prior to the commencement of dredging
- Exclusion zones for sensitive benthic habitats or species, marine archaeology, seabed features, cables and pipelines and low resource areas will be designated prior to the commencement of dredging. The location of these zones will be informed by pre-dredge survey.

8.5 The following measures have been considered by NRW in the EIA Consent Decision to be appropriate conditions to mitigate environmental effects. In compliance with MWR Regulation 10(4A)(b) and 10(4E)(b). NRW considers it appropriate to include relevant conditions in the Marine Licence:

- A biosecurity plan will be agreed with NRW PS prior to the commencement of dredging, to prevent the introduction or spread of invasive non-native species
- Exclusion zones for sensitive benthic habitats or species, marine archaeology, seabed features, cables and pipelines and low resource areas, will be designated prior to the commencement of dredging. The location of these zones will be informed by pre-dredge survey
- The use of best practice, in line with guidance note '*Marine Aggregate Dredging and the Historic Environment*' (British Marine Aggregate Producers Association (BMAPA) and English Heritage, 2003) will be used to mitigate effects to the historical environment.
- A post-dredge survey will identify any areas negatively impacted by the activity. Remedial action to mitigate these impacts will be undertaken post-survey.

8.6 The following monitoring measures have been considered by NRW PS in the EIA Consent Decision to be appropriate in relation to the project. In compliance with MWR Regulation 10(4A)(d) and 10(4E)(b). NRW PS considers it appropriate to include relevant conditions in the Marine Licence to ensure these are undertaken:

- A benthic characterisation survey will be undertaken prior to commencement of dredging to establish a baseline for future monitoring surveys.

- The licence variation will include a requirement for monitoring surveys and reports every 5 years, from the commencement of dredging activity, in line with the methodology used for the initial characterisation survey.
- 8.7 In accordance with Regulation 10(4B), NRW PS considers that the information relating to significant effects of the proposed project on the environment contained in the EIA Consent Decision, dated 20 September 2017 is up to date.
- 8.8 In summary, NRW PS consider it appropriate to grant the request for a variation to Marine Licence MMML1670.

9 Authorisation

Produced by: Peter Morrison (Permitting Officer, NRW PS)

Signed: 

Date: 5 July 2018

Approved by: Eleanor Ellick

Signed: 

Date: 2 August 2018