

Gate Check Report Review - Kyleakin Fish Feed Factory (May 2017)

During the Gate Check process in March 2017 a review of the Marine Licence application and all supporting documentation was carried out by MS-LOT. The table below captures each of the clarification comments raised by MS-LOT. These are covered in the order presented by MS-LOT with each point being detailed even if they have been adequately clarified in subsequent discussions before final submission of the Marine Licence application package. Where relevant, reference is provided to the original Kyleakin Scoping Opinion (2016) comments made by the consultees and provided in tabular format (Gap Analysis Table, Appendix 1.2 of ES). The final column details the section(s) within the ES or other supporting documents, where an issue has been addressed. Justification to a specific clarification comment is provided if required.

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| 4 | Applicant to take account of current British Underwater Test and Evaluation Centre Byelaws (1984) as detailed in statutory instrument no.1851relating to the restrictions on the use of sea areas (as specified) containing the ranges | <i>Under Point 4, the DIO asked that consideration is made to the BUTEC byelaws and we require that you please identify the specific section in Appendix 16.1 where consideration has been made</i> | See Appendix 16.1 (ABPmer, 2016) Consideration given to the BUTEC byelaws during Hazard workshop attended by QinetiQ. Following implementation of appropriate mitigation, marine risk to navigational receptors will be maintained within a level that is 'as low as reasonably practicable' | Further justification provided in Gap Analysis table (Appendix 1.2). |
| 7 | Condition to be included in any license granted to regulate the hours when pile driving type works may be conducted and to make provision that works are suspended for periods (as reasonably notified by MOD) should there be an urgent operational need for the range to be used outside the normal operating times identified. | <i>Your consideration of Point 7 is unclear and we ask that you please specify whether or not you are content with having that as a condition to any prospective marine licence.</i> | N/A Should the MLA be approved MH will liaise with MOD, and successful contractor(s) to produce a management plan that will include consideration of noise regulation. | Gap Analysis table updated as requested (Appendix 1.2). Chapter 17: section 17.7.1 and 17.7.2 updated; Chapter 18: section 18.7 updated; Chapter 19: section 19.6 and 19.7 also updated. It is acknowledged that there would be no piling between the hours of 20:00 and 07:30 (except in the case of emergency) (section 19.7).. |
| 9 | Mitigation: • MS-LOT welcome commitment made in the Proposal Summary to identify mitigation measures in order to avoid, minimize, or reduce adverse impacts. The range of mitigation options considered in the ES should be informed by the EIA process along with any input from the relevant nature conservation bodies. Contact with these bodies should be established and maintained throughout the EIA process in order to ensure effective mitigation measures are identified. • Within ES it is important that all mitigation measures are: Clearly stated Fully described with accuracy Assessed for their environmental effects Assessed for their effectiveness Their implementation should be fully described How commitments will be monitored If, necessary, how they relate to any consents or conditions | <i>We note that Point 9 requests the identification of mitigation measures in the ES and would like to confirm that the CEMP is not a mitigation measure in itself, but rather a means of describing the detail of mitigation post-consent. Therefore, we ask that all reference to the use of potential post-consent plans and documents as mitigation measures, is removed and the gap analysis table updated to reflect that.</i> | 1. Communication has been ongoing with conservation bodies throughout. Key consultation is detailed in upfront sections of Chapters 16, 17, 18, 19 and 20. 2. Where provided, mitigation measures are clearly described and impacts reassessed as appropriate (e.g. sections 16.6; 17.7 ; 18.7; 19.6). | Gap Analysis table updated as requested (Appendix 1.2). Chapter 17: section 17.7.1 and 17.7.2 updated; Chapter 18: section 18.7 updated; Chapter 19: section 19.6 and 19.7 also updated. |
| 12 | Ecology, Biodiversity and Nature Conservation: • European Protected Species ("EPS"): Applicants must give consideration to the three fundamental tests and should refer to the guidance on the protection of marine European Protected Species for more detailed information in relation to Scottish Inshore Waters. Applicants may choose to apply for an EPS licence following any grant of consent once construction methods have been finalised, however it is useful to include a shadow EPS assessment within the ES. • Species on Schedules 5 (animals), e.g. basking sharks, and 8 (plants) of the Wildlife & Countryside Act 1981 are protected against intentional or reckless disturbance or harassment and should be given due consideration within the ES along with Marine Protected Area (MPA) species/habitats. | <i>Under Point 12 a shadow EPS assessment and consideration of Schedule 5 and 8 species of the Wildlife & Countryside Act 1981 are required, however the sections in your response do not seem to answer that and we therefore ask that you please include this information in your ES and/or amend the gap analysis table to reflect the correct sections.</i> | 1. Section 11.4.2; 11.6.3; 11.6.4; Table 19.2 and 19.5; section 19.4.2; 19.5.1.1; 19.6.1.2 2. Table 11.1; 19.2 | 1. Recognition of EPS species are provided in Chapter 11: Table 11.1 and 11.2 and sections 11.6.3 and 11.6.4; Chapter 19: Table 19.1, 19.2, 19.5 and 19.9, and sections 19.4.2, 19.5.1.1, and 19.6.1.2. It is the Applicant's intention to apply for an EPS licence for the relevant species in the area once consent has been granted (Chapter 19: section 19.6.1.2). However, following discussion with MS-LOT (17/5/17) the Applicant will submit a shadow EPS assessment as a separate stand-alone document post submission of the MLA. The shadow EPS assessment is not a constituent part of the MLA package and, as agreed with MS-LOT (17/05/17), will not interrupt the consultation phase for the MLA and ES. 2. Table 11.1; 19.1; 19.2; 19.9. Also section 19.4.4 and 19.4.5. |

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| 14 | Archaeology and Cultural Heritage: • The ES should address the predicted impacts on both the marine historic environment and the potential for the onshore impacts of terrestrial elements of the development. It should also describe the mitigation proposed to avoid or reduce impacts to a level where they are not significant. Historic environment issues should be taken into consideration from the start of the site selection process and as part of the alternatives considered. | <i>Point 14 asks for consideration of the development's predicted impacts on the marine historic environment, which does not seem to be analysed in Chapter 13, as identified in the gap analysis table.</i> | n/a | ES Chapter 13 (Cultural Heritage) includes at Section 13.4.1.1 an overview of marine cultural heritage and the requirement for any potential mitigation. |
| 17 | • Please ensure that any applications submitted include detailed coordinates (WGS84 datum) for each individual element of the marine aspects of the development including: • Full dredge area • All land reclamation • Slipway • Rock armour • The pier extension area • Pile diameter/size, location (or average distance between piles) and number. | <i>Under Point 17 (and part of Point 27) we have asked that separate coordinates (WGS84 datum) for each individual element of the marine aspects of the development (e.g. pier, land reclamation area, etc.) are supplied. We note that the marine licence applications contain an outline of the entire development rather than specific elements and we therefore ask that you please amend that to reflect our requirements.</i> | These are provided as part of the MLA package | Appendix 01 (Additional Coordinates has been completed to supplement the Dredging and Sea Disposal MLA, providing a breakdown of all relevant co-ordinates. |
| 28/32 | Point 28 The following info must be provided in the ES: - Map of proposed waste water drainage layout - Map of proposed surface water drainage layout Point 32 - Given the marine designations adjacent and close to the site and the interrelationship between the above issues and the marine environment, it will be important to consider consentability during the planning application determination. For example, the regulated processes will impact upon issues such as discharges or abstractions to/from the MPA. This may be particularly important should AA be required for impacts upon the environmental designations. | <i>The gap analysis table should be updated to indicate the location of the waste water drainage and surface water drainage layout maps (Point 28), along with information on how Point 32, with specific reference to the aspect of discharges to/from the MPA, has been addressed.</i> | Consideration given in Chapter 17 (e.g. section 17.6); Chapter 19 (section 19.5.1 and 19.5.2). Also refer to Kyleakin RIAA and RIAA memo (both are submitted as part of MLA). SEPA stated in consultation response (19/1/17) The proposed water abstraction will be consentable under the existing water abstraction licence in place on site and therefore we have no objection to it. The existing water abstraction licence, CAR/L/1011948, allows 1100m3/day to be abstracted from the Allt Anavaig and 800m3/day from a groundwater abstraction (see SEPA consultation response (19/01/17)) No additional abstractions required | 1. Point 28 - A plan of the proposed surface water and waste water drainage layout has been provided in Appendix 2.1 of the ES. 2. Point 32 - this has been clarified in point 32 of the Gap Analysis table. |
| 42 | SEPA's Flood Risk Assessment checklist should be completed and attached within the front cover of any FRAs issued in support of a development proposal which may be at risk of flooding. | <i>Point 42 refers to SEPA's Flood Risk Assessment checklist which we could not locate within the information supplied. This checklist should be added to the relevant ES chapter and the location updated on the gap analysis table.</i> | Chapter 9 – Hydrology and Flood Risk. FRA is part of Chapter 9. Noted. A checklist has been completed and incorporated into an updated FRA in response to SEPA's consultation comments (19/01/17). | Gap Analysis table updated and checklist now included as part of Appendix 9.1. |
| N/A | N/A | <i>NON-TECHNICAL SUMMARY This document states that its purpose is applying for planning permission rather than marine licences and does not make the representations process clear. The relevant marine legislation is also not mentioned.</i> | n/a | NTS has been updated to acknowledge the application for Marine Licences. Recognition given to the Marine Works Regs 2017. |
| N/A | N/A | <i>CHAPTER 1 Please note that the representations process and the purpose of this ES have not been made clear. Land reclamation has been missed off of the list of marine works and the legislation quoted needs to be amended. Please note that representations should be sent to ms.majorprojects@gov.scot or the postal address in my signature.</i> | n/a | Chapter 1 updated to acknowledge the application for Marine Licences. Recognition given to the Marine Works Regs 2017. List of marine works includes land reclamation. Website address updated. |
| N/A | N/A | <i>CHAPTER 2 Can you please confirm whether both vibro and impact piling methods will be used for the proposal?</i> | n/a | Both vibro and impact piling will be used, and this has been confirmed within Chapter 2 |
| N/A | N/A | <i>CHAPTER 4 Section 4.2.1 makes no mention of the Inner Hebrides and the Minches pSAC.</i> | n/a | Update has been made to Chapter 4 to include recogniton of the Inner Hebrides and Minches cSAC. |
| N/A | N/A | <i>CHAPTER 5 Section 5.2.5 states that 'errors in the reporting of data, such as chemical laboratory analysis, cannot be ruled out'. Clarification of this statement should be made</i> | n/a | ES Chapter 5 (Hydrogeology & Geology) provides some further text/clarification at Section 5.2.5. |

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| N/A | N/A | <i>CHAPTER 7 This chapter does not make any reference to piling noise and its effects on the marine environment. Although this is discussed in subsequent chapters, Ch. 7 should have a reference as to where the marine aspect has been considered.</i> | n/a | A reference to piling noise and its effects on the marine environment has been added to Chapter 7. |
| N/A | N/A | <i>CHAPTER 15 Pages 15-8 to 15-10 include a Ch. 10 that used to discuss aquatic ecology. Following planning application, this chapter was removed and as such reference to it in the ES and supporting documentation should no longer be made.</i> | n/a | Chapter 10 has been superseded by Chapters 16 to 19, and Chapter 15 has now been updated to reflect this. All references to Chapter 10 have also been amended throughout the ES. |
| N/A | N/A | <i>CHAPTER 16 Throughout the ES the Navigational Risk Assessment has been referred to as either its name or 'Appendix 16.1'. The names of documents should be consistent throughout the ES to avoid any confusion, so please rename the NRA into Appendix 16.1 and update all reference in the ES.</i> | n/a | Updated Chapter 16. Text amended to provide clarity however, on some occasions it is still necessary to refer to the 'NRA' within Chapter 16. |
| N/A | N/A | <i>CHAPTER 17 Sections 17.6.1.3 & 17.6.1.4 should contain an explanation of the ways to prevent concrete and oil releases in the environment, rather than accepting the releases will occur.</i> | n/a | These relate to the potential for accidental spillages and are listed in the impacts section of the chapter. Mitigation measures that will reduce the likelihood/magnitude of such spillages are contained in the following section 'mitigation measures' |
| N/A | N/A | <i>CHAPTER 18 In Appendix 18.1 Figure 2.2 excludes the Inner Hebrides and Minches pSAC, while Section 2.2 excludes land reclamation from the list of marine works. Please make sure these are amended accordingly.</i> | n/a | The Appendix 18.1 Report has been updated to address clarifications. |
| N/A | N/A | <i>CHAPTER 19 Reference is made throughout the chapter to the Inner Hebrides and Minches 'cSAC'. Please note the site's current status is 'proposed' and as such all sections should be amended to reflect that. Please make sure that this amendment is made to all other documents supplied. Section 19.5.1 has identified seal corkscrew injury due to vessels strikes as a risk, although that is no longer the case. Please amend this.</i> | n/a | No change has been made to cSAC as in September 2016, following consultation, this site was changed from 'proposed' to 'candidate' SAC. All reference to corkscrew injury has been removed from the chapter. |
| N/A | N/A | <i>MARINE LICENCE CONSTRUCTION & DREDGING APPLICATIONS Can you please confirm whether the cost of works quoted in the construction application form is the total cost of works for the project, including dredging? Should that be the case, your fee will be £13,325 which should either be submitted as a cheque at the point of application or transferred by BACS once an invoice is generated. We therefore cannot accept your cheque of £9,000 and will be returning it to you shortly. Please update the 'agent' section to reflect your current arrangements with Jacobs and please provide confirmation of whether Kyle of Lochalsh and the Highland Council are the same harbour authority. Your construction application should include all marine construction works including land reclamation (section 6.c) and caissons (section 6.d), while your dredging application should mention the intention of re-using some of the dredge spoil for land reclamation (section 6.a). Please note that Figure A.1 does not include the Inner Hebrides and Minches pSAC.</i> | n/a | Noted. Marine Harvest has been in contact with Marine Scotland and the issue regarding fees now been clarified. The agent section of the MLA forms includes a Jacobs contact and required co-ordinates have been added to the MLA forms. Kyle of Lochalsh is the harbour authority. |

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| N/A | N/A | <p><i>GEOTECHNICAL REPORT</i> <i>Tables 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40 and 42 identify incorrect action levels for Tributyltin (TBT). Action Level 1 (AL1) for TBT is 0.1 mg/kg, whereas AL2 is 0.5 mg/kg. Should these correct levels be used, TBT in your samples has exceeded AL1 and this needs to be discussed in the relevant chapters and documentation.</i></p> <p><i>The above tables also state that all PCBs were below AL1 in all cases and we please ask that you incorporate an additional table to show the PCB values for each sample. These tables are also missing measurements of Benzo[g]perylene, which is one of the PAHs that we require to be tested, according to our pre-disposal sampling guidance.</i></p> <p><i>The methodology behind the leachate analysis should either be added to the Geotechnical Report or cross-referenced with another document for ease of reading. Tables similar to the ones for action levels and actual measurements should be put with regards to leachate EQS.</i></p> | n/a | <p>The geotechnical report was updated to address the clarifications outlined.</p> <p>Following additional discussion with MS-LOT (12/05/17) it was noted that the inclusion of Benzo(g)perylene as an additional PAH for testing prior to dredging and sea disposal has been an internal error and Marine Scotland guidance will now be amended to exclude this. MS-LOT stated that this point could be disregarded from their initial response.</p> <p>There is no leachate EQS however, a comparison was made between the leachate values and that of the marine water EQS. This has now been clarified.</p> |
| N/A | N/A | <p><i>PAC REPORT</i> <i>The PAC report needs significant re-writing to comply with the requirements of The Marine Licensing (Pre-application Consultation) Regulations 2013. Please note that the screening and scoping processes are not related to PAC, but rather EIA.</i></p> | n/a | <p>The PAC Report has been updated in line with the requirements of the Marine Licensing (Pre Application Consultation) Regulations 2013.</p> |
| N/A | N/A | <p><i>GENERAL COMMENTS</i> <i>Please make sure that all documentation is amended to reflect the fact that Marine Harvest are applying for marine licences, rather than planning permission and that the right legislation (marine) is quoted in all instances.</i></p> <p><i>Cross-referencing between chapters and documents should be improved, as should the naming of documents across the ES and the appendices.</i></p> <p><i>The list of marine works should be consistent throughout the ES and supporting documentation.</i></p> | n/a | <ol style="list-style-type: none"> 1. The ES has been reviewed throughout to reflect the fact that it is in support of a marine licence application, and all relevant marine legislation has been quoted. 2. Noted, and where possible cross referencing between chapters has been improved. 3. The list of marine works has been checked throughout for consistency. |