

T: +44 (0)300 244 5046
E: ms.marinelicensing@gov.scot

Ms S Gooch
Fairhurst
1 Arngrove Court
Barrack Road
Newcastle-Upon-Tyne
NE4 6DB

31 January 2020

Dear Ms Gooch

SCREENING OPINION UNDER PART 2, REGULATION 11 OF THE MARINE WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) SCOTLAND REGULATIONS 2017 (AS AMENDED)

Thank you for your screening opinion request for the proposed construction and improvement works at Dundee East, Port of Dundee ("the Proposed Works") received on 28 October 2019 and the Proposed Mitigation Measures document received on 15 January 2020 and supplemented on 20 January 2020.

The Proposed Works involve the construction of a new suspended quay and rock armour, improvements to an existing suspended quay, capital dredging and deposit of dredged substances or objects to create an offshore wind assembly, storage and decommissioning area at Port of Dundee. The Scottish Ministers consider the works to fall under paragraphs 10(g) and 10(m) of The Marine Works (Environmental Impact Assessment) Scotland Regulations 2017 ("the 2017 MW Regulations"). The Proposed Works are schedule 2 works under paragraph 10(g), construction of harbour and port installations, and 10(m), coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, as part of the works is to be carried out in a sensitive area. Dundee City Council is screening the terrestrial concerns of the project under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017.

In considering your screening request, the Scottish Ministers have consulted with Scottish Natural Heritage ("SNH"), Scottish Environment Protection Agency ("SEPA"), Historic Environment Scotland ("HES") and the relevant local planning authority (Dundee City Council) as to their view on whether the Proposed Works are an Environmental Impact Assessment ("EIA") project. Copies of the consultation responses are enclosed for your review.

When making a determination as to whether schedule 2 works are an EIA project, the Scottish Ministers must take into account such of the selection criteria set out in schedule 3 of the 2017 MW Regulations as are relevant to the works. In this regard, the Scottish Ministers have considered the following:

Characteristics of the works

The Proposed Works involve upgrading the existing suspended Prince Charles Wharf to increase quay capacity by thickening the overslab and pile repairs using up to 6 tonnes of welded plates. The existing dredged berth associated with the Prince Charles Wharf will be widened by 20m and the depth of the berth will be increased to -10m chart datum ("CD"). A new suspended quay to the west of Prince Charles Wharf will be built to accommodate Ro-Ro vessels. The area of the new suspended quay will

be 5,450m² and comprised of 3,000 tonnes of steel piles and 8,600 tonnes of concrete, with sections of combi-wall adjacent to the existing quay. Up to 60,000 tonnes of rock armour and fill will be constructed underneath it. Both vibro and hammer piling will be used during the installation of sheet and tubular piles with the potential to cause disturbance through noise, although the noise levels are not expected to change when compared to pre-existing background levels of other port activities. The new berth pocket in front of the new suspended quay will be 170m × 30m and dredged to -9.0m CD. In total, the 75,000m³ of dredge material is proposed be deposited at the licensed Middlebank sea deposit site located approximately 0.6 nautical miles from Dundee. Potential environmental impacts from dredging include increased suspended sediment concentrations and loss of subtidal habitat.

SEPA advised that the Proposed Works are not likely to cause significant environmental effects. SEPA provided general comments in regards to waste management, marine non-native species, biodiversity plans and pollution prevention. Provided that good working practices are followed for these, SEPA is satisfied that with respect to its interests, an EIA is not required.

Location of the works

The Proposed Works are situated in an established port which is located within the Firth of Tay and Eden Estuary Special Area of Conservation ("SAC") and the Outer Firth of Forth and St Andrews Bay Complex proposed Special Protection Area ("SPA"). The Proposed Works are also in close proximity of the Firth of Tay and Eden Estuary SPA and the Firth of Tay and Eden Estuary Ramsar site. The Proposed Works also have the potential to impact highly mobile species of the River Tay SAC and the Moray Firth SAC. In its initial response, SNH advised that the proposal may have significant effects upon several European sites including SACs and SPAs and also have effects on European Protected Species. SNH advised that the Proposed Works could result in physical habitat loss and/or damage in the Firth of Tay and Eden Estuary SAC and that the Proposed Works could impact migratory fish species of the River Tay SAC, bottlenose dolphins of the Moray Firth SAC and several bird qualifying interests of the Firth of Tay and Eden Estuary SPA and the Outer Firth of Forth and St Andrews Bay Complex proposed SPA due to noise, lighting and other construction activities.

HES advised that a large area within the onshore proposed development boundary is known to have been the site of a World War II seaplane base, and that there are records of wrecks of seaplanes and other unrelated vessels in the general vicinity of the Proposed Works. HES therefore advised that it is possible for the proposed dredging activities to have significant adverse impacts on currently unidentified marine historic environment assets. Fairhurst subsequently provided a document showing historical dredging areas and a report of geophysical and geotechnical investigations which were undertaken in 2002 to show that marine historic environment assets are unlikely to exist in the area. HES reviewed the information and agreed that there are no significant marine heritage remains in the area and any minor finds remaining are likely to be in situ and undisturbed, therefore further mitigation is not necessary. HES advised that significant adverse impacts on the marine historic environment are unlikely and therefore an EIA is not required for the Proposed Works.

Characteristics of the potential impact

SNH advised that construction activities, especially piling, associated with the Proposed Works have the potential to disturb harbour seals, migratory fish, bottlenose dolphins and several bird species due to noise and light pollution. Dredging could also impact the benthic habitats and associated species of the Firth of Tay and Eden Estuary SAC through physical habitat loss or damage. Fairhurst subsequently provided a Proposed Mitigation Measures document containing further information on the Proposed Works and mitigation measures to address each potential environmental impact. The mitigation measures include a piling soft start, limitations to duration of piling per day and a marine mammal observer watch during piling. Additionally, construction works will only take place Monday to Saturday, no night time working is proposed and site lighting will be designed to minimise the impacts of light pollution on bird species in the vicinity of the Proposed Works. Any noise related impacts on residential receptors are unlikely given the distance from the site and the intervening land uses. Furthermore, the firth is 1.5km wide where the proposed works are located, so there is sufficient space for any species to move away from sources of disturbance. Dredging activities may result in increased sedimentation, but the proposed dredging is not anticipated to greatly increase rates of sedimentation or reduce the water quality due to high existing suspended sediment concentration. The proposed

dredge area is adjacent to the current dredge pocket in an active port and the biodiversity and habitat quality are considered low. There is also suitable alternative habitat for any species that would use the dredge area for foraging purposes. Therefore no significant adverse impacts on benthic ecology are anticipated.

On review of the proposed mitigation measures, SNH advised that once the proposed mitigation measures are taken into account, the proposal will not have significant adverse impact on the environment and therefore is not an EIA project. In its response Dundee City Council advised that based on the information provided on the characteristics of the Proposed Works and the mitigation measures detailed in the Proposed Mitigation Measures document, the Proposed Works will not have any significant effects on the marine environment and European Sites, and therefore an EIA is not required for the Proposed Works.

The Scottish Ministers consider that the mitigation measures detailed in the Proposed Mitigation Measures document sufficiently mitigate against potential noise impacts associated with the Proposed Works. Furthermore, the subtidal habitat that could be impacted by the dredging is of low value and biodiversity so any environmental effects are likely to be insignificant. Based on the information provided and advice received, the Scottish Ministers are of the opinion that the characteristics of the works are not likely to have significant adverse impacts on the environment.

Conclusion

In view of the findings above, the Scottish Ministers are of the opinion that the Proposed Works are not an EIA project under the 2017 MW Regulations and therefore an EIA is not required to be carried out in respect of the Proposed Works.

If you increase, alter or extend the Proposed Works, you are advised to contact Marine Scotland - Licensing Operations Team again to confirm if the screening opinion is still valid.

A copy of the screening opinion has been forwarded to Dundee City Council for their information. The screening opinion has also been made publicly available through the Marine Scotland Information webpage:

<http://marine.gov.scot/ml/marine-licence-redevelopment-dundee-east-port-dundee>

Thank you for consulting with us on this matter. If you require any further assistance or advice on marine licensing matters, please do not hesitate to contact me.

Yours sincerely

[Redacted]

Anni Mäkelä
Licensing Operations Team
Marine Scotland

Our ref: PCS/168737
Your ref: Forth Ports Ltd

If telephoning ask for:
Silvia Cagnoni-Watt

5 December 2016

Marine Scotland
Marine Laboratory
375 Victoria Road
Aberdeen
AB11 9DB

By email only to: MS.MarineLicensing@gov.scot

Dear Sir/Madam,

**THE MARINE WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND)
REGULATIONS 2017 (AS AMENDED) (“the EIA Regulations”)**

**CONSULTATION UNDER PART 2, REGULATION 10(5) OF THE EIA REGULATIONS
Redevelopment of Dundee East - Port of Dundee
Consultation on Request for Screening Opinion**

Thank you for consulting SEPA on the screening opinion for the above development proposal by way of your email of 13 November 2019.

We consider that, with respect to our interests, an Environmental Impact Assessment (EIA) is not required for the above proposal.

We understand that the Port of Dundee is covered by Permitted Development Rights so if an EIA is not required then there will not be a planning application consultation.

Although we are on the opinion that no significant environmental effects are likely on the basis of the information provided, we consider that there will be some effects. While we welcome the migration measures proposed, we have further recommendations to make in relation to this proposal. Please therefore see our comments and advice in the sections below and consider SEPA's regulatory requirements for the applicant in 5.

1. Marine licensing

- 1.1 We refer to our standing advice in relation to Marine Licence consultations contained in the SEPA's Land Use Planning System SEAP Guidance Note 13 (LUPS-GU13) *SEPA standing advice for the Department for Business, Energy and Industrial Strategy and Marine Scotland on marine consultations* states under Sections 2.1 – 2.3

Continued.....



Chairman
Bob Downes

Chief Executive
Terry A'Hearn

SEPA Edinburgh Office

Silvan House, 3rd Floor, 231 Corstorphine Road,
Edinburgh EH12 7AT.

www.sepa.org.uk • customer enquiries 03000 99 66 99

- 1.2 Please consider our standing advice in Section 3 and Table 1 as SEPA's consultation response.
- 1.3 Please note that we have not appraised the chemistry of the information provided. Marine Scotland should be satisfied with the outcome of the study.

2. Ecology

- 2.1 Invasive non-native species have not been mentioned and may be present, though are not always be easily visible. We recommend that the appropriate guidance is followed in terms of containment and/or disposal.
- 2.2 Salmonids and lamprey present in the River Tay are features of the SAC and should therefore be considered by Marine Scotland and SNH; both in relation to barriers such as noise and changes in water quality. We would expect mitigation to be included for migratory species that may include soft touch start up procedures and breaks in construction to allow fish movement if 24 hour activity is planned.

3. Marine ecological interests

- 3.1 Advice on designated sites and European Protected Species should be sought from Scottish Natural Heritage. Marine and transitional Special Areas of Conservation (SAC) and Special Protected Areas (SPA) and Marine Protected Areas (MPA) are also Water Framework Directive Protected Areas. Therefore, their objectives are also River Basin Management Plan objectives which should be taken into account. In such situations, Scottish Natural Heritage may contact SEPA for input on the consultation.
- 3.2 The Nature Conservation (Scotland) Act 2004 gives all public bodies, including SEPA and planning authorities, a duty to further the conservation of biodiversity. The developer is **recommended** to consult both the UK Biodiversity Action Plan and Local Biodiversity Action Plan lists for marine and coastal features found within the proposed areas of development, and consider mitigation measures, as appropriate. During the construction, operation and maintenance phases, it is important that good working practice is adopted and that wider habitat damage is mitigated against or kept to a minimum within defined acceptable limits.
- 3.3 Given that there could be the accidental introduction of Marine Non-Native Species (MNNS) as a risk for water body degradation, we **recommend** that controls should be included in development planning and marine licensing for MNNS in line with Water Framework Directive and Marine Strategy Framework Directive objectives, and [EU Biodiversity Strategy](#) targets. Under the Water Framework Directive the presence of MNNS within a water body can constitute a significant pressure on the biological elements. Good status is usually the maximum a water body can achieve if MNNS are detected and this can fall to moderate status if MNNS are present above certain thresholds. Once well established, efforts to eliminate MNNS species have proven to be extremely expensive and so far, no non-native species have been successfully eradicated from the marine environment. Therefore, in view of these difficulties, we support the [GB Non-Native Species Secretariat](#) recommendation to put into place effective biosecurity measures to prevent introduction and to stop their spread.

Continued.....

3.4 Accidental introduction of MNNS can also occur via attachment to construction plant, specialised equipment and moorings as these are moved from one area to another. Guidance that may be drawn upon includes:

- [The alien invasive species and the oil and gas industry guidance](#) produced by the Oil and Gas industry;
- SNH web-based advice on [Marine non-native species](#);
- [Marine non-native guidance](#) from the GreenBlue (recreation advice).

4. Pollution prevention and environmental management

- 4.1 One of SEPA's key interests in relation to major developments is pollution prevention measures during the periods of construction, operation, maintenance, demolition and restoration. The construction phase includes construction of access roads, borrow pits, temporary storage areas and any other site infrastructure.
- 4.2 We **advise** that the applicant should, systematically identify all aspects of site work that might impact upon the environment, potential pollution risks associated with the proposals and identify the principles of preventative measures and mitigation. This will establish a robust environmental management process for the development. Please refer to the Pollution prevention guidelines. Other pollution prevention and environmental best practice guidance that may be drawn upon includes that produced by CIRIA .
- 6.3 Any application involving large scale beach replenishment and/or dredging works should be cross checked as to whether the proposals lie within or close to a designated bathing water or shellfish growing water. Ideally all physical works should be done outwith the Bathing Water Season (1 June to 15 September) and spatfall periods. Please refer to the [Bathing waters](#) section of our website for further guidance on the Bathing Waters Directive (2006/7/EC).
- 6.4 The proposal may need a Construction Site Licence (CSL). Details are available in the regulatory section of this response. We **recommend** that the applicant consult the SEPA Regulatory team (see details below) for further information.

Regulatory advice for the applicant

5. Regulatory requirements

- 5.1 Authorisation is required under The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR) to carry out engineering works in or in the vicinity of inland surface waters (other than groundwater) or wetlands. Inland water means all standing or flowing water on the surface of the land (e.g. rivers, lochs, canals, reservoirs).
- 5.2 Management of surplus peat or soils may require an exemption under The Waste Management Licensing (Scotland) Regulations 2011. Proposed crushing or screening will require a permit under The Pollution Prevention and Control (Scotland) Regulations 2012. Consider if other environmental licences may be required for any installations or processes.

Continued.....

5.3 A Controlled Activities Regulations (CAR) construction site licence will be required for management of surface water run-off from a construction site, including access tracks, which:

- is more than 4 hectares,
- is in excess of 5km, or
- includes an area of more than 1 hectare or length of more than 500m on ground with a slope in excess of 25°

See SEPA's [Sector Specific Guidance: Construction Sites \(WAT-SG-75\)](#) for details. Site design may be affected by pollution prevention requirements and hence we strongly encourage the applicant to engage in pre-CAR application discussions with a member of the regulatory services team in your local SEPA office.

5.4 Below these thresholds you will need to comply with [CAR General Binding Rule 10](#) which requires, amongst other things, that all reasonable steps must be taken to ensure that the discharge does not result in pollution of the water environment. The detail of how this is achieved may be required through a planning condition.

5.5 Details of regulatory requirements and good practice advice for the applicant can be found on the [Regulations section](#) of our website. If you are unable to find the advice you need for a specific regulatory matter, please contact a member of the regulatory services team in your local SEPA office at:

62 High Street Arbroath DD11 1AW

Tel: 01241 874370

If you have any queries relating to this letter, please contact me by telephone on 01786 452430 or e-mail at planning.se@sepa.org.uk .

Yours sincerely

Silvia Cagnoni-Watt
Senior Planning Officer
Planning Service

ECopy to:
david.gray01@dundeecity.gov.uk
claire.myles@dundeecity.gov.uk
dominic.waugh@fairhurst.co.uk

Disclaimer



HISTORIC
ENVIRONMENT
SCOTLAND

ÀRAINNEACHD
EACHDRAIDHEIL
ALBA

By email to:

MS.MarineLicensing@gov.scot

Marine Scotland
Marine Laboratory
375 Victoria Road
Aberdeen
AB11 9DB

Longmore House
Salisbury Place
Edinburgh
EH9 1SH

Enquiry Line: 0131-668-8716

HMConsultations@hes.scot

Our case ID: 300041449

02 December 2019

Dear Sir/Madam

**The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017
Redevelopment of Dundee East - Port of Dundee
Request for Screening Opinion**

Thank you for your consultation which we received on 13 November 2019 seeking our comments on an Environmental Impact Assessment (EIA) screening opinion for the above proposed development. This letter contains our comments for our historic environment interests. That is world heritage sites, scheduled monuments and their setting, category A-listed buildings and their setting, gardens and designed landscapes and battlefields on their respective Inventories, and Historic Marine Protected Areas (Marine (Scotland) Act 2010). In this case, our advice also includes matters relating to marine archaeology outwith the scope of the terrestrial planning system.

The Local Authority archaeological and conservation advisors will also be able to offer advice for their interests. This may include unscheduled archaeology, category B- and C-listed buildings and conservation areas.

Our Screening opinion

We have reviewed the information supplied with the screening request and we are content that the proposals are not likely to have significant impacts on terrestrial assets within our remit. We note, however, that dredging is proposed as part of the scheme of works and there is therefore the potential for significant adverse impacts on the marine historic environment. We have provided further comments on this aspect of the development below.

As there is potential for the development to have significant impacts on marine archaeology we consider that an EIA should be undertaken.

Our advice

We note that the proposal includes an increased area of dredging associated with the Prince Charles Wharf extension (shown in brown on Drawing no. 130143/8003) and a new area of dredging adjacent to the proposed new suspended quay (shown in purple on Drawing no. 130143/8003).



A large area within the onshore proposed development boundary is known to have been the site of a World War II seaplane base. Although no upstanding structures of the seaplane base remain, there is the possibility that there may be undesignated below ground remains associated with this site. The Local Authority archaeology and conservation advisors should therefore be consulted regarding the potential impacts of the development on potential undesignated terrestrial historic environment features.

Associated with the seaplane base, there are a number of records of wrecks of seaplanes, and other unrelated vessels in the general vicinity of the proposed development. There is therefore the possibility that the proposed dredging works could have significant adverse impacts on currently unidentified marine historic environment assets. We note that there does not appear to have been any consideration of this potential impact in the information supplied for the proposals so far.

Marine Scotland needs to be satisfied that the proposals will not have adverse impacts on undesignated marine archaeology or that appropriate mitigation is proposed to ensure that any impacts will not be significant. We consider that the applicant should undertake an assessment to determine if dredging has previously been undertaken to similar depths in the proposed dredging areas. If dredging has not previously occurred an assessment of potential impacts on marine archaeology should be undertaken and appropriate mitigation (such as a Protocol for Archaeological Discoveries) put in place.

We consider that with appropriate assessment and mitigation prior to and during the works the proposals will be able to avoid significant impacts on marine archaeology. Whether EIA is required or not for this proposal, we will wish to review the assessment and proposed mitigation for the historic environment with any Marine Licence application.

We hope this is helpful. Please contact us if you have any questions about this response. The officer managing this case is Victoria Clements and they can be contacted by phone on 0131 668 8730 or by email on Victoria.Clements@hes.scot.

Yours faithfully

Historic Environment Scotland

Sweeting S (Stephanie)

From: Victoria Clements <victoria.clements@hes.scot>
Sent: 14 January 2020 16:04
To: MS Marine Licensing; claire.myles@dundeecity.gov.uk
Cc: Derek McGlashan
Subject: Redevelopment of Dundee East - Port of Dundee

Good afternoon,

We recently provided a screening response, dated 02 December 2019, for the above proposed development in which we suggested that there was the potential for significant adverse impacts on the marine historic environment due to the dredging aspects of the proposals. We recommended that an assessment of previous dredging and the potential for survival of marine archaeology should be undertaken which would allow us to understand whether significant impacts on marine archaeology from the development are likely and that this might allow us to scope out cultural heritage within our remit from the EIA.

We have now received further information from Forth Ports Limited, including a plan showing historical dredging areas and a report of geophysical and geotechnical investigations which were undertaken in 2002. We have reviewed this information in detail and we can confirm that we are satisfied that it is unlikely that marine archaeology will survive undisturbed in the areas of proposed dredging for the redevelopment proposals. The geophysical and geotechnical survey information demonstrates that there are no significant marine heritage remains in the areas and the historical dredging areas indicate that any minor finds remaining are highly unlikely to be in situ and undisturbed. We consider that further mitigation will not be necessary in this case.

We are therefore satisfied that significant adverse effects on the marine historic environment are not likely and we do not consider that there is a requirement for EIA for our interests. We are content for the historic environment within our remit to be scoped out of any EIA.

I hope that this is useful to you and should you have any questions or require any clarification please do not hesitate to get in touch with me.

Kind regards,

Victoria

Victoria Clements | Senior Casework Officer | Heritage Directorate

We inform and enable good decision-making so that the historic environment of Scotland is valued and protected.

On May 1st we adopted the new Historic Environment Policy for Scotland. You can see the full set of policy and guidance online at www.historicenvironment.scot/heps

Historic Environment Scotland | Àrainneachd Eachdraidheil Alba
Longmore House, Salisbury Place, Edinburgh, EH9 1SH
T: 0131 668 8730
E: victoria.clements@hes.scot

www.historicenvironment.scot

[Heritage For All - read our new Corporate Plan and help to share our vision](#)



Dear Sir/ Madam

THE MARINE WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND) REGULATIONS 2017 (AS AMENDED) (“the EIA Regulations”)

CONSULTATION UNDER PART 2, REGULATION 10(5) OF THE EIA REGULATIONS

Forth Ports Ltd (per Fairhurst) - Redevelopment of Dundee East – Port of Dundee

Thank you for your consultation email of 13 November 2019 regarding the Marine Works Environmental Impact Assessment (EIA) Screening Opinion request.

SNH Advice – EIA screening

It is SNH’s policy that EIA screening decisions must be made solely by the competent authority. Our role at this stage is to advise you on the environmental receptors within our remit which may be affected by the proposal and which should be assessed, whether through EIA or other means.

However we note the specific requirement in Regulation 10(5) and we advise that in our opinion this proposal may have significant effects on the environment and therefore is an EIA project.

The proposal may have effects upon several European sites (SACs and SPAs). Should Marine Scotland determine that a full EIA is not required then impacts upon these receptors should be considered through a supporting HRA report.

The proposal may also have effects upon European Protected Species (EPS) that are not specifically protected by relevant European sites, for example otter, minke whale or harbour porpoise. Should Marine Scotland determine that a full EIA is not required then impacts upon these receptors should be considered through a supporting ecology report.

In our view this proposal will not have significant effects on any other receptors within our remit (i.e. habitats, species, geodiversity, landscape & visual).

SNH Advice – HRA screening

We welcome the inclusion of the supporting document “*Proposed Redevelopment of Dundee East: Habitats Regulations Appraisal Screening for Likely Significant Effects*” (“HRA

screening report') at this early stage in the EIA process. The HRA screening report is thorough and, while we do not support all of its conclusions, it forms an excellent basis for discussion.

The HRA screening report identifies two European sites that should be taken forward for 'appropriate assessment', and screens out several other sites. In our view the threshold for appropriate assessment has been set incorrectly, and several more sites should also be taken forward.

However, much of the reasoning in the HRA screening report that has been used to conclude 'no likely significant effects' ('no LSE') can be carried forward into the appropriate assessment.

Please see Annex 1 for further detailed advice on the HRA process, including which sites and features should be taken forward to appropriate assessment.

I hope these comments are useful, if you would like to discuss them further you can contact me via 0131 316 2629 / malcolm.fraser@nature.scot

Yours faithfully

[by email]

Malcolm Fraser
Operations Officer
Forth

Annex 1 – advice on Habitats Regulations Appraisal (HRA)

The HRA screening report (section 3.7) identifies several European sites that could be affected by the proposal. Further information about these sites, and the special features they are designated to protect, can be found on the SNH SiteLink website.¹

- Firth of Tay and Eden Estuary Special Area of Conservation (SAC)
- Firth of Tay and Eden Estuary Special Protection Area (SPA)
- Outer Firth of Forth and St Andrews Bay Complex proposed SPA
- River Tay SAC
- Moray Firth SAC

At this screening stage we have also considered the following sites:

- Isle of May SAC
- Barry Links SAC

The status of these sites means that the requirements of the Conservation (Natural Habitats, &c.) Regulations 1994 as amended (the “Habitats Regulations”) or, for reserved matters the Conservation of Habitats and Species Regulations 2010 as amended apply. Consequently, the competent authority is required to consider the effect of the proposal on these sites before it can be consented (commonly known as Habitats Regulations Appraisal). Please see our guidance note for a summary of the legislative requirements.²

The above sites may also be notified as Sites of Special Scientific Interest (SSSI) and/ or Ramsar sites. However, any issues raised in relation to these designations are fully addressed as part of the following consideration of the respective European sites.

1. HRA Stage 1 – is the proposal connected with conservation management of the European sites?

No – this proposal is not connected to conservation management of any European site.

2. HRA Stage 2 – is the proposal ‘likely to have significant effects’ upon the European sites?

The HRA screening report (section 1.9) sets out the following definition of ‘likely significant effects’ (‘LSE’):

*“For a ‘likely significant effect’ to occur, an impact must have a source and also a clear linking pathway **and a negative impact** upon the receptor” [emphasis added]*

We do not support this definition of LSE. In our view this second stage of HRA examines whether there is any connectivity between the proposal and the European sites. If connectivity exists then the site, or its specific ‘qualifying interest’ (i.e. habitat/ species), should be taken forward to appropriate assessment.

2.1. Firth of Tay and Eden Estuary SAC

Several aspects of the proposal (i.e. capital dredging and construction) are located within the SAC boundary and therefore have the potential to affect the site via physical habitat loss and/ or damage. Therefore LSE exists and this site should be taken forward to appropriate assessment. However we advise that the arguments laid out in the HRA screening report will be important aspects of the appropriate assessment.

¹ <http://gateway.snh.gov.uk/sitelink/index.jsp>

² https://www.nature.scot/sites/default/files/2017-12/Legislative%20requirements%20for%20European%20Sites%20-%20updated%20November%2030th%202017%20%28B449621%29_1.pdf

We support the remaining conclusions in this section, including LSE based on potential noise-based disturbance to harbour seal.

2.2. Firth of Tay and Eden Estuary SPA

Several of the qualifying interests protected by the SPA designation may use the area around the proposal site and so there is potential for disturbance to those species via noise, lighting, or other activities. Therefore LSE exists and these features should be taken forward to appropriate assessment.

The relevant qualifying interests include species that make use of open water such as cormorant, eider, goldeneye, goosander, long-tailed duck, red-breasted merganser; as well as the waterfowl assemblage.

Again we advise that arguments laid out in the HRA screening report will be important aspects of the appropriate assessment. However we also highlight that they are based on bird survey data that is over 5 years old, and so more recent data is required. This could be existing data from the WeBS recording scheme, or data specifically collected in support of this proposal.

We support the remaining conclusions in this section, and have no further comments to add.

2.3. Outer Firth of Forth and St Andrews Bay Complex pSPA

Our position with regard to this site is identical to that laid out for the Firth of Tay and Eden Estuary SPA. Several of the qualifying interests protected by the pSPA designation may use the area around the proposal site and so there is potential for disturbance to those species via noise, lighting, or other activities. Therefore LSE exists and these features should be taken forward to appropriate assessment.

We support the remaining conclusions in this section, and have no further comments to add.

2.4. River Tay SAC

Migratory fish species protected by the SAC designation may use the area around the proposal site and so there is potential for disturbance to those species via noise or other activity. Therefore LSE exists and these features should be taken forward to appropriate assessment.

For these receptors we advise that the arguments laid out in the HRA screening report effectively constitute the appropriate assessment, and no further work is required to reach a conclusion of 'no adverse effects on site integrity'.

We support the remaining conclusions in this section, and have no further comments to add.

2.5. Moray Firth SAC

We support the conclusions in this section, including LSE based on potential noise-based disturbance to bottlenose dolphin. This feature should be taken forward to appropriate assessment.

2.6. Isle of May SAC

This site is not considered in the HRA screening document. Our position is that there is no LSE due to the distance between the proposal and the breeding colony (c. 45km). This distance is outwith the normal foraging range of grey seals during the breeding season.

2.7. Barry Links SAC

We support the conclusion briefly laid out in the HRA screening report (section 3.8). There will be no overall change in local sediment supply to this site, as any dredged material will be disposed of at the nearby Middle Bank (Tay) site, therefore no LSE exists.

2.8. Summary of features to be taken forward to appropriate assessment

Site	Feature(s)	Impact pathway
Firth of Tay and Eden Estuary SAC	Estuaries	Physical habitat loss/ physical habitat damage
Firth of Tay and Eden Estuary SAC	Harbour seal	Disturbance
Firth of Tay and Eden Estuary SPA	Various bird species; waterfowl assemblage	Disturbance
Outer Firth of Forth and St Andrews Bay Complex pSPA	Various bird species	Disturbance
River Tay SAC	Migratory fish species	Disturbance
Moray Firth SAC	Bottlenose dolphin	Disturbance

Sweeting S (Stephanie)

From: Malcolm Fraser <Malcolm.Fraser@nature.scot>
Sent: 17 December 2019 14:19
To: MS Marine Licensing; claire.myles@dundeecity.gov.uk
Subject: Port of Dundee - Redevelopment of Dundee East - addendum to SNH consultation response

Marine Scotland LOT/ Dundee City Council –

We provided advice on the EIA Screening stage of this proposal to Marine Scotland LOT and Dundee City Council (DCC) by letters dated 28 November 2019. Since then it has become clear our advice would benefit from clarification on two points.

Please consider this a formal addendum to our original response letters.

1. Scope of assessment required

In our view the Habitats Regulations Appraisal (HRA) process will address impacts upon all relevant receptors. The HRA will include cetacean and seal marine mammal receptors. The assessment of impacts upon, and mitigation measures for, will be identical for Natura receptors as well as non-Natura marine mammals.

We suggest that any forthcoming application states that the assessment/ mitigation identified in HRA also applies to relevant marine EPS, and that separate assessment is not required. However, works may still require an EPS licence. We would be happy to provide further information and support on these topics.

2. EIA Screening decision

It is worth re-iterating our policy that EIA screening decisions are made solely by the Competent Authority. If it is decided that EIA is required then we suggest that the HRA assessment and conclusions can be ported across to EIA to address all issues raised by SNH.

If the proposal is screened into EIA then we understand that this will introduce public/ statutory consultation elements of the EIA process and consequently a slightly longer time frame will be involved. We can work with the applicants and the Competent Authorities to consider the most suitable information and our ability to respond as quickly as we can.

I hope this clarification is useful.

All the best.

--

Malcolm Fraser | Operations Officer - Forth

Scottish Natural Heritage | Silvan House | 3rd Floor East | 231 Corstorphine Road | Edinburgh | EH12 7AT | t: 0131 316 2629
Dualchas Nàdair na h-Alba | Taigh Silvan | 3mh Làr an Ear | 231 Rathad Chros Thoirphin | Dùn Èideann | EH12 7AT
nature.scot – Connecting People and Nature in Scotland – [@nature_scot](https://twitter.com/nature_scot)

From 1 May 2020, SNH will be rebranding and changing its name to NatureScot.

This email has been scanned by the Symantec Email Security.cloud service.

Stef Sweeting
Marine Scotland – Marine Planning & Policy

Email: ms.marinelicensing@gov.scot

Date: 23 January 2020
Our ref: CEA158057/ A3154452

Dear Ms Sweeting

**THE MARINE WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND)
REGULATIONS 2017 (AS AMENDED) (“the EIA Regulations”)**

CONSULTATION UNDER PART 2, REGULATION 10(5) OF THE EIA REGULATIONS

Forth Ports Ltd (per Fairhurst) - Redevelopment of Dundee East – Port of Dundee

Thank you for your email of 20 January 2020 re-consulting us on the above Marine Works Environmental Impact Assessment (EIA) Screening Opinion request.

Background

We originally responded to this EIA screening request on 28 November 2019. Since then, and following a meeting with the applicant and both competent authorities (Marine Scotland and Dundee City Council), we have received an updated version of the “*Proposed Mitigation Measures*” document from the applicant. This has enabled us to update our advice, and therefore this letter replaces and supersedes our previous letter dated 28 November 2019 and our addendum email of 17 December 2019.

SNH Advice – EIA screening

It is SNH’s policy that EIA screening decisions must be made solely by the competent authority. Our role at this stage is to advise you on the environmental receptors within our remit which may be affected by the proposal and which should be assessed, whether through EIA or other means.

However we note the specific requirement in Regulation 10(5). In our view the updated “*Proposed Mitigation Measures*” document demonstrates that, once mitigation measures are taken into account, this proposal will not have significant effects on the environment and therefore is not an EIA project.

The proposal may have effects upon several European sites (SACs and SPAs). Mitigation measures cannot be taken into account in the early stages of the Habitats Regulations Appraisal (HRA) process, and so an assessment of impacts upon these receptors must be considered through a supporting HRA report.

The proposal may also have effects upon European Protected Species (EPS) that are not specifically protected by relevant European sites, for example otter, minke whale or harbour porpoise. We advise that assessment, conclusions, and mitigation measures identified in the HRA report can also apply to EPS. In other words no separate work is required for these receptors.

In our view this proposal will not have significant effects on any other receptors within our remit (i.e. habitats, species, geodiversity, landscape & visual).

We have prepared detailed advice on the HRA Screening Report, and will provide this advice at the appropriate stage.

I hope these comments are useful, if you would like to discuss them further you can contact me via 0131 316 2629 / malcolm.fraser@nature.scot

Yours sincerely

[by email]

Malcolm Fraser
Operations Officer – Forth

Dr Anni Makela
Marine Scotland
Marine Laboratory
375 Victoria Road
Aberdeen
AB11 9DB

Executive Director
City Development

Dundee House,
50 North Lindsay Street, Dundee DD1 1LS

If calling, please ask for
Claire Myles, 01382 433833

Email: claire.myles@dundee.gov.uk

Our Ref: CM/KM 19/00004/EIASCRC

Your Ref:

Date: 28 January 2020

Dear Dr Anni Makela

**The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) ("The EIA Regulations")
Consultation Under Part 2, Regulation 10(5) Of The EIA Regulations
Redevelopment of Dundee East - Port of Dundee Consultation on Request for Screening Opinion**

I refer to your e-mail of 13 November 2019 requesting a screening opinion from the Council for the above development and note that the deadline for adopting the screening opinion was moved to 31 January 2020.

Further detailed information regarding the proposal has been made available since 13 November 2019 and proposed mitigation measures were circulated to all relevant parties following a meeting at the Port of Dundee on Thursday 16 January 2020.

On the basis of this new information and the mitigation measures proposed, the Council considers that the proposal will not have any significant effects on the marine environment and specially protected European Sites, therefore an Environmental Impact Assessment is not required.

If you have any queries relating to this letter please contact me on 01382 433833.

Yours sincerely

Claire Myles
Planning Officer

