

Frances Valente  
Arch Henderson  
Stewart Building  
Lerwick, Shetland  
ZE1 0LL

Date: 15 April 2020

Dear Frances Valente,

**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 dated 4 February 2020 and supporting correspondence dated 23 March 2020, in regards to the proposed construction of a new marina, including breakwater construction and land reclamation works, at Cullivoe Pier, North Yell, Shetland Islands ("the Proposed Works").

It is the Scottish Ministers' understanding that Shetland Islands Council screened the terrestrial concerns of this project under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 and concluded an EIA was not required. The Scottish Ministers also understand that Shetland Islands Council subsequently granted planning permission and a works licence for the project in July 2019.

The Scottish Ministers consider the Proposed Works to fall under paragraph 12(a) of Schedule 2 of the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) ("the 2017 MW Regulations") with the extent of the Proposed Works exceeding the corresponding threshold described in column 2 of schedule 2. Consequently, the Scottish Ministers are obliged to adopt a screening opinion as to whether the Proposed Works are, or are not, an Environmental Impact Assessment ("EIA") project under the 2017 MW Regulations.

Under regulation 10(5) of the 2017 MW Regulations, the Scottish Ministers have consulted with the relevant local planning authority Shetland Islands Council, Scottish Natural Heritage ("SNH"), the Scottish Environment Protection Agency ("SEPA") and Historic Environment Scotland ("HES") as to their view on whether the Proposed Works are an EIA project. Copies of the consultation responses received are enclosed for your review (at Appendix I).

When making a determination as to whether schedule 2 works are an EIA project, the Scottish Ministers must take into account 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 works**

The Proposed Works involve constructing a 210 metre (“m”) long breakwater and land reclamation of approximately 125m along the foreshore using surplus rock material from an adjacent terrestrial extension project and approximately 8,881 tonnes of further imported rock armour. The breakwater will shelter eight 10m long marina pontoon units providing an estimated 34 berths. Inert stone fill will be used to create the marina access and breakwater core bund, which will then have a geotextile membrane secured to its exposed slope profiles between Mean High Water Spring and seabed toe to reduce sediment migration. Stone armour will be deposited over the geotextile membrane to permanently secure the structure. During construction of the breakwater core bund, a silt boom will be moored and advanced in front of the bund to provide protection as the works progress.

There will be a loss of approximately 1.3 hectares of intertidal habitat within the footprint of the Proposed Works. During construction, increased sedimentation may occur within the water column due to the movement of materials, pollution of the marine environment may occur due to the leakage of fuels, oils etc, from plant machinery/equipment and increased vessel numbers could cause disturbance and/or collision related injury to marine mammals and birds.

SEPA provided general guidance in regards to waste management, sediment runoff, and pollution prevention. Providing that good working practices and environmental mitigation measures are followed during the construction of the Proposed Works, SEPA advised that, with respect to its interests, the Proposed Works are unlikely to have a significant effect on the environment and therefore it does not consider an EIA to be required.

### **Location of the works**

The Proposed Works are located within the Bluemull and Colgrave Sounds proposed Special Protection Area (“pSPA”), designated as an important foraging area for breeding red-throated diver. The Proposed Works could potentially adversely affect the red-throated divers through disturbance during construction, removal of/exclusion from their foraging habitat and inhibition of foraging ability due to increased water turbidity resulting from the release of sediment during construction. To mitigate for the potential disturbance to breeding red-throated diver and protect the integrity of the pSPA, it is intended for the Proposed Works to be undertaken outwith the key breeding months for red-throated diver. To prevent pollution of the water environment, further mitigation measures, such as the installation of a silt boom to minimise the amount of fine sediment suspension in the water column, are proposed to be employed.

Cetaceans are known to pass through Bluemull Sound. Should any underwater noise producing activities be undertaken during construction of the Proposed Works, disturbance could be caused to these European Protected Species (“EPS”), which would likely require appropriate mitigation to be implemented.

Two marine historical heritage assets have been identified within 500m of the Proposed Works. HES advised that, based on the information and proposed archaeological discovery protocol provided, the Proposed Works are unlikely to have significant impacts on its historic environment interests, therefore it does not consider an EIA to be required for the Proposed Works.

### **Characteristics of the potential impact**

SNH advised that the Proposed Works are likely to have a significant effect on the red-throated diver feature of the Bluemull and Colgrave Sounds pSPA. SNH further advised however that a Habitats Regulations Appraisal had been carried out by Shetland Islands Council in relation to the Proposed Works, which concluded that there would be no adverse effect on the site integrity of the pSPA. SNH therefore advised that it did not consider further assessment of the impact of the Proposed Works on the pSPA to be required.

Additionally, SNH advised that although cetaceans passing through Bluemull Sound could be disturbed during construction of the breakwater, the level of noise arising from the Proposed Works is not considered likely to have a significant impact on cetacean populations or distribution. SNH confirmed any mitigation necessary to minimise disturbance could be secured through the marine/EPS licensing process without the need for EIA.

The Scottish Ministers are content that the embedded mitigation of the Proposed Works’, in particular undertaking the Proposed Works outwith the key breeding months for red-throated divers and the implementation of pollution/suspended sediment control measures, is sufficient to ensure no significant impacts on the environment. It is the Scottish Ministers’ intention that this mitigation will be formalised in conditions, as appropriate, attached to any marine/EPS licence subsequently granted for the Proposed Works.

### **Conclusion**

In view of the findings above, the Scottish Ministers are of the opinion that the Proposed Works are not an EIA project under 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 Shetland Islands Council planning department. The screening opinion has also been made publicly available through the Marine Scotland Information website.

If you require any further assistance or advice on this matter, please do not hesitate to contact me.

Yours sincerely,

Fiona Munro  
Licensing Operations Team  
Marine Scotland

Marine Scotland  
Marine Planning & Policy  
Scottish Government  
Marine Laboratory  
375 Victoria Road  
Aberdeen  
AB11 9DB

Attn: Fiona Munro

10<sup>th</sup> March 2020

Dear Ms Munro

**The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017  
(as amended)  
Consultation under part 2, regulation 10(5) of the EIA regulations  
North Yell Development Council - Construction of a new marina, Cullivoe Pier, North  
Yell**

Thank you for email dated 19<sup>th</sup> February seeking our opinion on the requirement for this development to be subject to Environmental Impact Assessment.

The proposal lies within Bluemull and Colgrave Sounds proposed Special Protection Area (pSPA), identified as an important foraging area for breeding red-throated diver. The development would have a likely significant effect on the red-throated diver feature of the pSPA, however a Habitats Regulations Appraisal has been carried out by Shetland Islands Council in relation to the Works Licence application for the marina. This concluded that there would be no adverse effect on the integrity of the site. No further assessment of the impact of the development on the pSPA is therefore required.

The Works Licence application also included an otter survey of the area and the impacts of the proposal on otters have been addressed by SIC in considering that application.

Cetaceans are likely to pass through Bluemull Sound and could be disturbed by construction of the breakwater. The level of noise arising from the work is not considered likely to have a significant impact on cetacean populations or distribution. All cetaceans are European Protected Species (EPS) and the development may therefore require an EPS disturbance licence from Marine Scotland. Any mitigation necessary to minimise disturbance can be secured through the licencing process without need for EIA.

In our opinion no other important natural heritage features are likely to be significantly affected by the proposal and, so far as our interests are concerned, we do not consider that EIA is required.

Yours sincerely

Jonathan Swale  
Operations Officer – Shetland  
Northern Isles and North Highland  
[jonathan.swale@nature.scot](mailto:jonathan.swale@nature.scot)

Our ref: PCS/170204  
Your ref:

If telephoning ask for:  
Alison Wilson

4 March 2020

Fiona Munro  
Marine Scotland  
Marine Laboratory  
375 Victoria Road  
Aberdeen  
AB11 9DB

By email only to: [ms.marinelicensing@gov.scot](mailto:ms.marinelicensing@gov.scot)

Dear Ms Munro

**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  
North Yell Development Council - Construction of a new marina, Cullivoe Pier, North Yell  
Request for Screening Opinion**

Thank you for consulting SEPA on the screening opinion for the above development proposal by way of your email of 19 February 2020.

Based on the information submitted to us we consider that, with respect to interests relevant to our remit, the proposed development will be **unlikely to have a significant effect** (in the context of the Regulations) on the environment and therefore Environmental Impact Assessment (EIA) is **not required**. This is on the assumption that modest or plainly and easily achievable environmental mitigation measures will be put in place during the construction works.

Please refer to our standing advice on marine consultations, within guidance document [SEPA standing advice for The Department of Energy and Climate Change and Marine Scotland on marine consultations](#), for links to best practice guidance for the construction phase of the works.

**Regulatory and other advice for the applicant**

We note that "The reclamation and breakwater area is to be constructed using surplus rock fill from an adjacent Business Park extension project (described within Section 9.5), with further rock armour to protect the integrity of the structure." An exemption under The Waste Management Licensing (Scotland) Regulations 2011 may be required as the material is being brought in from another site. Please contact a member of the regulatory services team in our Shetland office prior to construction to discuss any regulatory requirements in regard to this.

In addition we note that the foul outfall from the existing Business Park septic tank and connection from the proposed Business Park extension septic tank will be diverted into a new packing pumping station (by Flygt or equal) to a new sea outfall outside the marina basin. The applicant should contact the local regulatory services team, if not already done so, to discuss our requirements in regard to authorisation under The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR) for the discharge.

As previously advised best practice should be followed to mitigate sediment run off in to this Shellfish Water Protected Area, please see the guidance notes on the [Guidance for Pollution Prevention \(GPPs\)](#) Netregs webpage.

Details of regulatory requirements and good practice advice for the applicant can also be found on the [Regulations section](#) of our website. If the applicant is unable to find the advice they need for a specific regulatory matter, please contact a member of the regulatory team in your local SEPA office at: Charlotte House, Commercial Road, Lerwick, Shetland, ZE1 0LQ, Tel: 01595 696926.

If you have any queries relating to this letter, please contact me by telephone on 01224 266656 or e-mail at [planningaberdeen@sepa.org.uk](mailto:planningaberdeen@sepa.org.uk).

Yours sincerely

Alison Wilson  
Senior Planning Officer  
Planning Service

Ecopy to: Andrew Nisbet, North Yell Development Council, [andrew@northyell.co.uk](mailto:andrew@northyell.co.uk)

*Disclaimer*

*This advice is given without prejudice to any decision made on elements of the proposal regulated by us, as such a decision may take into account factors not considered at this time. We prefer all the technical information required for any SEPA consents to be submitted at the same time as the planning or similar application. However, we consider it to be at the applicant's commercial risk if any significant changes required during the regulatory stage necessitate a further planning application or similar application and/or neighbour notification or advertising. We have relied on the accuracy and completeness of the information supplied to us in providing the above advice and can take no responsibility for incorrect data or interpretation, or omissions, in such information. If we have not referred to a particular issue in our response, it should not be assumed that there is no impact associated with that issue. For planning applications, if you did not specifically request advice on flood risk, then advice will not have been provided on this issue. Further information on our consultation arrangements generally can be found on our [website planning pages](#).*



**Date:** Wed, 11 Mar 2020 9:47:35 AM (UTC)  
**Sent:** Wed, 11 Mar 2020 9:47:06 AM (UTC)  
**Subject:** RE: North Yell Development Council - Construction of a new marina, Cullivoe Pier, North Yell - Consultation on Request for Screening Opinion - Response Required by 11 March 2020  
**From:** marine.planning@shetland.gov.uk  
**To:** MacFarlane M (Marc) <Marc.Macfarlane@gov.scot>; MS Marine Licensing <MS.MarineLicensing@gov.scot>; marine.planning@shetland.gov.uk;  
**CC:** Munro F (Fiona) (MARLAB) <Fiona.Munro2@gov.scot>; ryan.leask@shetland.gov.uk;

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**

**North Yell Development Council - Construction of a new marina, Cullivoe Pier, North Yell**

Thank you for your consultation on this screening opinion.

Shetland Islands Council have approved the development under Works Licence 2018/026/WL and Planning Permission 2018/330/PPF. These were determined against all relevant criteria.

Appropriate Assessments were undertaken for both applications with regards to the possible impact on the Bluemull and Colgrave Sounds proposed Special Protection Area (pSPA), designated for its Breeding Red-throated diver. The outcome, which was agreed with Scottish Natural Heritage, was that the development would result in a Likely Significant Effect (LSE) on the conservation objectives or integrity of the Bluemull and Colgrave Sounds pSPA, but these could be mitigated and controlled through planning conditions so that the integrity of the pSPA is not impacted. Such conditions were included in the consents for both the Works Licence (2018/026/WL) and the Planning Permission (2018/330/PPF). These can be viewed here:

<https://pa.shetland.gov.uk/online-applications/search.do?action=simple &searchType=Application>

The development was also screened under The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 through the planning process (Planning Permission 2018/330/PPF) where it was considered that appropriate planning controls are sufficient to assess the environmental and amenity impacts arising from the proposal, and as such, an Environmental Impact Assessment was not required.

Taking these above measures into account, alongside the other considered environmental effects of this development, Shetland Islands Council does not consider that the proposed works are an EIA project in this particular case.

Regards

Simon Pallant | Coastal Zone Manager – Marine Planning | Shetland Islands Council | Development Services  
8 North Ness Business Park | Lerwick | Shetland | ZE1 0LZ  
Tel: 01595 744805  
Mobile: 07384 878706

Date: Wed, 25 Mar 2020 11:40:12 AM (UTC)  
Sent: Wed, 25 Mar 2020 11:40:04 AM (UTC)  
Subject: RE: North Yell Development Council - Construction of a new marina, Cullivoe Pier, North Yell - Consultation Ended  
From: Chloe Porter <chloe.porter@hes.scot>  
To: Craig Potter <CPotter@envirocentre.co.uk>;  
Munro F (Fiona) (MARLAB) <Fiona.Munro2@gov.scot>; Andrew Sandison  
CC: <asandison@arch-henderson.co.uk>; Andrew Nisbet (keldahoul@btinternet.com)  
<keldahoul@btinternet.com>; Ian Buchan <IBuchan@envirocentre.co.uk>;

Good morning,

Thank you for confirming that the potential for significant impacts for our interests would be unlikely. We can confirm that thanks to the information provided, we are of the view that EIA would not be required for our interests. We note the protocol you are proposing in case of archaeological discovery and we are content with this approach.

Is this email adequate for your records or would you prefer a new screening response?

Kind Regards,

Chloé

**Chloé Porter (AssocRTPI) | Senior Casework Officer | Heritage Directorate**

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From: Craig Potter <CPotter@envirocentre.co.uk>

Sent: Monday, March 23, 2020 4:37:25 PM

To: Chloe Porter <chloe.porter@hes.scot>

Cc: [fiona.munro2@gov.scot](mailto:fiona.munro2@gov.scot) <[fiona.munro2@gov.scot](mailto:fiona.munro2@gov.scot)>; Andrew Sandison <[asandison@arch-henderson.co.uk](mailto:asandison@arch-henderson.co.uk)>; Andrew

Nisbet ([keldahoul@btinternet.com](mailto:keldahoul@btinternet.com)) <[keldahoul@btinternet.com](mailto:keldahoul@btinternet.com)>; Ian Buchan <[IBuchan@envirocentre.co.uk](mailto:IBuchan@envirocentre.co.uk)>

Subject: RE: North Yell Development Council - Construction of a new marina, Cullivoe Pier, North Yell - Consultation Ended

Hi Chloe

Regarding the abovementioned Screening Request through Marine Scotland and your response dated 11th March 2020 (your ref 300043456) – see attached we can clarify as follows with regards to our Screening Report and your response.

In Table 8.1 of our Screening Report we acknowledge 2x Canmore records within 500m of the proposed site, and then specify no mitigation is required. On reflection we could have provided clearer and expanded wording however we disagree with your view that an EIA is required on the grounds of these Canmore records. Taking each in turn:

**290396: Unknown: Atlantic**

This record is marked on the Canmore map near the end of the existing breakwater for Cullivoe Pier and represents a potential wreckage washing ashore dating to 900AD. However the Canmore record states that the location is tentative, and the location of loss is unverified. Should the wreckage have been washed ashore, then given present day baseline environment then that wreckage has long since disappeared. Given the dating and uncertainty surrounding the location, it is unlikely that any wreckage still survives in this location given 1100 years of erosion.

However, during construction works, a protocol could be operated whereby any unidentified finds by the construction contractor would be notified to the site manager, a temporary stop put in place, and the Council Archaeologist would be notified and advice followed thereafter.

There would be no reason to assume likely significant effects upon this record via the proposed development and the potential for unknown remains, however slim, is not reason to conduct full EIA.

**174694: Cullivoe Pier**

This represents the current pier which is to be left in situ. Local anecdotal evidence suggests a pier was first built for the herring fishery probably around 1900–1920. This was demolished in the 1960s or early 70s and replaced by a concrete pier. This in turn was demolished in the 1990s and the area reclaimed when the existing pier/breakwater was built. The site where the old pier was is now under infill.

Given the proposed development is of a similar type and performs a similar function, given this record will be left in situ and will experience no adverse construction or operational effects, and given the existing pier has no statutory designation, we see that no mitigation is required here. If this feature were to be removed, then a written and photographic record could be undertaken prior to this, however this is hypothetical. In all instances, an EIA is only required when significant environmental effects are likely, which would certainly not be the case here.

I trust this assists and please let me know if this resolves your queries around these records such as to amend your advice stating that EIA is required?

Thanks  
Craig

**Craig Potter PIEMA**  
**Principal Environmental Consultant**

Direct dial 0141 341 3240

Email: [cpotter@envirocentre.co.uk](mailto:cpotter@envirocentre.co.uk)



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**By email to:**

**[MS.MarineLicensing@gov.scot](mailto: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](mailto:HMConsultations@hes.scot)**

Our case ID: 300043456

11 March 2020

Dear Sir/Madam

**Environmental Impact Assessment (Scotland) Regulations 2017**  
**Cullivoe Pier, North Yell - Construction of a new marina**  
**Request for Screening Opinion for a new marina to be constructed at Cullivoe Pier,**  
**Shetland Islands**

Thank you for your consultation which we received on 19 February 2020 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.

Your 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**

An EIA is required for this proposed development. This is due to the lack of information included in this consultation relating to the potential for a significant effect of the proposed development on the potential unrecorded marine archaeology. Given the lack of information included with the application, it is not clear how this proposal could proceed in accordance with the provisions of the UK or Scottish Marine Plans.

### **Our advice**

We note from paragraph 8.2 of the screening report that two marine- based heritage assets have been identified in the 500m of the proposed development: Unknown: Atlantic (Canmore) and Yell, Cullivoe, Pier (Canmore).

However, paragraph 8.3 of the screening report says that no mitigation is required to protect the marine-based assets. We have concerns about this as the potential for marine archaeology is flagged up but there is no clarification on what would be put in place to mitigate any potential impacts. We would suggest that further investigation is

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undertaken to identify the potential for unrecorded archaeology and mitigation measures are described. The guidance in [The Crown Estate Protocol for Archaeological Discoveries](#) document will help with the design of suitable actions and mitigation measures. We also recommend that the developer takes account of the [Joint Nautical Archaeological Committee's Code of Practice for Seabed Development](#) as part of the assessment of the impact of this proposal.

If you find that there is no marine archaeology in the area, we would be happy to be re-screened as no EIA would be required for our interests.

We hope this is helpful. Please contact us if you have any questions about this response. The officer managing this case is Chloe Porter and they can be contacted by phone on 0131 668 8653 or by email on [chloe.porter@hes.scot](mailto:chloe.porter@hes.scot).

Yours faithfully

**Historic Environment Scotland**