

FORTH PORTS LIMITED



1 Prince of Wales Dock, Edinburgh EH6 7DX
Telephone: 0131 555 8700 Facsimile 0131 553 7462

BY EMAIL

Anni Makela
Marine Scotland Licensing Operations
Team Marine Laboratory
375 Victoria Road Aberdeen
AB11 9D

8 September 2022

Dear Anni

00009818 - FORTH PORTS LTD – CONSTRUCTION - PORT OF LEITH OUTER BERTH
00009819- FORTH PORTS LTD - CAPITAL DREDGE AND SEA DISPOSAL -- PORT OF LEITH OUTER BERTH

We refer to the above marine licence applications (MLAs) for the Port of Leith Outer Berth project (the Project) and enclose the additional environmental information requested by email from Marine Scotland dated 29 July 2022. This is provided in an Addendum to the following reports:

- Environmental Impact Assessment Report (EIAR) referenced PC2045-RHD-ZZ-XX-RP-EV-0007; and
- Habitat Regulations Appraisal (HRA) report (Port of Leith – Outer Berth Habitats Regulations Appraisal - Screening for LSE and the Provision of Information to Inform Appropriate Assessment) referenced PC2045-RHD-ZZ-XX-RP-EV-0009.

As with the original EIAR, with the adoption of industry best practice mitigation, the additional environmental information in the Addendum has identified no significant environmental effects associated with the Project. Furthermore, no change has been identified to the conclusions in the HRA in that the Project would not have an adverse effect on the integrity on any protected site under the Habitats Regulations.

Forth Ports is content that the information contained in the Addendum is confirmatory in nature. It simply provides further detail on matters that were already considered in the original EIAR and HRA reports and should provide Marine Scotland and any interested parties with even greater confidence in those assessments. The conclusions of the EIAR and HRA reports though remain exactly the same as at the time of submission of the MLAs on 12 April 2022 (approaching five months ago). That being the case, Marine Scotland has now had a substantial period of time to consider the implications of the Project, and Forth Ports sees no reasonable basis for the Addendum to lead to any further delay in the determination of the MLAs.

At the application stage, Marine Scotland must of course be satisfied that it has the information it needs to understand the environmental effects of the Project and to impose appropriate conditions. Forth Ports believes it has provided information that is both complete and accurate (and indeed precautionary in nature) for those purposes. It would also point out that there will be a further opportunity for both Marine Scotland (and any interested parties that it may wish to consult) to

consider and approve the details submitted to discharge the conditions imposed on any forthcoming marine licences. Such matters cannot and should not delay the determination of the MLAs.

With respect to the EIA Regulations, Forth Ports has throughout maintained that there were no significant environmental effects associated with the Project, and that therefore it did not constitute EIA development. Nevertheless, it accepted the positive screening opinion from Marine Scotland dated 18 January 2022 in order to adopt a precautionary approach and to expedite determination of the MLAs. We submit this additional environmental information for the same reasons.

The totality of the environmental information submitted in support of the Project confirms (in accordance with EIA procedures) that, with the adoption of industry best practice mitigation, it would not have any significant environmental effects. It therefore confirms Forth Ports' original position, and that of the City of Edinburgh Council (CEC) who issued a negative screening opinion dated 14 October 2021.

Nevertheless, the work undertaken to prepare the EIAR and additional environmental information has identified some environmental effects associated with the marine licensable activities during the construction stage that require mitigation, and which Forth Ports accepts must be secured by conditions of any forthcoming marine licence. Those mitigation items and therefore related conditions are:

- A Construction Environmental Management Plan (CEMP) to be prepared and agreed with Marine Scotland;
- An Ecological Clerk of Works to be employed to oversee the implementation of the CEMP;
- Soft start piling techniques and pre-piling search; and,
- A piling shroud to be installed for the tern breeding period (as well as the post breeding period).

The original reports and the Addendum confirm that there are no operational effects associated with the marine licensable activities that require mitigation and therefore conditions imposed on any forthcoming marine licences. That is because either no new environmental effects have been identified, or the effect is otherwise controlled by other regulatory regimes, as set out below:

- Vessel movements – In 2019, there were 1,215 vessel movements in/out of the Port of Leith, and 3,087 vessel movements over the disposal site (Forth Ports Limited). These numbers do not include recreational or fishing vessels.
- This equates to a 2% and 13% increase respectively. These levels are not considered to be significant, in particular when considering the average number of vessel movements to the disposal site, and are within Forth Ports Limited's existing powers to permit increased vessel movements even if the proposed development were not to proceed.
- Noise/visual disturbance on birds at the Eastern Breakwater – The Eastern Breakwater is adjacent to (i.e. less than 100m) the approach channel to the Port of Leith, hence the presence and passage of large vessels is a frequent visual / noise disturbance at this location. Furthermore, the current port operations extend to the Breakwater. It must be recognised that water birds using the Eastern Breakwater currently contend with port-related disturbances as a matter of course. The proposed use of the berth and current level of port activity around the Eastern Breakwater is not considered to be significantly different to the existing baseline.

In the absence of any operational stage adverse environmental effects associated with the marine licensable activities, Forth Ports trusts that Marine Scotland will not seek to impose any conditions controlling the operational stage of the Project.

Marine Scotland will be aware that the Project is a scheme that straddles the terrestrial and marine elements of Leith Port and is thus subject to both the planning and marine licensing regimes. The

position is unambiguous in respect of the terrestrial elements: Forth Ports benefits from planning permission for development under Class 35 of The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (GPD Order). This was confirmed following the issue of the negative screening opinion by CEC on 14 October 2021.

The GPD Order states:


“Schedule 1 development or Schedule 2 development within the meaning of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 is not permitted by this Order unless– (a) the planning authority have adopted a screening opinion under regulation 8 of those Regulations that the development is not EIA development”

The GPD Order is clear that a screening opinion from the planning authority is to be treated as definitive in confirming that development is not EIA development and thus benefits from permitted development rights. The CEC Screening Opinion provides exactly that confirmation. The marine licensing regime is distinct from planning control: it follows that the conditions of the marine licences (should MS be minded to grant them) cannot (and should not) seek to control development which already benefits from planning permission. Any decision to the contrary would cut-across the purposes for which the GPD Order was made.

We trust that the additional environmental information now submitted in the Addendum to the original reports confirms beyond doubt that the marine licensable activities associated with the Project would have no significant environmental effects, that any environmental effects in the marine environment during the construction stage can be mitigated by appropriate conditions and that there are no operational effects associated with the marine licensable activities that require mitigation and therefore conditions. We also trust that the content of the Addendum provides Marine Scotland with an even greater degree of confidence in the conclusions in the original HRA Report.

Forth Ports wish to see completion of this “nationally significant” project (as identified in the draft NPF4) as soon as possible in order that the infrastructure provided can make a major contribution to Scotland achieving its 2045 net zero greenhouse gases target and also towards safeguarding national energy security. We therefore look forward to determination of the marine licence applications in early course to allow the construction of the infrastructure in the marine environment to proceed as soon as possible.

Yours sincerely



Ian Kerr
Infrastructure Manager – Scottish Operation