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Date: **18 January 2022**

Dear **Ms. Starmore**,

SCREENING OPINION UNDER THE MARINE WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND) REGULATIONS 2017

Thank you for your screening opinion request dated **09 November 2021** in regards to the proposed creation of a new outer berth, including rock armour, suspended deck construction, capital dredging and dredged material deposit at the Port of Leith, Firth of Forth (“the Proposed Works”).

The Scottish Ministers consider the Proposed Works to fall under paragraph **10(g)** of schedule 2 of The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 MW Regulations”), with the Proposed Works **being carried out in a sensitive area, as defined by the 2017 MW Regulations**. 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 NatureScot (formerly Scottish Natural Heritage), the Scottish Environment Protection Agency, The City of Edinburgh Council and Historic Environment Scotland as to their view on whether the Proposed Works are an EIA project. Copies of the consultation responses received are attached 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 such of the selection criteria set out in schedule 3 of the 2017 MW Regulations as are relevant to the Proposed Works. In this regard, the Scottish Ministers have considered the following:

Characteristics of the works

Forth Ports Limited propose to extend and improve an existing berth on the inner edge of the eastern breakwater at the Port of Leith in order to accommodate windfarm construction and service vessels. The Proposed Works are expected to take 15 months. Figure 1 shows the area of Proposed Works colour coded to show the activities.

The Proposed Works include the construction of a suspended deck approximately 120 metres (“m”) long and 30m wide. The deck will be constructed using tubular piles and a wall at the rear will be constructed using a combination of tubular and sheet piles. Piles will also be used to construct mooring dolphins. It is anticipated that approximately 150 tubular and 44 sheet piles will be used. The existing steel piled jetty at this location will be removed. Existing dolphins will also be removed as will revetment materials.

The pile installation method is yet to be confirmed but may include impact piling or drilling and socketing. Vibro piling will be used where possible. The removal of the jetty will require either vibro-extraction or cutting down at seabed level.

A hardstanding area will be created behind the suspended deck and to the rear of an existing concrete jetty which is to be retained (see Figure 1). This area will be infilled, possibly with material from the proposed dredge.

Revetment slopes will be protected by rock armour, specifically under the suspended deck and at the rear of the lead in jetty. This will replace the existing revetment of concrete blocks. 5500 m³ of rock armour is expected to be constructed, consisting of pieces 1 to 2 tonnes each and 1.6 m thick to form a top layer and an 0.8m under-layer consisting of 3300m³ of 60 – 300 kg rock pieces.

There will be works above Mean High Water Springs (“MHWS”) to the existing concrete jetty and the adjacent laydown area.

A capital dredge of approximately 100,000 m³ from an area of 300 m by 600 m immediately adjacent to the construction works is also required to achieve a depth of between -9.25 m and -10.25 m Chart Datum (“CD”). It is anticipated that the dredge material will be used as infill where possible or deposited offshore.

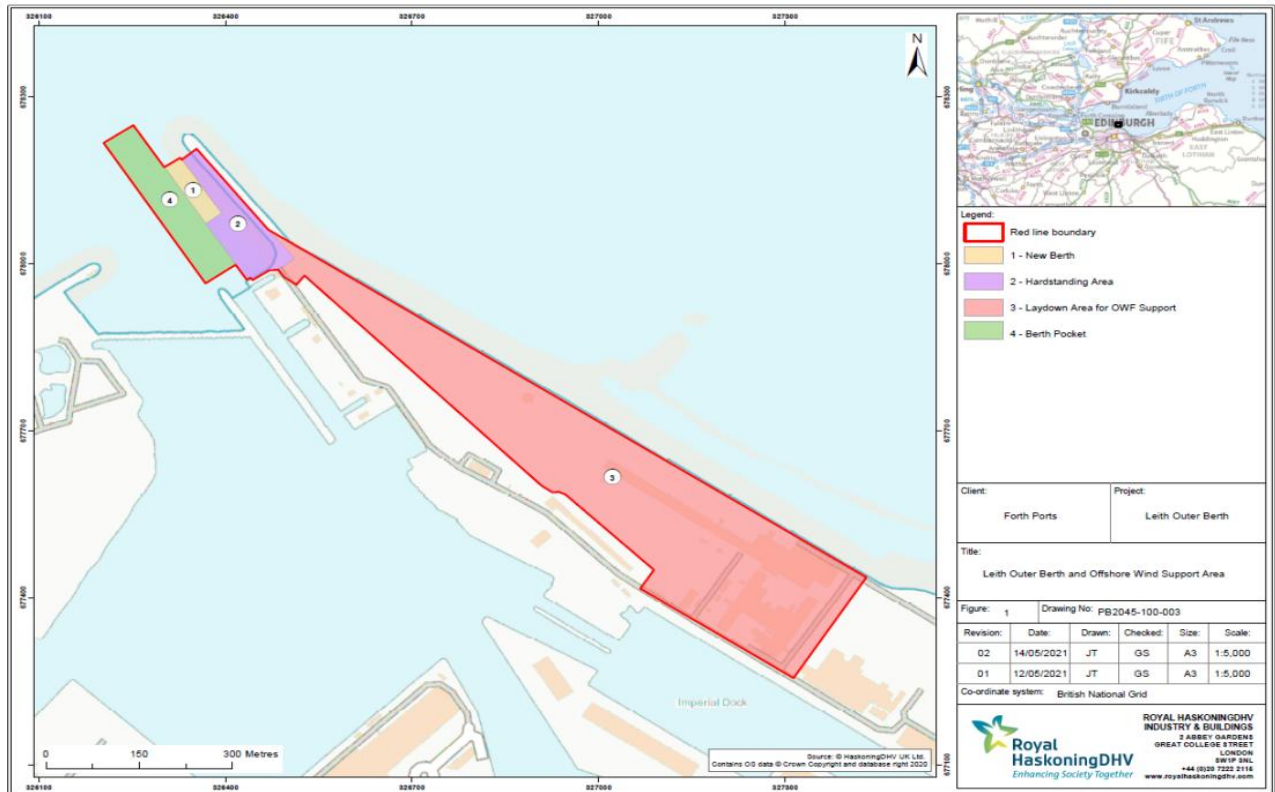


Figure 1. Showing the extent of the Proposed Works and the areas of each element of construction.

Location of the works

The site of the Proposed Works is within the boundary area of the Port of Leith, Firth of Forth on the seaward side of the entrance locks to the Port.

The site of the Proposed Works partially lies within the Outer Firth of Forth and St Andrews Bay Complex SPA designated for various breeding and non-breeding seabird and waterfowl qualifying interests. It is also immediately adjacent to the Firth of Forth SPA and RAMSAR sites which are both designated for various non-breeding waterfowl and wading birds. Imperial Dock Lock, Leith SPA is within 500 m of the Proposed Works and the Forth Islands SPA, designated for various breeding ornithological qualifying interests is located approximately four kilometres from the site. The EIA screening report identifies potential impacts on bird species including disturbance (both noise and visual), displacement, water quality and loss of prey species.

The site of the Proposed Works also has connectivity to various sites designated for their marine mammal qualifying interests namely; the Isle of May and the Berwickshire and North Northumberland Coast SACs designated for their grey seal qualifying interest, the Moray Firth SAC designated for its bottlenose dolphin qualifying interest, and the Firth of Tay and Eden Estuary SAC designated for its harbour seal qualifying interest. Potential impacts are identified as disturbance due to underwater noise from construction activities and indirect impacts due to changes in water quality and prey availability.

In addition to the above sites, the site of the Proposed Works has connectivity to the River Teith SAC, designated for its diadromous fish qualifying interests including sea lamprey, river lamprey, and Atlantic salmon. The HRA report identified physiological or behavioural response impacts due to underwater noise, impacts to water quality such as sedimentation and impacts to habitat quality such as loss of habitat.

Characteristics of the potential impact

Following the conclusions of the HRA report, the applicant has gone on to conclude within the main EIA screening report that the potentially significant impacts noted above could be managed through a combination of best practice construction methods and standard mitigation measures.

In its advice, NatureScot states that while the scope of the HRA, in terms of the sites and interests covered, appears adequate, and provides information regarding what further work might be needed to undertake a satisfactory appropriate assessment, an assessment has not been carried out, nor is there any indication in regards to many of the impacts identified above, as to what the outcomes of the appropriate assessment might be. As such, NatureScot states that the conclusions of the applicant's EIA screening report are premature and further information and/or assessment is required to satisfactorily determine that there will be no significant impacts as a result of the Proposed Works on marine mammals, ornithology, and fish receptors.

Further, NatureScot noted that the Proposed Works may have an impact upon European Protected Species ("EPS") which are not necessarily afforded protected by the sensitive sites included in the applicant's HRA such as otters, minke whales and harbour porpoises. NatureScot advised that the impacts outlined in the applicant's HRA were likely to apply to marine EPS as well, and impacts upon these receptors should be considered further.

Based on the information provided and available to us, the Scottish Ministers are in agreement with the conclusions reached by NatureScot that due to insufficient information, currently it cannot be concluded that the proposed works will not have a significant effect on the environment.

Conclusion

In view of the findings above, the Scottish Ministers are of the opinion that the Proposed Works **are** an EIA project under the 2017 MW Regulations and, therefore, an EIA **is** 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 The City of Edinburgh Council planning department. The screening opinion has also been made publicly available through the Marine Scotland Information website here: <https://marine.gov.scot/ml/port-leith-outer-berth>.

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

Yours sincerely

Claire Crookston
Marine Scotland - Licensing Operations Team