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Patricia Rowley  
Flooding & Structural Design  
Commercial Services (Roads &  
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North Ayrshire Council  
Cunningham House  
Irvine  
KA12 8EE

Date: 12 March 2021

Dear Ms. Rowley,

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

Thank you for your screening opinion request dated 02 December 2020 and further information dated 28 January 2021, in regards to the construction of scour protection along the river bank at Glencloy Water, Brodick, Arran ("the Proposed Works").

The Scottish Ministers consider the Proposed Works to fall under paragraph 10(m) of schedule 2 of The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) ("the 2017 MW Regulations"), with the Proposed Works meeting 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 NatureScot (formerly Scottish Natural Heritage), the Scottish Environment Protection Agency ("SEPA"), North Ayrshire Council 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 attached for your review (at Appendix I). Due to reasons outwith its control, SEPA has been unable to provide a consultation response.

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**

At the point where it enters Brodick Bay, Glencloy water has eroded into the bankside of a public right of way that forms part of the Arran Coastal Way. The area encompasses part of a historic landfill site and erosion of the bank was noted to be uncovering potentially contaminated sediments. The Proposed Works detailed in the screening opinion request consist of the construction of 40 metres ("m") of rock armourstone along the eastern bank of the Glencloy Water. The 40m length of armourstone will connect areas of existing armourstone to the north and south of the Proposed Works. The works involve the excavation of the existing bankside and the formation of a toe for the armourstone, prior to the laying of a sand bed and 1200m<sup>2</sup> of geotextile membrane. A granular layer will then be placed to protect the membrane from the rock armour which is made up of 400m<sup>3</sup> of 1 tonne blocks. The watercourse bed will also be regraded to negate any morphological impacts.

Works, including laying of sand bed, laying of geotextile membrane, the placing of 150m<sup>3</sup> of boulders and the installation of a rock toe, have already been completed following an approval issued under the Marine Licensing (Exempted Activities) (Scottish Inshore) Order 2011 – Article 21 Emergency Works to prevent pollution of the environment through leaching of contamination from the scoured landfill. It is anticipated that the works completed to date will remain in situ and therefore the only part of the Proposed Works that have yet to be completed is the placing of 250m<sup>3</sup> of 1 tonne blocks. The Proposed Works are being screened as a whole to allow for the possibility of works completed to date requiring to be removed or re-done.

The Proposed Works will stop the scouring of the riverbank at the historic landfill site. Levels of contamination at this landfill site has previously been tested and the scoured riverbank is potentially releasing contaminants into Glencloy Water. The construction of the Proposed Works is not thought to release contaminants into the water course and when finished, will prevent contaminant release due to reduced scouring.

### **Location of the works**

The site of the Proposed Works is bounded to the west by Glencloy Water, to the south by recreational grassland, to the east by a disused landfill site and beach and to the north by Brodick Bay. The site of Proposed Works is located 200 m north of Brodick Village, which is the main village on the Isle of Arran.

The Proposed Works are not located within any sensitive areas, as defined by the 2017 MW Regulations. The Arran Moors Special Protected Area ("SPA") designated for breeding hen harrier (*Circus cyaneus*), and Arran Moors Site of Special Scientific Interest ("SSSI") are located approximately 1 km west of the site. In its consultation response, NatureScot advised that the main potential impact on the Arran Moors SPA would be through noise and/or visual disturbance of breeding hen harriers, but that there would be no likely significant effect on the Arran Moors SPA hen harriers from disturbance from the Proposed Works as the SPA is beyond the zone of impact for noise and visual disturbance. NatureScot also consider the Proposed Works unlikely to damage any of the protected natural features of the SSSI. NatureScot advised that the proposal is unlikely to have an adverse effect on the integrity of any National Scenic Area or on any Wild Land Areas.

The area of Proposed Works may be suitable habitat for mobile species such as otter (*Lutra lutra*) or seals. However, due to the ongoing erosion of the riverbank and the hard engineering already in place, mobile protected species are unlikely to be present. To determine if any protected species are present, NatureScot advised that an initial ecological assessment of the site and its environs should be carried out by an accredited ecological consultancy no more than 18 months prior to submission of any application for a marine licence. If protected

species could be affected by the Proposed Works, a species specific protection plan should be prepared. If the mitigation measures identified within any such plan are not sufficient to avoid an offence under protected species legislation, a licence will be required from NatureScot before works can proceed. It also advised that the impact of the Proposed Works on protected species could be considered through a targeted environmental report.

In its consultation response HES stated that there are no designated assets in vicinity of the Proposed Works.

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

NatureScot and North Ayrshire Council both advised that, in their view, the Proposed Works do not constitute an EIA project and therefore no EIA is required.

The Scottish Ministers consider the Proposed Works to be relatively small in scale and low impact in nature and are in agreement with the applicant's assessment that the environmental effects of the Proposed Works will be minor and localised.

The Scottish ministers consider that the methods outlined in the screening opinion request and the applicant's commitment to adhere to the 'Engineering in the Water Environment Good Practice Guide' (SEPA 2009) will ensure there are no significant environmental effects.. The Scottish Ministers are in agreement with NatureScot that impacts on protected species must be considered and evidence of this must be provided in support of any future marine licence application.

### **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, no 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 made publicly available through the Marine Scotland Information website and a copy has been sent to the local authority, in this instance North Ayrshire Council.

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

Yours sincerely,

Anni Mäkelä  
Marine Scotland - Licensing Operations Team

## Appendix One

### Historic Environment Scotland

Please find attached our response to the above consultation.

Regards

Sandra

Sandra Archer | Business Support Officer, (SMO) | Heritage Directorate

Historic Environment Scotland | Àrainneachd Eachdraidheil Alba  
Longmore House, Salisbury Place, Edinburgh, EH9 1SH  
T: 0131 668 8770  
E: [sandra.archer@hes.scot](mailto:sandra.archer@hes.scot)

Involved in decisions affecting the historic environment? See the Historic Environment Policy for Scotland at [www.historicenvironment.scot/help](http://www.historicenvironment.scot/help)

[www.historicenvironment.scot](http://www.historicenvironment.scot)



Historic Environment Scotland - Scottish Charity No. SC045925

Registered Address: Longmore House, Salisbury Place, Edinburgh, EH9 1SH



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Historic Environment Scotland - Scottish Charity No. SC045925

Registered office: Longmore House, Salisbury Place, Edinburgh, EH9 1SH

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Scran Ltd - Company No. SC163518

Registered office: John Sinclair House, 16 Bernard Terrace, Edinburgh, EH8 9NX

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HISTORIC  
ENVIRONMENT  
SCOTLAND

ÀRAINNEACHD  
EACHDRAIDHEIL  
ALBA

**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: 300048822

22 February 2021

Dear Marine Scotland

**The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017**  
**North Ayrshire Council - Watercourse Protection - Glencloy Water, Arran**  
**Request for Screening Opinion**

Thank you for your consultation which we received on 02 February 2021 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, Historic Marine Protected Areas (HMPAs), 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**

We understand that the proposed development comprises scour protection works along the eastern bank of the Glencloy water, Isle of Arran. This will reduce ongoing erosion within this area. This will involve the excavation of the eastern bank for the extension of existing armourstone works that lie to the north and south of the proposed development.

We note that there are no designated assets within our remit, as outlined above, within the vicinity of the works. We therefore have no comments to make on the requirement or otherwise for an EIA for this proposed development.

We hope this is helpful. Please contact us if you have any questions about this response. The officer managing this case is Samuel Fox and they can be contacted by phone on 0131 668 6890 or by email on [samuel.fox@hes.scot](mailto:samuel.fox@hes.scot).

Yours faithfully

**Historic Environment Scotland**

# North Ayrshire Council

Dear Hamish,

**Watercourse Protection - Glendoy Water, Arran – EIA Screening**

Thank you for consulting North Ayrshire Council's Planning Service relating to the above Screening Opinion. I can confirm that we are content with both the contents of the report and the conclusion that the proposed would not constitute a EIA development under the relevant regulations. Please note this is an officer response made on behalf of North Ayrshire Council Planning Service and as such, will not prejudice any further decision (if required) made by the Council relating to the above proposal.

Kind regards,

Thom

Thom Ledingham  
Planning Officer  
Planning Services (Strategic Planning)  
Economic Development and Regeneration  
North Ayrshire Council  
Cunninghame House, Irvine, KA12 8E

e-mail: [thomledingham@north-ayrshire.gov.uk](mailto:thomledingham@north-ayrshire.gov.uk)  
telephone: 01294 324 623

If you would like to view or comment on a planning application, please go to [www.eplanning.north-ayrshire.gov.uk](http://www.eplanning.north-ayrshire.gov.uk)



## NatureScot initial response

Dear Sir/ Madam

Thank you for consulting with NatureScot re the above screening opinion.

Please see attached for our response and feel free to direct any enquiries regarding this response to me in the first instance

Best wishes

Ian

**Ian Cornforth | NatureScot Operations Officer - Strathclyde & Ayrshire**

By email only

Hamish Wright  
Marine Planning & Policy  
Licensing Operations Team (LOT)  
Marine Scotland

08 February 2021  
Our ref: CNS/MSA/NA  
CEA161964

Dear Mr Wright,

**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 Ayrshire Council - Watercourse Protection - Glencloy Water, Arran.**

Thank you for consulting NatureScot over the above proposal and the information contained in the Glencloy Water Environmental Impact Assessment Screening Report (RPS January 2021).

In providing the following comments, our role is to advise whether the proposal is likely to have any significant effects on the environment in order to inform the competent authority's decision as to whether an Environmental Impact Assessment (EIA) is required. The decision on whether an EIA is required is for Marine Scotland to make.

#### **Internationally important areas for nature conservation**

The proposed development is approx. 1.5km to the east of the Arran Moors Special Protection Area (SPA), classified for its breeding population of Hen Harriers.

The site's status as an SPA means that the requirements of the Conservation (Natural Habitats, &c.) Regulations 1994 as amended (the "Habitats Regulations") apply or, for reserved matters, The Conservation of Habitats and Species Regulations 2017. Consequently, Marine Scotland is required to consider the effect of the proposal on the SPA before it can be consented (commonly known as Habitats Regulations Appraisal). The NatureScot website has a summary of the legislative requirements – see <https://www.nature.scot/professional-advice/planning-and-development/environmental-assessment/habitats-regulations-appraisal-hra>.

Our advice is that it is unlikely that the proposal will have a significant effect on the qualifying interest of the SPA either directly or indirectly. An appropriate assessment is therefore not required.



As the proposed development is outside of the SPA, its main potential impact on the SPA would be through noise and/or visual disturbance of breeding hen harriers. We note the proposed noise mitigation measures described in the Screening Request report. These measures will reduce the potential impact of noise on the SPA. Evidence suggests that sources of noise and visual disturbance are unlikely to affect breeding hen harriers beyond a distance of 500m and 750m<sup>1</sup>. The nearest boundary of the SPA is approx. 1.5km from the proposed development site, although suitable nesting habitat within the SPA is at least 2km distant. As such, the noise associated with this proposal is unlikely to have a significant effect on breeding hen harriers through disturbance.

### **Nationally important areas for nature conservation**

#### **Arran Moors Site of Special Scientific Interest (SSSI)**

The SPA in this area is coincident with the Arran Moors SSSI, designated for breeding hen harrier, wider moorland assemblage of breeding birds, and for upland habitats. For reasons similar to those described above for the Arran Moors SPA, we consider that the proposal is unlikely to damage any of the protected natural features of the SSSI.

### **Nationally important landscapes**

#### **National Scenic Areas (NSA)**

The proposal lies within 500m of the North Arran NSA. Given the small size of the proposal and its short term duration, our advice is that the proposal is unlikely to have an adverse effect on the integrity of any NSA, or on the objectives of the designation.

#### **Wild Land Areas (WLA)**

WLAs are identified as “areas of significant protection” in SPP. The closest WLA to the proposal lies approximately 2km to the northwest, the North Arran Wild Land Area.

In our view, the proposal is unlikely to have any significant effects on the qualities of this, or any other WLA

### **Protected species**

We note the observation within the Glencloy Water Environmental Impact Assessment Screening Report (RPS January 2021) that mobile species such as Otter or Seals may be present within the work site sphere of impact and we make the following observations in relation to this:

We advise the developers undertake an initial ecological assessment of the site and its environs through an accredited ecological consultancy to determine the presence or absence of protected species.

Surveys for protected species should be completed no more than 18 months prior to submission of any application, to ensure that the survey results are a contemporary reflection of species activity at and around the site.

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<sup>1</sup> <https://www.nature.scot/review-disturbance-distances-selected-bird-species>

Where ongoing assessment process finds that particular species could be affected by the proposal, then a species specific protection plan should be prepared. If the implementation of the identified mitigation measures within any such plan is not sufficient to avoid an offence under protected species legislation, a licence will be required from NatureScot before the works can proceed. It is important that any licensing issues are fully established as part of the planning application. This is to avoid a situation where planning permission is secured but the lack of a species licence prevents the development from proceeding. Our guidance on species survey requirements and associated licensing considerations can be found on our website at <https://www.nature.scot/professional-advice/planning-and-development/planning-and-development-advice/planning-and-development-protected-species>.

We welcome the applicant's commitment to adhere to the Engineering in the Water Environment Good Practice Guide (SEPA 2009) as a robust framework in which to protect the aquatic environment and its dependent species.

Any application for this proposal will require to consider the impacts of the development on protected species. Should Marine Scotland determine that an EIA is not required, we consider that this information could be provided in the form of a targeted environmental report.

### **Concluding remarks**

I hope that this response will assist you in your consideration of this screening request. However, please contact me should you wish to discuss our advice. Should it be determined that an EIA is required for the proposed development, the applicant should refer to our pre-application/scoping advice. <https://www.nature.scot/general-pre-application-and-scoping-advice-onshore-wind-farms>.

Although this advice outlines the survey and assessment work that developers need to undertake to support a wind farm planning application, the principles are similar. It provides links to guidance explaining how to do this and the ways that a proposal can minimise impacts on nature.

This advice is provided by NatureScot, the operating name of Scottish Natural Heritage.

Our advice is given without prejudice to a full and detailed consideration of the impacts of the proposal if it is subsequently submitted as a formal application.

Yours sincerely,

Ian Cornforth  
Operations Officer  
Ayrshire and Arran  
[Ian.Cornforth@Nature.Scot](mailto:Ian.Cornforth@Nature.Scot)

## NatureScot Follow up response

Good afternoon Tom, very many thanks for your email, please see attached for our revised response which provides our view on the requirement for an EIA for this proposal.

Best wishes

Ian

Ian Cornforth | Operations Officer - Strathclyde & Ayrshire

By email only

Hamish Wright  
Marine Planning & Policy  
Licensing Operations Team (LOT)  
Marine Scotland

16 February 2021  
Our ref: CNS/MSA/NA  
CEA161964

Dear Mr Wright,  
**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 Ayrshire Council - Watercourse Protection - Glencloy Water, Arran.**

Thank you for consulting NatureScot over the above proposal and the information contained in the Glencloy Water Environmental Impact Assessment Screening Report (RPS January 2021).

### Summary

We advise that, given the scale and location of the proposed development, an EIA is not required but that the relevant competent authorities should ensure that sufficient information is provided to enable assessment of potential impacts on European Protected Species, specifically otters (*see advice below*).

### Internationally important areas for nature conservation

The proposed development is approx. 1.5km to the east of the Arran Moors Special Protection Area (SPA), classified for its breeding population of Hen Harriers.

The site's status as an SPA means that the requirements of the Conservation (Natural Habitats, &c.) Regulations 1994 as amended (the "Habitats Regulations") apply or, for reserved matters, The Conservation of Habitats and Species Regulations 2017. Consequently, Marine Scotland is required to consider the effect of the proposal on the SPA before it can be consented (commonly known as Habitats Regulations Appraisal). The NatureScot website has a summary of the legislative requirements – see <https://www.nature.scot/professional-advice/planning-and-development/environmental-assessment/habitats-regulations-appraisal-hra>.

Our advice is that it is unlikely that the proposal will have a significant effect on the qualifying interest of the SPA either directly or indirectly. An appropriate assessment is therefore not required.

As the proposed development is outside of the SPA, its main potential impact on the SPA would be through noise and/or visual disturbance of breeding hen harriers. We note the proposed noise mitigation measures described in the Screening Request report. These measures will reduce the potential impact of noise on the SPA. Evidence suggests that sources of noise and visual disturbance are unlikely to affect breeding hen harriers beyond a distance of 500m and 750m<sup>1</sup>. The nearest boundary of the SPA is approx. 1.5km from the proposed development site, although suitable nesting habitat within the SPA is at least 2km distant. As such, the noise associated with this proposal is unlikely to have a significant effect on breeding hen harriers through disturbance.

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<sup>1</sup> <https://www.nature.scot/review-disturbance-distances-selected-bird-species>

Where ongoing assessment process finds that particular species could be affected by the proposal, then a species specific protection plan should be prepared. If the implementation of the identified mitigation measures within any such plan is not sufficient to avoid an offence under protected species legislation, a licence will be required from NatureScot before the works can proceed. It is important that any licensing issues are fully established as part of the planning application. This is to avoid a situation where planning permission is secured but the lack of a species licence prevents the development from proceeding. Our guidance on species survey requirements and associated licensing considerations can be found on our website at <https://www.nature.scot/professional-advice/planning-and-development/planning-and-development-advice/planning-and-development-protected-species>.

We welcome the applicant's commitment to adhere to the Engineering in the Water Environment Good Practice Guide (SEPA 2009) as a robust framework in which to protect the aquatic environment and its dependent species.

Any application for this proposal will require to consider the impacts of the development on protected species. Should Marine Scotland determine that an EIA is not required, we consider that this information could be provided in the form of a targeted environmental report.

### **Concluding remarks**

I hope that this response will assist you in your consideration of this screening request. However, please contact me should you wish to discuss our advice. Should it be determined that an EIA is required for the proposed development, the applicant should refer to our pre-application/scoping advice. <https://www.nature.scot/general-pre-application-and-scoping-advice-onshore-wind-farms>.

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This advice is provided by NatureScot, the operating name of Scottish Natural Heritage.

Our advice is given without prejudice to a full and detailed consideration of the impacts of the proposal if it is subsequently submitted as a formal application.

Yours sincerely,

Ian Cornforth  
Operations Officer  
Ayrshire and Arran  
[Ian.Cornforth@Nature.Scot](mailto:Ian.Cornforth@Nature.Scot)