

Jack Clarkson
Affric Limited
Lochview Office
Loch Duntelchaig
Farr
IV2 6AW

Date: 25 June 2020

Dear Mr Clarkson,

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

Thank you for your screening opinion request dated 26 February 2020, further information dated 30 March 2020 and subsequent supporting correspondence in regards to the proposed extension to a laydown area, including land reclamation works, at Kishorn Port (“the Proposed Works”).

The Proposed Works are part of the larger regeneration of Kishorn Yard project (“the Regeneration Project”) which was previously subject to a mandatory Environmental Impact Assessment (“EIA”) in relation to both the terrestrial and marine works in 2013 as an Annex 1 paragraph 8(b) project (now referred to as a schedule 1 project) under The Marine Works (Environmental Impact Assessment) Regulations 2007. A marine licence was previously granted in 2013 for the marine aspects of the Regeneration Project, which included the Proposed Works (“the 2013 Licence”). The Proposed Works have not yet been undertaken and the 2013 Licence has now expired.

It is the Scottish Ministers’ understanding that there is existing planning permission for the terrestrial aspects of the Regeneration Project which was most recently varied in January 2019 without the requirement for a further EIA.

The Scottish Ministers consider the Proposed Works to fall under paragraph 14 of schedule 2 of the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) (“the 2017 MW Regulations”), being a change or extension to a schedule 1 project, with the Proposed Works being located in a sensitive area. Consequently, the Scottish Ministers are obliged to adopt a screening opinion as to whether the Proposed Works are, or are not, an 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 The Highland 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 the reclamation of approximately 83,244 square metres (“m²”) of land. This area will be formed through the construction of a rock armour perimeter bund utilising previously excavated rock from within Kishorn Port, with the primary rock stone anticipated to be 1 cubic metre (“m³”) (3 tonnes) and the secondary rock armour to be 0.45m³ (0.25 tonnes) in size. Much of the placement of the rock armour will be undertaken between Mean Low Water Springs and Mean High Water Springs during tidal windows. Once the perimeter bund has been completed a heavy-duty geotextile membrane will be secured against the inner slope and the area will then be infilled, again utilising rock from within Kishorn Port. The rock armour bund will extend to 724 metres in length and over an area of 11,946m².

Prior to the coastal infill works a minor watercourse will be diverted from a single point immediately east of the existing dry dock and re-routed to Loch Kishorn via a culvert to the edge of the infill area. The culvert will include an outfall structure through the newly constructed rock armour slope.

The area of intertidal habitat being removed supports a number of seaweed species but the habitat is common around Loch Kishorn and none of the species identified are Priority Marine Features (“PMF”). During construction there is a risk of unplanned emissions or pollutants being released into the water column from waste material, oil/fuel storage and handling, plant/machinery faults or release of fines and disturbed sediments due to rock placement and the diversion of the watercourse.

SEPA provided general guidance in regards to pollution prevention. Providing that good working practices 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 lie with the southern part of the Wester Ross National Scenic Area. The Highland Council advised that the Proposed Works have the potential to have a significant impact on the environment on this basis. SNH have however advised that it does not consider that the Proposed Works will result in significant environmental impact on natural heritage interests. The Scottish Ministers are content that the Proposed Works will ultimately be low lying and therefore agree with SNH that the Proposed Works will not significantly impact the National Scenic Area.

The Proposed Works are located within 2 kilometres of the Loch Carron Marine Protected Area (“MPA”), designated for its flame shell beds and maerl beds. The Proposed Works could have a potential adverse effect on these qualifying features of the Loch Carron MPA through impact on the water quality during construction. To mitigate for the potential impact on water quality it is intended that the Proposed Works are conducted in line with standard best practice and existing guidelines including storage and handling, waste management and spill plans and spill kits.

The Proposed Works are also located in proximity to the Inner Hebrides and Minches Special Area of Conservation (“SAC”). The Proposed Works could potentially adversely affect the harbour porpoise qualifying interest of the Inner Hebrides and Minches SAC through disturbance during construction however only a small proportion of the Proposed Works will take place in water thereby minimising the impact of underwater noise. To mitigate against potential disturbance to harbour porpoise, it is intended that rock infill will not be dropped from height.

Previous site specific otter surveys in the wider Kishorn area have been carried out, including most recently in 2019, which covered all of the terrestrial area of the Regeneration Project and highlighted otter activity in the coastal areas of the site. SNH advised however that pre-construction surveys to inform mitigation or licensing requirements should ensure there are no significant environmental impacts on these European Protected Species.

SNH also advised that since the Proposed Works will be restricted to the coastal shelf and undertaken from land they should not affect PMF burrowed muds or the tall sea pen which occur in water depth of below 20m and 30m respectfully.

HES advised that they had not identified any potentially significant impacts on its historic environment interests and it did not consider an EIA to be required for the Proposed Works. HES recommended that, as previously identified for the Regeneration Project, appropriate recording and mitigation measures are put in place for any archaeological discoveries.

Characteristics of the potential impact

The Highland Council advised that the Proposed Works may have a cumulative impact with previously approved works, specifically the terrestrial aspects of the Regeneration Project for which planning permission was granted in 2013. The Scottish Ministers note however that the Proposed Works overlap considerably with, and do not differ from, those already consented by The Highland Council. This regulatory overlap will therefore not result in a cumulative impact. In respect of the remaining area of the Proposed Works which are solely marine licensable, the Scottish Ministers are content that these are of a scale which will not have a cumulative significant impact on the environment.

SNH advised that given the location and nature of the Proposed Works together with the proposed mitigation measures there should be no significant direct or indirect environmental impacts on the features for which the Loch Carron MPA and Inner Hebrides and Minches SAC have been designated. SNH further advised that considering the information supplied in support of the Proposed Works, it did not consider that these would result in a significant environmental impact on its natural heritage interests and therefore does not consider an EIA is required.

The Scottish Ministers are content that the embedded mitigation of the Proposed Works is sufficient to ensure no significant 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 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 Highland 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

Appendix I



HISTORIC
ENVIRONMENT
SCOTLAND

ÀRAINNEACHD
EACHDRAIDHEIL
ALBA

By email: naomi.gibson@gov.scot

Ms Naomi Gibson
Marine Licensing - Casework Officer
Marine Scotland (Aberdeen Office)

Longmore House
Salisbury Place
Edinburgh
EH9 1SH

Enquiry Line: 0131-668-8716
HMConsultations@hes.scot

Our case ID: 300044258

08 April 2020

Dear Ms Gibson

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 Land Reclamation for Laydown Area Extension, Kishorn Port – Request for a Screening Opinion

Thank you for your consultation which we received on 31 March 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

We welcome the detail provided in the screening report, including the identification of historic environment receptors in the area.

We have not identified any potentially significant impacts on our interests as identified above. We therefore have not identified a need for Environmental Impact Assessment in this instance.

We recommend that appropriate recording and mitigation measures are put in place for any archaeological discoveries, as were identified in the 2013 application and Environmental Statement.

We hope this is helpful. Please contact us if you have any questions about this response. The officer managing this case is Ruth Cameron, who can be contacted by phone on 0131 668 8657 or by email on Ruth.Cameron@hes.scot.



HISTORIC
ENVIRONMENT
SCOTLAND

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ALBA

Yours sincerely

Historic Environment Scotland

Historic Environment Scotland – Longmore House, Salisbury Place, Edinburgh, EH9 1SH

Scottish Charity No. **SC045925**

VAT No. **GB 221 8680 15**



Scottish Natural Heritage Dualchas Nàdair na h-Alba

All of nature for all of Scotland
Nàdair air fad airson Alba air fad

Naomi Gibson
Marine Licensing Casework Officer
Marine Scotland - Marine Planning & Policy
Scottish Government Marine Laboratory
375 Victoria Road
Aberdeen
AB11 9DB

8 April 2020

Our Ref: NAT/SUS/REN/NRIP/Kishorn (A3204103)
Your Ref: SCRE/KISHORN

Dear Naomi

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

**Kishorn Port Limited (per Affric) - Land Reclamation for Laydown Area Extension, Kishorn Port
Loch Carron Marine Protected Area (MPA)
Inner Herbrides and the Minch Special Area of Conservation (SAC)
Wester Ross National Scenic Area (NSA)**

Thank you for your consultation dated 31 March 2020 seeking a screening opinion on this proposal.

Summary

Having considered the information supplied in support of this application we consider that the proposal as described will not result in a significant environmental impact on those natural heritage interests on which we advise.

Background

The proposal is for land reclamation for a lay down area between the east quay and the dry dock at Kishorn Port.

This activity was granted under a previous Marine Scotland licence (licence number 05003/03/0 that expired in May 2019).

Appraisal of the proposal and advice

The information supplied in support of this proposal recognises the proximity of both the Loch Carron MPA and Inner Herbrides and the Minch SAC. We agree that given the nature and location of the proposed works and the mitigation measures set out in

Scottish Natural Heritage, South Highland, Anancaun Field Station, Kinlochewe by Achnasheen, Ross-shire IV22 2PA Tel: 01445 760254 Fax: 01445 760301 Website: www.snh.org.uk

Dualchas Nadair na h-ALBA, Ath nan Ceann, Ceann Loch Iubh, Achadh na Sine, Siorrachd Rois, IV22 2PA Fo ☐ ☐ n 01445 760254 Facs 01445 760301 Website www.snh.org.uk



INVESTOR IN PEOPLE

Table 6.1 and 6.1 there should be no significant direct or indirect environmental impacts on the features for which these sites have been designated.

The information supplied in support of this proposal highlights that the last survey for otters, carried out in 2019, highlighted activity in coastal areas. It recommends that pre construction surveys are undertaken and information used to inform any necessary mitigation or licensing requirements. Such an approach should ensure there is no significant environmental impacts on these species.

The proposed coastal infill will be restricted to the coastal shelf and be undertaken from the land. It should not therefore affect Priority Marine Features (PMF's) burrowed muds, which occur within the deeper waters below 20m, or the tall sea pen *Funiculina quadrangularis* which occurs below 30m either directly or indirectly.

I hope this response is helpful to you.

Yours sincerely

Mary Gibson
Operations Officer
South Highland

cc Susan Haslam SEPA

Gibson N (Naomi)

From: Mary Gibson <Mary.Gibson@nature.scot>
Sent: 20 April 2020 09:08
To: Gibson N (Naomi)
Subject: RE: Kishorn Port Limited (per Affric) - Land Reclamation for Laydown Area Extension, Kishorn Port

Thanks for this.

My apologies.

Our response should have stated that having considered the information supplied in support of this application we consider that the proposal as described will not result in a significant environmental impact on those natural heritage interests on which we advise and therefore works are not considered an EIA project.

Mary

Mary Gibson| Operations Officer, South Highland

Scottish Natural Heritage| Anancaun| Kinlochewe| Achnasheen| Ross-shire| IV22 2PA| t: 01463 701655 m: 07887 832276

Dualchas Nàdair na h-Alba |Ath nan Ceann |Ceann Loch Iubh | Achadh na Sine | Siorrachd Rois | IV2 2PA

nature.scot – *Connecting People and Nature in Scotland* – [@nature_scot](https://twitter.com/nature_scot)

All SNH email addresses have now changed to @nature.scot Mine is: mary.gibson@nature.scot

Please update your contacts.

Please note I work Tuesday Wednesday and Thursday only

Our ref: PCS/170813
Your ref: NONE

Naomi Gibson
Marine Scotland
Aberdeen

If telephoning ask for:
Susan Haslam

By email only to: Naomi.Gibson@gov.scot

9 April 2020

Dear Ms Gibson

**The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017
Land Reclamation for Laydown Area Extension, Kishorn Port
Kishorn Port**

Thank you for consulting SEPA on the screening opinion for the above development proposal by way of your email which we received on 31 March 2020.

We consider that, with respect to our interests, Environmental Impact Assessment is not required for the above proposal. However as you know, since the original application was determined we have revised that approach we take to providing advice on impacts on the marine environment as we consider that Marine Scotland itself is generally well placed to provide the expertise needed to determine if the proposals are environmentally acceptable.

In line with Table 1 of our [SEPA standing advice for the Department for Business, Energy and Industrial Strategy and Marine Scotland on marine consultations](#) we need not be consulted on the subsequent application. To be helpful a copy of our previous response is attached however we can confirm that we would now defer to you on pollution prevention and environmental management so do not seek a condition in relation to this.

Should you wish to discuss this letter please do not hesitate to contact me via planning.dingwall@sepa.org.uk.

Yours sincerely

Susan Haslam
Senior Planning Officer
Planning Service

ECopy to: Mary.Gibson@SNH.gov.uk
Enclosed: Copy of original response

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.

Our ref: PCS/127501
Your ref: FKB/A1428

Cate Green
Marine Scotland
Aberdeen

If telephoning ask for:
Susan Haslam

31 July 2013

By email only to: Cate.Green@scotland.gsi.gov.uk

Dear Ms Green

**Marine (Scotland) Act 2010
The Marine Works (Environmental Impact Assessment) Regulations 2007
Kishorn Port Ltd: Regeneration of Kishorn Yard, Loch Kishorn
Kishorn, Wester Ross**

Thank you for your consultation emails which SEPA received on 27 June and 4 July 2013.

Advice for Marine Scotland

We ask that the **condition** in Section 2 be attached to the consent. If it will not be applied, then please consider this representation as an objection. Please also note the advice provided below.

1. Impacts on the marine environment, including coastal processes

- 1.1 In the Scotland River Basin Management Plan the Loch Kishorn water body is currently classified as having an overall classification of High Ecological Status. The current ecological status of this water body therefore meets the requirements of the Water Framework Directive and it should be ensured that no deterioration in ecological status occurs in the future.
- 1.2 A simple risk based screening tool, based on environmental standards which define permissible levels of impacts on a system, has been developed to guide the River Basin Management Plan process. Our preliminary assessment, based on existing morphological pressures in the water bodies and the proposed development footprint of approximately 9 ha, suggest that the water body will not be at risk of deteriorating as a result of this development. It should be recognised however that the loss of intertidal and subtidal habitat, in addition to that lost in the past, will result in the hydromorphological status classification moving towards the high/good boundary for this water body.

2. Pollution prevention and environmental management

- 2.1 We welcome the environmental mitigation measures outlined in the Environmental Statement and the production of a draft Construction Method Statement and Construction Environmental Management Plan. The principles outlined within these documents are generally acceptable to us

2.2 We ask that the production of a finalised detailed and site-specific Construction Environmental Management Plan be ensured by **condition**, to be agreed with Marine Scotland, in consultation with SEPA. Generally the finalised CEMP should be based on the framework CEMP submitted and address the pollution prevention and management issued outlined on our website at www.sepa.org.uk/planning/construction_and_pollution.aspx. We have provided further advice to the developer on this in section 4 below.

3. Potential overlap in regulation

3.1 Depending on how the works are carried out it would seem that the new culvert under the main reclamation area could be authorised under a Marine Licence or via the Water Environment (Controlled Activities) (Scotland) Regulations (CAR), or possibly both. We would welcome your views on this so that we could advise the developer accordingly. Generally, SEPA would regulate any engineering works in inland surface waters, which the top end of the new culvert seems likely to fall into.

Detailed advice for the applicant

4. Environmental management plan

4.1 Please note that we have requested that a condition is attached to the licence requiring the submission of a finalised Construction Environmental Management Plan (CEMP).

4.2 The CEMP should be site-specific and detailed in nature and should incorporate development-specific pollution prevention and mitigation measures for all construction elements potentially capable of giving rise to pollution. Full details of what should be included in the CEMP can be found on our website at www.sepa.org.uk/planning/construction_and_pollution.aspx and proposals should comply with the guidance within CIRIA C584 *Coastal and marine environmental site guide*.

4.3 The finalised CEMP should specifically address how it will be ensured that the possibility of introducing marine non-native species to the area will be minimised during the construction phase, including consideration of introduction via construction plant. The following guidance can be drawn from:

- The alien invasive species and the oil and gas industry guidance produced by the Oil and Gas industry (www.ogp.org.uk/pubs/436.pdf);
- SNH web-based advice on Marine non-native species (www.snh.gov.uk/land-and-sea/managing-coasts-and-sea/marine-nonnatives/);
- Marine non-native guidance from the GreenBlue (recreationadvice) (www.thegreenblue.org.uk/clubs_and_training_centres/antifoul_and_invasive_species/best_practice_invasive_species.aspx).

5. River basin management planning

- 5.1 For information, river basins comprise all surface waters, including transitional (estuaries) and coastal waters extending to 3 nm seaward from the territorial baseline and the overall classification of ecological status is made up of several different tiers of classification and includes the consideration of chemical, biological and hydromorphological parameters (e.g. structure and integrity of the intertidal and subtidal zones), and not just water quality.

Regulatory advice for the applicant

6. Regulatory requirements

- 6.1 Details of regulatory requirements and good practice advice for the applicant can be found on our website at www.sepa.org.uk/planning.aspx. We have provided detailed advice on the likely environmental regulatory requirements of this development in our response to your main planning application. You are encouraged to contact Emma Jones in the local regulatory team at this office to instigate pre-application discussions.

Should you wish to discuss this letter please do not hesitate to contact me on 01349 860359 or planning.dingwall@sepa.org.uk.

Yours sincerely

Susan Haslam
Senior Planning Officer
Planning Service

Ecopy to: <removed>

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 the planning stage. We prefer all the technical information required for any SEPA consents to be submitted at the same time as the planning 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 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.

Marine Scotland
Per Naomi Gibson
Scottish Government
Marine Laboratory
375 Victoria Road
Aberdeen
AB11 9DB

Please ask for: Graham Sharp
Direct Dial: 01478 613808
E-mail: graham.sharp@highland.gov.uk
Our Ref: 20/01455/SCRE
Your Ref:
Date: 22 April 2020

Dear Sir/Madam

PLANNING REFERENCE: 20/01455/SCRE
DEVELOPMENT: LAND RECLAMATION FOR LAYDOWN AREA EXTENSION
LOCATION: AT LAND AT KISHORN BASE, KISHORN
APPLICANT: KISHORN PORT LIMITED

I refer to the above proposed development and to your request dated 31st March 2020 for a Screening Opinion under Part 2, Regulation 10(5) of the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 As Amended (hereafter referred to as 'the 2017 Regulations').

Screening Opinion

It is considered that **Environmental Impact Assessment IS required** for the development described in the letter and information accompanying your screening request.

The rationale behind this screening opinion is as follows:

1. The proposal constitutes Schedule 2, Section 10(g) development (construction of harbours and port installations) under the 2017 Regulations;
2. In assessing the proposal against the criteria in Schedule 3 of the 2017 Regulations it is considered that Sections 1(a) – size and design of the works; 1(b) and 3(g) - cumulation with other approved works, specifically those consented by planning approval 13/02272/FUL; 2(c)(v) – areas classified under or protected under national legislation, specifically the Wester Ross National Scenic Area, apply. As such, the potential impact on the receiving environment is considered to be significant, and it is

therefore the opinion of the Highland Council that an EIA is required for this proposed development.

Yours faithfully

[Redacted]

Graham Sharp
Planner