







## **2 Summary of environmental information**

2.1 The environmental information provided by the Applicant was:

- An EIA Report providing an assessment of the impact of the Works on a range of receptors;
- Additional Information pertaining to ornithology, construction methodology and vessel traffic; and
- Habitats Regulations Appraisal – Provision of information by Applicant to inform appropriate assessment.

2.2 A summary of the environmental information provided in the EIA Report and Additional Information is given below.

### **Coastal Processes**

2.3 To assess the potential effects on coastal processes resulting from the Works, the Applicant undertook a desk based study to formulate an understanding of the baseline environment and carried out numerical modelling to predict tidal current and suspended sediment transport changes associated with the construction and operation of the Works.

2.4 During the construction phase, the assessment identified potential changes in sea-bed levels in the vicinity of the Works and the Narrow Deep B deposit site due to increased suspended sediment concentrations associated with capital dredging of the outer berth pocket and the disposal of dredge arisings at the sea deposit site. The effects of the sea-bed level changes were assessed in the EIA Report to be negligible or no impact.

2.5 During the operational phase, due to the presence of the outer berth and enlarged berth pocket, the assessment identified potential changes to the tidal current regime and to sediment transport and erosion/accretion patterns.

2.6 No significant impacts on coastal processes were identified in the EIA Report and therefore no mitigation measures were proposed.

### **Marine Water and Sediment Quality**

2.7 The Applicant identified that during the construction phase of the Works, impacts to marine water and sediment quality could arise due to increases in suspended sediment concentrations (“SSC”) and the potential release of contaminants during dredging and deposit activities.

- 2.8 To assess the potential effects of dredging on SSC, sediment dispersion modelling was carried out at both the dredging and disposal locations. The results predicted that the impact on SSC at the dredging area would be low, reversible and short term. At the Narrow Deep B deposit site, whilst the plume extent is predicted to be larger than at the dredging area, the impact on SSC is still expected to be reversible and short term. In respect of both dredging and deposit activities the predicted peak SSC outside of the dredge and deposit areas are within background levels recorded within the Forth.
- 2.9 Sediment sampling conducted by the Applicant showed concentrations of seven metals, cadmium, chromium, copper, mercury, nickel, lead and zinc within the sediment at the dredge site, as well as heavy concentrations of cadmium and mercury found at two of the sample sites. The material to be dredged for the Works is glacial till and mudstone which does not contain anthropogenic derived contaminants. Sediment sample analysis indicates that the remaining soft material component when averaged, does not contain significantly elevated concentrations of contaminants. The contamination levels are noted to be in line with historic data (collected between 1993 - 2020) from the Narrow Deep B deposit site. Based on the contaminants being restricted to certain sediment types within the dredge area and the short dispersal times of the sediment plume, the Applicant concludes that potential impacts to marine water and sediment quality from the potential release of contaminants, at the dredging site and at the Narrow Deep B deposit site, will be low and reversible.
- 2.10 Overall, the Applicant assesses potential impacts to water quality during the construction phase of the Works to be of minor adverse significance, due to the localised extent of the impacted area, the rapid rate of dispersion and the non-continuous nature of the activities. The Applicant considers no mitigation to be required and assessed the residual impact to be of minor adverse significance, which is not significant in environmental impact assessment ("EIA") terms.
- 2.11 The Applicant does not predict any impacts on marine water and sediment quality to occur during the operational phase.

### **Marine and Coastal Ecology**

- 2.12 To assess the impact of the Works on marine and coastal ecology the Applicant undertook a desktop study using a range of published datasets. The Applicant identified the potential impacts on marine and coastal ecology during the construction phase as:- direct loss of benthic habitats within the footprint of the Works; smothering of benthic habitats as a result of dredging and

deposit of dredged material; release of contaminants through dredging and deposit; and disturbance and reduced availability of prey to otters.

- 2.13 The study showed that the dredge area of the Works is inhabited by locally common benthic species such as white furrow shell, common mussel, limpet and periwinkle. There are no Priority Marine Features (“PMF”) recorded within the immediate vicinity of the Works and very few instances recorded within the wider Firth of Forth. Given the localised area, low level of sediment deposition and that the benthic communities surrounding the Works and the Narrow Deep B deposit site will be tolerant to sediment deposition, smothering of benthic habitats as a result of dredging and deposit activities is considered to be of negligible significance. Similarly given the above factors and the low value of the benthic habitats present the potential impact from the release of contaminants during dredge and deposit activities is considered to be of minor adverse significance.
- 2.14 The area of the Works is heavily constructed with limited natural coastal habitat. Otters are known to regularly use the Waters of Leith in and around urban Edinburgh. The Applicant stated, however that there is no evidence to suggest significant habitual use of the impounded dock system or the coastline immediately adjacent to the Works by otters. The Applicant stated that it appears that the otters favour areas more than 2 km upstream from the Port of Leith. The Applicant therefore predicted that otters are unlikely to be affected by direct contact with the Works. The Applicant also predicted no significant impact from the Works on the prey species of the otters, due to the presence of the lock gates and the dam separating the marine environment from the Water of Leith. The Applicant highlighted that the noise from piling would last approximately 5.5 months and sediment disturbance during dredging approximately 4 months. The Applicant concluded therefore any impact on either the otters themselves or on their prey species would be temporary and short term. Overall, the Applicant considered the potential impact from the Works to be of minor adverse significance, which is not significant in EIA terms.
- 2.15 The Applicant identified that during the operational phase, changes in erosion and accretion patterns as a result of the presence of the Works have the potential to impact benthic habitats. The Applicant concluded however that given the predicted negligible changes in tidal currents no impact on benthic habitats is predicted.

### **Fish and Shellfish Ecology**

- 2.16 The Applicant identified the potential impacts on fish and shellfish ecology during the construction phase of the Works as:- injury or disturbance due to



- 2.20 As well as direct habitat loss there is also a risk of loss due to smothering by deposition of sediment. The modelling carried out by the Applicant showed that the maximum sediment deposition depth in the enlarged berth pocket and existing Approach Channel would be between 0.01 and 0.03 m. The Applicant considered the impact to benthic habitats to be negligible. As such, the Applicant assessed the significant of the effect on fish and shellfish would be, at worst, of minor adverse significance, which is not significant in EIA terms.
- 2.21 The Applicant has not identified any potential impacts of the Works on fish and shellfish during the operational phase.
- 2.22 The Additional Information submitted by the Applicant provided greater detail on the methodology for the initial, preparatory works but confirmed no additional impacts or changes in significance to those already identified.

### **Ornithology**

- 2.23 To inform the assessment on ornithology the Applicant undertook project specific baseline surveys and gathered publicly available information including details of the designated sites in or adjacent to the area. In particular, information regarding the Imperial Dock Lock, Leith Special Protection Area ("SPA"), located within the area of Works and designated for its breeding colony of common terns, was utilised. The Applicant identified the potential impacts on ornithology during the construction phase of the Works as: noise from impact piling; changes in prey availability due to changes in water quality; and changes to prey availability due to underwater noise.
- 2.24 With regard to noise, the Applicant identified that airborne noise from the piling works have the potential to impact breeding and foraging common tern, seabirds and non-breeding waterbirds. The Applicant considered the potential impact to be of minor adverse significance. The Applicant however stated that the use of the JNCC Piling Protocol will support birds becoming habituated to this noise disturbance. The Applicant concluded that with this mitigation measure in place, the residual impact is of minor adverse significance, which is not significant in EIA terms.
- 2.25 The Applicant however stated that the potential impact of airborne noise from the piling works on post-breeding common tern, should piling be taking place during this period, is considered to be of moderate adverse significance. In addition to soft start piling, the Applicant proposed the use of a piling shroud to reduce the noise of the piling. Within the Additional Information submitted by the Applicant, further detail was provided on the piling shroud and its effectiveness together with confirmation that an Ecological Clerk of Works ("ECoW") would be employed to monitor construction works during the bird

breeding season. The Applicant concluded that with this mitigation in place, the residual impact is considered to be of minor adverse significance, which is not significant in EIA terms.

- 2.26 With regard to changes in prey availability due to underwater noise and changes in water quality, due to increases in SSC or disturbance of contaminants during dredging and deposit activities on piscivorous/partly piscivorous bird species, the Applicant assessed these to be of minor adverse and negligible significance, respectively. The Applicant proposed no mitigation and concluded the residual impacts are not significant in EIA terms.
- 2.27 The Applicant identified the potential impact on ornithology during the operational phase of the Works was to breeding common tern flying across the port estate when entering or leaving the port due to the change of use within the proposed laydown area. The Applicant acknowledged that items to be stored in this area may be large and during loading onto vessels may be up to 90 m tall, well within the range of flight height of the terns. It is the Applicant's view however that the terns are habituated to the presence of tall structures such as gantry cranes and therefore considered this potential impact to be of minor adverse significance. The Applicant proposed no mitigation and concluded the residual impacts are not significant in EIA terms.
- 2.28 Within the Additional Information submitted, the Applicant also provided further detail on the artificial lighting to be used during the operational phase of the Works. The Applicant noted however that they did not expect any impact from these to be significant or materially different from the existing baseline. The Applicant also provided further detail regarding the predicted increase in vessel traffic during both the construction and operation phases of the Works. It was the Applicant's view however that this would still not be considered significant compared to the baseline conditions, and there would be no greater impact on bird species as a result of the Works. The Additional Information submitted by the Applicant also provided greater detail on the methodology for the initial, preparatory works but confirmed no additional impacts or changes in significance to those already identified.

### **Marine Mammals**

- 2.29 The Applicant identified the most common species within the Firth of Forth as; harbour porpoise, white-beaked dolphin, grey seal and harbour seal. Other species include minke whale and bottlenose dolphin, and less common species such as sei whale, humpback whale, killer whale, Atlantic white-sided dolphin, Risso's dolphin and long-finned pilot whales. The Applicant considered the potential for marine mammals to be impacted during the construction phase of the Works by underwater noise from impact piling, vibro-

piling and dredging. The potential impacts from these activities were identified as permanent auditory threshold shift (“PTS”), temporary threshold shift (“TTS”), and disturbance. In addition, the Applicant identified the potential for marine mammals to be indirectly impacted by changes to prey availability due to underwater noise or changes to water quality.

- 2.30 The Applicant considered the potential impact of PTS or TTS to marine mammals from underwater noise during impact piling to be of minor adverse significance. The Applicant considered that with the adoption of the best practice guidance for minimising the risk of injury to marine mammals from piling noise, the residual impact would be of negligible significance, which is not significant in EIA terms.
- 2.31 The Applicant considered the potential impact of PTS or TTS to marine mammals from underwater noise during vibro-piling to be of minor adverse significance. The Applicant proposed mitigation measures including the establishment of a mitigation zone; to only commence piling operations during the hours of daylight and good visibility; and a pre-piling search for marine mammals of mitigation zone by a Marine Mammal Observer. The Applicant considered however that the pre-piling search area could be reduced from the JNCC recommended minimum of 500 m to 200 m. The Applicant considered that with this mitigation in place, the residual impact would be of negligible significance, which is not significant in EIA terms.
- 2.32 With regard to the potential impact to marine mammals from disturbance during the piling works the Applicant considered this to be of minor adverse significance. No mitigation is proposed and the Applicant concluded the residual impacts are not significant in EIA terms.
- 2.33 The Applicant considered the potential for marine mammals to be impacted by changes to prey availability due to either underwater noise impacts or a changes in water quality to be of minor adverse significance. No mitigation is proposed and the Applicant concluded the residual impacts are not significant in EIA terms.
- 2.34 Within the Additional Information submitted, the Applicant also provided further detail on vessel traffic during both the construction phase and the operational phase. The Applicant stated however that this increase would still not be considered significant compared to the baseline conditions, and there would be no greater impact on marine mammal species as a result of the Works. The Additional Information submitted by the Applicant also provided greater detail on the methodology for the initial, preparatory works but confirmed no additional impacts or changes in significance to those already identified.





Firth of Tay and Eden Estuary SAC	harbour seal	Underwater noise impacts, water quality changes, prey availability changes
Berwickshire and North Northumberland SAC	grey seal	Underwater noise impacts, water quality changes, prey availability changes
Moray Firth SAC	bottlenose dolphin	Underwater noise impacts, water quality changes, prey availability changes

4.6 NS stated that it was largely content with the information presented in the applicant’s Habitats Regulations Assessment (“HRA”) report and agreed that there will not be adverse effects on site integrity provided that the mitigation outlined by the Applicant in the report is followed subject to the following changes:

- Employment of soft start piling procedure whereby the piling power is gradually ramped up, incrementally over a set time period, until full operational power is achieved. The soft-start duration should be a period of not less than 20 minutes;
- JNCC piling guidance is followed including pre-piling search area of 500 m around the area of piling activity;
- Use of a piling shroud at all times through the tern breeding season (1 May to 31 July) not just during the post breeding phase (August); and
- Piling works are to be undertaken outwith the tern breeding season (1 May to 31 July) but if this is not possible, then an Ecological Clerk of Works will be required to monitor disturbance at the colony.

4.7 To inform its consideration of the impact of the Works on the Outer Firth of Forth and St Andrews Bay Complex SPA, NS requested further detail on the number of vessel movements to the Narrow Deep B deposit site and how often that route will be used against baseline be provided. Further, NS requested further detail on the initial, preparatory works required, expanding upon what this work would include, the likely impacts and any mitigation in addition to that already included in the EIA Report.

4.8 NS agreed with the Applicant’s assessment and conclusions on coastal processes, benthic habitat and species. NS also confirmed they were content with the Applicant’s assessment that the operational vessel movements associated with the Works are unlikely to have significant impacts, providing that existing routes through the Forth are followed.

- 4.9 NS advised that a licence to disturb European Protected Species (“EPS”) will be required for the Works although it advised they will not have a detrimental effect on the favourable conservation status of the EPS providing the mitigation advised by NS is followed.
- 4.10 In response to the Additional Information, NS confirmed on 28 October 2022 that the Applicant had provided sufficient detail on the initial, preparatory works for it to conclude that they would not raise any significant impacts requiring additional mitigation. NS confirmed that the detail provided on additional vessel movements to the Narrow Deep B Deposit Site compared to the existing movements is unlikely to cause significant disturbance to the qualifying species of the Outer Firth of Forth and St Andrews Bay Complex SPA. NS further advised that the additional mitigation outlined in the Additional Information was sufficient and noted the use of the piling shroud throughout the tern breeding season and the appointment of an ECoW. NS advised that based the uncertainties within the noise modelling provided by the Applicant and that piling is likely to take 5.5 months, the mitigation zone should remain as per the JNCC Piling Protocol minimum recommendation, namely 500 m.
- 4.11 Edinburgh City Council (“ECC”) responded to the initial consultation on 29 June 2022 stating it had no comment to make on the Works.
- 4.12 ECC was consulted on the additional information but declined to comment

## **5 Summary of non-statutory consultee responses**

- 5.1 Marine Coastguard Agency (“MCA”) responded to the initial consultation on 27 June 2022. The MCA noted that the Works fall within the jurisdiction of a Statutory Harbour Authority (“SHA”), Forth Ports Limited, and that the deposit of the material is within a designated deposit site. The Applicant is therefore responsible for the safety of navigation within the SHA area. The MCA has no objection to the Works provided that all maritime safety legislation is adhered to.
- 5.2 In response to the Additional Information, the MCA confirmed on 24 October 2022 its position remained the same.
- 5.3 Northern Lighthouse Board (“NLB”) responded to the initial consultation on 31 May 2022 stating it had no objection to the capital dredge and deposit campaign. In relation to the construction aspects of the Works, NLB recommended a number of standard conditions and provided advice in relation to the Aids to Navigation associated with the Works.

- 5.4 In response to the Additional Information, the NLB confirmed on 3 October 2022 its position remained the same.
- 5.5 UK Chamber of Shipping provided a response to the initial consultation on 8 June 2022 and to the Additional Information on 17 October 2022 confirming it had no comments on the Works.
- 5.6 The Ministry of Defence responded to the initial consultation on 10 June 2022 confirming no objection to the Works. It was consulted on the Additional Information but declined to comment.
- 5.7 Whale and Dolphin Conservation responded to the initial consultation on 30 May 2022 stating that it would not be submitting a response. It was also consulted on the Additional Information but no response was received.
- 5.8 Royal Yachting Association Scotland provided a response to the initial consultation on 30 May 2022 and to the Additional Information on 5 October 2022 confirming it had no comment to make on the Works.
- 5.9 Scottish Water (“SW”) provided a response to the initial consultation on 7 June 2022 stating no objection to the Works. SW advised that the Applicant should be aware that should the Works require service from SW, for example, access to the combined sewer system, the Applicant should contact SW at the earliest opportunity to discuss making a connection request.
- 5.10 SW was consulted on the additional information but declined to provide comment.
- 5.11 The Royal Society for the Protection of Birds Scotland (“RSPB Scotland”) provided a response to the initial consultation on 15 July 2022. RSPB Scotland advised that whilst it did to a large extent, agree with the assessment and impacts identified by the Applicant it had concerns related to the assessment of the changes to activity levels across the site and to the extent to which construction impacts on post-breeding terns can be mitigated.
- 5.12 RSPB Scotland stated that the Applicant had based its assessment of operational impacts on birds using baseline conditions which suggest current disturbance levels are uniform across the site and the birds using the area of the Works are likely to be habituated to this level of disturbance and therefore will be unaffected. RSPB Scotland indicated that currently the eastern breakwater (site of the Works) may have relatively lower levels of disturbance and may act as a quieter refuge site for some species. RSPB Scotland highlighted that this appeared to be supported by survey records. RSPB Scotland advised that if the Works leads to a significant increase in the

operational usage of the area then this could lead to an increase in disturbance and a reduction in value of this area to the birds during the operational phase of the Works and not just the construction phase.

- 5.13 RSPB Scotland also raised concerns regarding the efficacy of the suggested mitigation for the Works. RSPB Scotland raised doubts that the proposed use of a piling shroud would reduce the level of impact to the point that it is not significant. Survey records suggest that the post-breeding groups of common terns currently utilise the eastern breakwater area in preference to most other areas of the dock. RSPB Scotland advised that even with the proposed piling shroud it could not conclude that the common terns would relocate to another suitable site within the port without detrimental impacts.
- 5.14 RSPB Scotland therefore objected due to the underestimation of the impacts from the operational phase of the Works to SPA qualifying species (kittiwake, ringed plover and common tern) and the doubt regarding the effectiveness of the proposed mitigation measures for common terns during the construction phase. RSPB Scotland advised that it may reconsider its objection if the Applicant provided further mitigation measures for common tern during construction and a reassessment of how potential changes from the current usage in specific parts of the port, namely the Outer Berth – end of the Port, will affect qualifying species.
- 5.15 In response to the Additional Information, RSPB Scotland responded on 31 October 2022 confirming it was content with the further details provided by the Applicant in relation to the impacts from the operational phase of the Works. RSPB Scotland advised that whilst it did still have concerns regarding the potential impact of the Works on loafing or roosting terns, it was content with the mitigation measures proposed. With regard to the use of an ECoW, RSPB Scotland advised they should be an independent environmental professional with direct responsibility for monitoring and reporting on compliance with planning consents, environmental permits, legislation and mitigation. RSPB Scotland also advised that the ECoW should provide feedback as to compliance against the plans and mitigation via a written report (made publicly available by the licensing authority) within a specified timescale. In addition, it was subsequently agreed between the Applicant and RSPB Scotland that some improvements to the area of Works to provide nesting, roosting and loafing areas for common terns would be carried out by the Applicant. The Scottish Ministers do not however consider these improvements to be necessary to avoid adverse effect the integrity of the Imperial Dock Lock, Leith SPA.

## **6 Summary of representations from other organisations and members of the public**

6.1 No representations were received in relation to the Works from other organisations or members of the public.

## **7 Summary of third party advice**

7.1 Transport Scotland (“TS”) provided a response to the initial consultation on 29 June 2022 stating that it was satisfied that the Works will not give rise to any significant environmental impacts on the trunk road network. TS is also satisfied that as there is no mention in the application documents of the need to transport abnormal indivisible loads, no further detail is required in this regard.

7.2 In response to the Additional Information, TS confirmed on 28 October 2022 its position remained the same.

7.3 Marine Scotland Science (“MSS”) provided advice on 5 July 2022 and further clarification on 25 July 2022. The initial advice considered all receptors included in the Applicant’s EIA Report and the points of clarification were provided in response to questions regarding marine mammals, birds, marine fish and diadromous fish.

7.4 With reference to marine mammals MSS, was content with the impact pathways identified (underwater noise, changes to water quality and changes to prey availability) by the Applicant and the modelling carried out. MSS advised that the key sensitive period with respect for these Works is the grey seal breeding season (October to December) and noted the lack of timings for construction provided in the EIA report.

7.5 MSS advised that further detail was required describing the nature and noise profile of the initial, preparatory works, detailing the source level noise expected from this work. MSS also requested further detail on the use of a piling shroud and whether it had the potential to mitigate underwater noise. In addition, MSS advised it agreed with NS that the recommended minimum of a 500 m pre-piling search area is appropriate rather than the proposed 200 m by the Applicant, unless it can be demonstrated that this is unfeasible due to operational reasons or if the piling shroud can provided effective mitigation for underwater noise.

7.6 MSS advised that given the proximity of the Narrow Deep B deposit site to Inchkeith island, a designated grey seal haul-out site vessel operators involved in the dredge and deposit activities adhere to best practice guidelines as

detailed in the Scottish Marine Wildlife Watching Code and ensure there are no marine mammals near the vessel prior to deposit activities.

- 7.7 In relation to birds, MSS was content that the baseline surveys were sufficient to inform the EIA. MSS noted that the construction works were anticipated to last 5.5 months but details were not provided confirming when this would occur. MS advised that the key period for disturbance of the identified populations is likely to be during the spring and early summer months, when birds are breeding. MSS raised particular concerns in respect of common tern breeding at the Imperial Dock Lock, Leith SPA. MSS recommended that activities likely to cause the greatest disturbance are undertaken outwith the tern breeding season (May to mid-September) and that an ECoW be employed to monitor disturbance to birds, should it be essential to carry out works during the breeding season.
- 7.8 MSS requested more detailed data be provided on the noise generated by piling and the effect that the piling shroud will have on in air noise. MSS also requested further information regarding increased vessel activity during the construction phase of the Works.
- 7.9 MSS stated that some consideration should be given to changes to impacts from any new proposed lighting specifically with respect to illuminating the area used by breeding terns (during the breeding season) within the Imperial Dock Lock SPA. MSS advised that artificial lighting could lead to disturbance.
- 7.10 MSS advised that consideration should be given to the potential disturbance caused by increased vessel movements during both the construction and operation phases of the Works. MSS agreed with NS however that vessel movements during the operation phase are unlikely to be significant.
- 7.11 MSS noted that the Applicant has focussed mainly on the impacts on diadromous fish rather than other marine fish species in the EIA but clarified it was happy with the content and assessment provided.
- 7.12 MSS were generally content with the conclusions of the EIA in relation to diadromous fish but noted the lack of consideration given to the impact of reduced oxygen levels in the water column due to dredging and deposit activities. As the salmon populations of a number of the rivers discharging into the Firth of Forth are categorised as 3 meaning that there is no resilience in the population for additional loss of fish. MSS advised that a condition should be included in the licences that any sightings of dead, distressed or injured fish which could be connected to the Works must be immediately reported to the Licensing Authority. A condition to this effect will be included in the construction marine licence.

- 7.13 Overall, MSS advised that they were content with the information provided in relation to physical/coastal processes, commercial fisheries and benthic ecology.
- 7.14 MSS provided advice on 28 October 2022 in response to the Additional Information and confirmed it was content with the more detailed description of the initial, preparatory work and that this activity would have limited impacts on birds. MSS confirmed it was content with the information provided regarding vessel movements and noted the limited increase to vessel traffic was not likely to have significant impacts on ornithological receptors. MSS was also content based on the Additional Information provided that visual and noise disturbance during the construction and operation phases would be generally similar to current baseline conditions. MSS reiterated its recommendation for the pre-piling search area to remain at 500 m as per the JNCC guidelines, rather than the 200 m suggested by the Applicant.

## **8 The Scottish Ministers' Considerations and Main Determinative Issues**

### **8.1 Determination of Marine Licence Applications**

8.1.1 In determining the applications for a marine licences (including the terms on which they are granted and what conditions, if any, are to be attached to them) the Scottish Ministers have had regard to:

- the need to protect the environment, protect human health, prevent interference with legitimate uses of the sea and such other matters as the Scottish Ministers consider relevant;
- the effects of any use intended to be made of the works when constructed; and
- representations received from persons with an interest in the outcome of the applications.

### **8.2 Environmental Matters**

8.2.1 The Scottish Ministers are satisfied that an EIA has been carried out. Environmental information including the EIA Report and Additional Information has been produced and the applicable procedures regarding publicity and consultation laid down in regulations has been followed. The environmental impacts of the Works have been assessed and the Scottish Ministers have taken the environmental information into account when reaching their decision.

The Scottish Ministers have considered fully and carefully the applications, the EIA Report, the Additional Information and all relevant representations from consultees and third party advice.

### 8.3 Main Determinative Issues

8.3.1 The Scottish Ministers, having taken account of all relevant information and regulatory requirements, consider that the main determining issues are:

- The extent to which the Works accord with and are supported by the Scottish Government policy and the terms of Scotland’s National Marine Plan (“NMP”); and
- The main effects of the Works on protecting the environment and human health and preventing interference with the legitimate use of the sea are in summary impacts on:
  - marine mammals;
  - diadromous fish; and
  - birds.

Each of these include impacts on European sites.

### 8.4 Policy Context

8.4.1 As the Works are proposed to take place within the Scottish marine area, they are subject to the Marine (Scotland) Act 2010 (“the 2010 Act”). The NMP covering inshore waters is a requirement of the 2010 Act. The NMP lays out the Scottish Ministers’ policies for the sustainable development of Scotland’s seas and provides General Planning Principles, and sector specific objectives and policies, specifically to develop offshore wind and marine renewable energy. The relevant policies were considered, with the Works being deemed to meet the requirements of the NMP and to be contributing towards achieving relevant sector specific policies and objectives.

### 8.5 Impacts of the Works on the environment

*Impacts on European sites and Bird, Diadromous Fish and Marine Mammal Impacts*

8.5.1 The Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Habitats Regulations”) require the Scottish Ministers to consider whether the Works would be likely to have a significant effect on a European site (either alone or in combination with other plans or projects), as defined in the 1994 Habitat Regulations.

- 8.5.2 In line with the view of NS that the Works are likely to have a significant effect on the qualifying interests of Firth of Forth SPA, Imperial Dock Lock, Leith SPA, Forth Islands SPA, Outer Firth of Forth and St Andrews Bay Complex SPA, River Teith SAC, Isle of May SAC, Firth of Tay and Eden Estuary SAC, Berwickshire and North Northumberland SAC or Moray Firth SAC, Marine Scotland Licensing Operations Team (“MS-LOT”) on behalf of the Scottish Ministers, as the “competent authority”, was required to carry out an Appropriate Assessment (“AA”).
- 8.5.3 Having regard to the representations made by NS, it can be ascertained that the Works will not adversely affect the integrity of any SAC or SPA providing the Applicant adheres to the conditions set out in the AA and the marine licences are adhered to . Further considering the reasons for which the sites were designated and the associated conservation objectives, MS-LOT are content that the Works will not on its own or in combination with other projects, adversely affect the integrity of the Firth of Forth SPA, Imperial Dock Lock, Leith SPA, Forth Islands SPA, Outer Firth of Forth and St Andrews Bay Complex SPA, River Teith SAC, Isle of May SAC, Firth of Tay and Eden Estuary SAC, Berwickshire and North Northumberland SAC or Moray Firth SAC.
- 8.5.4 A full explanation of the issues and justification for decisions regarding site integrity is provided in the AA found here: <https://marine.gov.scot/node/23338>
- 8.5.5 The Scottish Ministers consider that, having taken into account the information provided by the Applicant, the representations of the consultative bodies, and having regard to the conditions attached, there are no outstanding concerns in relation to the impact of the Works on marine mammals, birds, diadromous fish or European sites which would require a marine licence to be withheld.

## **9 The Scottish Ministers’ Determination and Reasoned Conclusion**

- 9.1 The Scottish Ministers are satisfied that an EIA has been carried out, and that the applicable procedures regarding publicity and consultation in respect of the applications have been followed.
- 9.2 The Scottish Ministers have weighed the impacts of the Works, and the degree to which these can be mitigated. The Ministers have undertaken this exercise in the context of national and local policies.
- 9.3 The Scottish Ministers have considered the extent to which the Works accord with and are supported by Scottish Government policy, the terms of the NMP and the environmental impacts of the Works. In particular the Scottish

Ministers have considered the impacts on various species of birds, marine mammals and diadromous fish.

- 9.4 The Scottish Ministers are satisfied that the environmental issues associated with the Works have been appropriately addressed by way of the design of the Works and mitigation measures. In particular, the Scottish Ministers are satisfied that the Works will not adversely affect the integrity of the Firth of Forth SPA, Imperial Dock Lock, Leith SPA, Forth Islands SPA, Outer Firth of Forth and St Andrews Bay Complex SPA, River Teith SAC, Isle of May SAC, Firth of Tay and Eden Estuary SAC, Berwickshire and North Northumberland Coast SAC or the Moray Firth SAC.
- 9.5 The Scottish Ministers consider that the licensing tests in respect of an EPS disturbance application for cetaceans will likely be met and an EPS licence will likely be granted.
- 9.6 In their consideration of the environmental impacts of the Works, the Scottish Ministers have identified conditions to be attached to the licences to reduce environmental impacts. These include adherence to the mitigation measures outlined in the Schedule of Mitigation in the Applicant's EIA Report, Additional Information together with the mitigation measures identified by NatureScot during consultation. Specifically the Licensee must adhere to the JNCC Piling Protocol including the standard 500 m pre-piling search area and use a piling shroud during both the breeding and post-breeding seasons for common terns.
- 9.7 A condition requiring the appointment of an ECoW and defining the terms of the appointment, if piling is undertaken during the common tern breeding and post breeding seasons 1 May to 30 September (inclusive), has been included in the construction marine licence. The ECoW must be on site during piling and is responsible for monitoring any disturbance to the common tern colony of the Imperial Dock Lock, Leith Special Area of Conservation. The ECoW must have authority to halt the piling activities if any disturbance of breeding common terns is observed and the Licensing Authority must be notified. The piling works can only re-commence with further written approval of the Licensing Authority. The ECoW must report to the Licensing Authority detailing monitoring and compliance with the Marine Licence on at least an annual basis.
- 9.8 In addition, a condition requiring the Applicant to implement improvements to the area of the Works so to provide nesting, roosting and loafing areas for common terns prior to the completion of the Works has been included in the construction licence.



