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Marine Scotland - Licensing Operations Team Scoping Opinion

**Scoping Opinion adopted by the Scottish Ministers
under Part 4 of The Marine Works (Environmental
Impact Assessment) (Scotland) Regulations 2017**

Orkney Island Council Harbour Authority

Scapa Deep Water Quay Development

21 October 2021

Contents

1. Introduction	3
1.1 Background	3
2. The Proposed Works	4
2.1 Introduction	4
2.2 Description of the Proposed Works	4
2.3 Onshore/Planning	5
2.4 The Scottish Ministers' Comments	5
3. Contents of the EIA Report	10
3.1 Introduction	10
3.2 EIA Scope	10
3.3 Mitigation and Monitoring	10
3.4 Risks of Major Accidents and/or Disasters	11
3.5 Climate and Greenhouse Gases	12
4. Consultation	13
4.1 The Consultation Process	13
4.2 Responses received	13
5. Interests to be considered within the EIA Report	15
5.1 Introduction	15
5.2 Water Environment and Coastal Processes	15
5.3 Ecology	17
5.4 Designated Sites	18
5.5 Sites of Special Scientific Interest	18
5.6 Ornithology	19
5.7 Otter	19
5.8 Marine Mammals – Cetaceans	20
5.9 Marine Mammals – Seal	21
5.10 Benthic Ecology, Intertidal and Subtidal Habitats and Priority Marine Features	22
5.11 Basking Shark	23
5.12 Marine Fish Ecology	24
5.13 Commercial Fisheries	24
5.14 Diadromous Fish	24
5.15 Biosecurity – INNS	25
5.16 Archaeology and Cultural Heritage	26
5.17 Seascape, Landscape and Visual	27

5.18	Shipping and Navigation	28
5.19	Population and Human Health	29
5.20	Air Quality.....	29
5.21	Airborne Noise	29
5.22	Socio-Economic	30
5.23	Cumulative Assessment.....	30
6.	Application and EIA Report.....	32
6.1	General	32
7.	Multi-Stage Regulatory Approval.....	33
7.1	Background	33
	Appendix I: Consultation Responses & Advice.....	34
	Appendix II: Gap Analysis	35

1. Introduction

1.1 Background

1.1.1 On 31 March 2021, the Scottish Ministers received a scoping report (“the Scoping Report”) from Orkney Island Council Harbour Authority (“the Applicant”) as part of its request for a scoping opinion relating to Scapa Deep Water Quay Development (“the Proposed Works”). In accordance with regulation 14 of The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 MW Regulations”) the Scottish Ministers considered the content of the Scoping Report to be sufficient.

1.1.2 This scoping opinion is adopted by the Scottish Ministers under the 2017 MW Regulations (“the Scoping Opinion”) in response to the Applicant’s request and should be read in conjunction with the Scoping Report. The matters contained in the Scoping Report have been carefully considered by the Scottish Ministers and use has been made of professional judgment, based on expert advice from stakeholders and Marine Scotland in-house expertise and experience. This Scoping Opinion identifies the scope of impacts to be addressed and the method of assessment to be used in the Environmental Impact Assessment Report (“EIA Report”) for the Proposed Works. The Scottish Ministers, in adopting this Scoping Opinion, have, in accordance with the 2017 MW Regulations, taken into account the information provided by the Applicant, in particular, information in respect of the specific characteristics of the Proposed Works, including its location and technical capacity and its likely impact on the environment. In addition, the Scottish Ministers have taken into account the representations made to them in response to the scoping consultation they have undertaken. In examining the EIA Report, and any other environmental information, the Scottish Ministers will seek to reach an up to date reasoned conclusion on the significant effects on the environment from the Proposed Works. This reasoned conclusion will be considered as up to date if the Scottish Ministers are satisfied that current knowledge and methods of assessment have been taken account of. For the avoidance of doubt, this Scoping Opinion does not preclude the Scottish Ministers from requiring the Applicant to submit additional information in connection with any EIA Report submitted with applications for marine licences under the Marine (Scotland) Act 2010 (“the 2010 Act”). In the event that the Applicant does not submit applications for marine licences under the 2010 Act for the Proposed Works within 12 months of the date of this Scoping Opinion, the Scottish Ministers strongly recommend that the Applicant seeks further advice from them regarding the validity of the Scoping Opinion.

2. The Proposed Works

2.1 Introduction

2.1.1 This chapter provides a summary of the description of the Proposed Works provided by the Applicant in the Scoping Report together with the Scottish Ministers' general comments in response. The details of the Proposed Works in the Scoping Report have not been verified by the Scottish Ministers and are assumed to be accurate.

2.2 Description of the Proposed Works

2.2.1 The Proposed Works comprises of the creation of a deep water quay and laydown area in the Bay of Deepdale, located approximately 4 kilometres ("km") south of Scapa Pier, before Holm and by Deepdale. The site is currently untouched coastline. The Proposed Works include dredging, construction, the deposit or use of explosives and the deposit or removal of substances or objects in the Scottish marine area.

2.2.2 The Proposed Works will include the creation of a 575 metres ("m") quayside with water depth of -15 m Chart Datum ("CD"), a 110 m x 75 m quay extension with a water depth of -20 m CD and the formation of 18 hectares ("Ha") of laydown area – not including the quay areas. The laydown area includes aspects both above and below mean high water springs ("MHWS").

2.2.3 The Proposed Works will be completed in three phases. Phases 2 and 3 may be switched in ordering. Each phase consists of the following;

Phase 1

- Excavation of current landform which may require pre-treatment through drilling and controlled delayed explosives,
- Reclamation of the shore to form a 12 Ha laydown area,
- Bunds on the northern and eastern edges of reclaimed land which include geotextile and armour stone,
- Tubular and sheet piles installed by vibro-hammer for quay works
- Construction of a quay 300 m x ~46 m wide, this will have a 100 m wide section on the northern edge creating a 450 m berthing,
- Dredging adjacent to the newly formed quay (21 500m² to -15 m CD), and sea deposit of dredge material where it is unsuitable for infill in laydown or use in construction.

Phase 2

- Excavation of current landform which may require pre-treatment through drilling and controlled delayed explosives,
- Reclamation of shore to form an additional 12 Ha of laydown area to the south of the Phase 1 laydown area,
- Extension of a bund on the eastern edge to be extended along the length of the new laydown area and partially along the southern edge,
- Tubular and sheet piles installed by vibro-hammer for quay works,

- Extension of the Phase 1 quay area by 275 m x ~46 m to the south,
- Dredging adjacent to the newly formed quay extension to provide -15 m CD water depth (16 500m²) and sea deposit of dredge material where it is unsuitable for infill in laydown or use in construction.

Phase 3

- Construction of a 110 m x 75 m quay extension on the northern edge of Phase 1 quay out to a depth of -20 m CD,
- Tubular and sheet piles installed by vibro-hammer for quay works,
- Dredging on the northern side of the newly formed quay extension to provide -20 m CD water depth (13 800m²).

2.2.4 The Proposed Works aim to avoid sea deposit of dredge material as much as possible through the inclusion of dredge material and removed land into the construction and/or land reclamation requirements. However dredge material may be deposited at a suitably designated site if absolutely necessary.

2.2.5 Impact hammer piling might be required in phases 1 and 2. Works are estimated to take place over several months for phases 1 and 2.

2.2.6 It is noted that the Scoping Report lists the licensable marine activities but does not clearly establish which activities or aspects of activities are below MHWS and all activities for which 'regulatory approval' will be sought.

2.3 Onshore/Planning

2.3.1 The Scottish Ministers are aware the Applicant has sought a separate scoping opinion from Orkney Island Council for the associated onshore works. It is essential that the EIA Report concerning onshore works will be available at the time that the EIA Report for the Proposed Works is being considered so that all the information relating to the project as a 'whole' is presented. The EIA Report for the Proposed Works must consider the cumulative impacts with the onshore works.

2.3.2 The Scottish Ministers advise that the EIA Report must be explicitly clear about what licensable marine activities are proposed to be carried out below MHWS during the Proposed Works and must also detail which activities could overlap with the Local Authority's remit.

2.4 The Scottish Ministers' Comments

Description of the Proposed Works

2.4.1 The Scottish Ministers note that a Strategic Environmental Assessment ("SEA") and Habitat Regulations Appraisal ("HRA") were undertaken for the Orkney Harbours Masterplan which included the Proposed Works. A detailed

review of environmental baselines was undertaken covering a number of receptors and taking into account responses from consultees. An assessment of the impact of the Proposed Works on these receptors was also completed as part of the SEA. This information has not been considered or presented in the Scoping Report sufficiently. Further advice was also provided by consultees on survey methodologies to address areas of potential concern. The Scottish Ministers advise that these surveys should have been undertaken to evidence the scoping and justify which receptors are scoped in or out of the EIA Report. The Scottish Ministers also note that mitigation and monitoring was proposed as part of the SEA, which takes into consideration the consultation responses. This information has also not been included in the Scoping Report and no justification has been provided as to why these measures are no longer appropriate. The Scottish Ministers would expect inclusion of baseline assessments, surveys and results, ongoing monitoring and proposed mitigation to be included in the Scoping Report. Without satisfactory evidence being provided to justify scoping a receptor out, the precautionary principle has been applied and that receptor has been scoped in. Furthermore, without this information, the Scottish Ministers are unable to provide targeted advice on the content of the Scoping Report. This might increase the risk of additional information being required under the 2017 MW Regulations to ensure completeness and quality of the EIA Report. The Scottish Ministers advise that the assessments from the SEA and plan level HRA should be used to inform the EIA Report and that all previously identified mitigation and monitoring should be included or a justification provided as to why they are no longer appropriate.

- 2.4.2 Furthermore, the Scottish Ministers acknowledge the Applicant's intention to apply a 'Design and Build' approach but note that there is still a lack of detail of the construction methodology. The Applicant has not included any quantities, or estimation of quantities of materials to be used in the construction or dredging activities. There is also no information on the types of material to be used in the construction works, and very limited information on the duration of the Proposed Works. The Scottish Minister's advice can only be based on the information provided.
- 2.4.3 The Scottish Ministers advise that worst case scenario in terms of impacts to each receptor must be considered in the EIA Report.
- 2.4.4 The Scottish Ministers do not consider 'suitably won material' as a sufficient description and require further information on what materials are to be used in construction and what materials may require deposit at sea in a designated sea deposit site. In Section 2.2.2 of the Scoping Report it is proposed that the design principle will attempt to balance dredging with construction and/or land reclamation and in Section 2.2.3 of the Scoping

Report it is proposed that a site investigation will be undertaken to determine the best practicable environmental opinion for the use of the dredge material. The Scottish Ministers advise that this must be undertaken early to inform the options for use of the dredge material. The Scottish Ministers advise that particle analysis and chemical analysis must be undertaken to determine suitability of use and/or deposit at sea. The Applicant must consider alternative options in case the dredge material is not suitable for use in construction and/or land reclamation and must clearly detail all options. The Scottish Ministers advise that the environmental impacts of whichever material is used must be assessed in the EIA Report including but not limited to the transport of materials to site. If road transport of materials is required, the Applicant should refer to the advice from Transport Scotland regarding assessments that may be required. If, at the time of writing the EIA Report, there is still any uncertainty, the Scottish Ministers advise that the worst case scenario must be defined and assessed.

- 2.4.5 The Scottish Ministers also advise that any impacts relating to site investigation works must be included in the assessment.
- 2.4.6 Section 2.2.3 of the Scoping Report proposes that the construction phase will be awarded as a Design and Build and it will therefore be detailed within the Design Envelope of the EIA Report. The Scottish Ministers advise that the EIA Report should provide a full and detailed description and consideration of the nature and scope of the construction and operational phases, including the types of activities for which regulatory approval is required, their frequency, and how activities will be carried out for the Proposed Works. This should include consideration for the potential overlapping of activities with those required for the Hatston Pier proposal and any other proposed activity in the vicinity.
- 2.4.7 Section 2.2.3 of the Scoping Report considers the potential use of explosives, piling and drilling alongside the other potentially noisy construction and operational aspects. The Scottish Ministers advise that the Applicant must undertake underwater noise modelling to assess the impact of all potentially noisy aspects of the Proposed Works on all receptors likely to be susceptible to them, including but not limited to; marine mammals, fish and birds. The Scottish Ministers advise the worst case scenario for underwater noise should be assessed and mitigation proposed. The Scottish Ministers advise that the EIA Report should make clear whether or not blasting is required and in what circumstances.
- 2.4.8 The Scottish Ministers note the Applicant has acknowledged the Water Framework Directive (“WFD”) and the requirement to ensure that there is no deterioration in the quality of surface or groundwater bodies. The Applicant

also acknowledges that the construction and dredging associated with the Proposed Works have the potential to cause changes to the current hydromorphological conditions. The Scottish Ministers advise that there is currently insufficient evidence to determine if there will be an impact on the waterbody status. The Applicant states that the site of the Proposed Works is considered low energy and has an absence of fine sediment however has not provided sufficient evidence of this. The Applicant has not provided information on the material to be used in the construction aspects or the composition of the dredge material, nor has any consideration been given to the impact of blasting. The Applicant must assess the impacts of the Proposed Works on the waterbody status and demonstrate that the Proposed Works will not alter the status of the waterbody. The Scottish Ministers advise the Applicant should consider reviewing the Clearing the Waters for All guidance for England and recommends applying this to the Proposed Works. If you require assistance on how to assess the morphological impacts please get touch with MS-LOT.

Design Envelope

- 2.4.9 The Scottish Ministers note the Applicant's intention to apply a 'design and build' approach whereby the construction methodology will not be confirmed until a contractor is appointed. Where the details of the Proposed Works cannot be defined precisely, the Applicant must apply a worst case scenario. This has not been set out in the Scoping Report.
- 2.4.10 The Scottish Ministers advise that the Applicant must make every attempt to narrow the range of options. Where flexibility in the design envelope is required, this must be defined within the EIA Report and the reasons for requiring such flexibility clearly stated. At the time of application, the parameters of the Proposed Works should not be so wide-ranging as to represent effectively different projects. To address any uncertainty, the EIA Report must consider the potential impacts associated with each of the different scenarios. The criteria for selecting the worst case and the most likely scenario, together with the potential impacts arising from these, must also be described. The parameters of the Proposed Works must be clearly and consistently defined in the applications for the marine licences and the accompanying EIA Report.
- 2.4.11 The Scottish Ministers will determine the applications based on the worst case scenario. The EIA will reduce the degree of design flexibility required and the detail may be further refined in a Construction Method Statement ("CMS") to be submitted to the Scottish Ministers, for their approval, before works commence. Please note however, the information provided in Chapter 7 below regarding multi-stage regulatory approval. The CMS will 'freeze' the design of

the project and will be reviewed by the Scottish Ministers to ensure that the worst case scenario described in the EIA Report is not exceeded.

- 2.4.12 It is a matter for the Applicant, in preparing the EIA Report, to consider whether it is possible to robustly assess a range of impacts resulting from a large number of undecided parameters. If the Proposed Works or any associated activities materially change prior to the submission of the EIA Report, the Applicant may wish to consider requesting a new scoping opinion.

Alternatives

- 2.4.13 The EIA Regulations require that the EIA Report include ‘a description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the Applicant, which are relevant to the proposed works and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects’. The Scottish Ministers note that the Applicant’s Scoping Report did not indicate any consideration of alternatives.
- 2.4.14 For the avoidance of doubt, the Scottish Ministers advise that the EIA Report must include an up to date consideration of the reasonable alternatives studied as the parameters of the Proposed Works have been refined. The Scottish Ministers expect this to comprise a discrete section in the EIA Report that provides details of the reasonable alternatives studied across all aspects of the Proposed Works and the reasoning for the selection of the chosen option(s), including a comparison of the environmental effects.

3. Contents of the EIA Report

3.1 Introduction

- 3.1.1 This chapter provides the Scottish Ministers' general comments on the approach and content of information to be provided in the Applicant's EIA Report, separate to the comments on the specific receptor topics discussed in Section 5 of this Scoping Opinion.

3.2 EIA Scope

- 3.2.1 Matters are not scoped out unless specifically addressed and justified by the Applicant and confirmed as being scoped out by the Scottish Ministers. The matters scoped out should be documented and an appropriate justification provided in the EIA report.
- 3.2.2 The Scoping Report lacks detail in construction methodology and the worst case scenario of the Proposed Works and has not detailed any alternatives for the Proposed Works. Additionally, detailed baseline information has not been included nor specifics of proposed mitigation. The Scoping Report fails to identify all relevant receptors which should have been considered. The Scottish Ministers have therefore been unable to justify scoping out the majority of receptors in their entirety.

3.3 Mitigation and Monitoring

- 3.3.1 Any embedded mitigation relied upon for the purposes of the assessment should be clearly and accurately explained in detail within the EIA Report. The likely efficacy of the mitigation proposed should be explained with reference to residual effects. The EIA Report must identify and describe any proposed monitoring of significant adverse effects and how the results of such monitoring would be utilised to inform any necessary remedial actions.
- 3.3.2 It is noted that mitigation and monitoring presented in the SEA has been omitted from the Scoping Report. The Scottish Ministers consider the SEA and input to it from consultees to be relevant and consider that the mitigation should have been included in the Scoping Report. Furthermore, the Scottish Ministers acknowledge that the SEA included aims to undertake landscape revegetation and habitat enhancement as part of the proposed mitigation measures to enhance environmental protection and improve the quality of the environment. These aims were supported by consultees and the Scottish Ministers advise that consideration of biodiversity enhancements be considered in the proposed mitigation measures.

- 3.3.3 The EIA Report should clearly demonstrate how the Applicant has had regard to the mitigation hierarchy, including giving consideration to the avoidance of key receptors. The Scottish Ministers advise that where the mitigation is envisaged to form part of a management or mitigation plan, the EIA Report must set out these plans or the reliance on these in sufficient detail so the significance of the residual effect can be assessed and evaluated. This should also include identification of any monitoring and remedial actions (if relevant) in the event that predicted residual effects differ to actual monitored outcomes. Commitment to develop plans without sufficient detail is not considered to be suitable mitigation in itself.
- 3.3.4 The EIA Report must include a table of mitigation which corresponds with the mitigation identified and discussed within the various chapters of the EIA Report and accounts for the representations and advice attached in Appendix I.
- 3.3.5 Where potential impacts on the environment have been fully investigated but found to be of little or no significance, it is sufficient to validate that part of the assessment by detailing in the EIA Report, the work that has been undertaken, the results, what impact, if any, has been identified and why it is not significant.

3.4 Risks of Major Accidents and/or Disasters

- 3.4.1 The EIA Report must include a description and assessment of the likely significant effects deriving from the vulnerability of the Proposed Works to major accidents and disasters. The Applicant should make use of appropriate guidance, including the recent Institute of Environmental Management and Assessment (“IEMA”) ‘Major Accidents and Disasters in EIA: A Primer’, to better understand the likelihood of an occurrence and the Proposed Works susceptibility to potential major accidents and hazards. The description and assessment should consider the vulnerability of the Proposed Works to a potential accident or disaster and also the Proposed Works potential to cause an accident or disaster.
- 3.4.2 The Scottish Ministers advise that existing sources of risk assessment or other relevant studies should be used to establish the baseline rather than collecting survey data and note the IEMA Primer provides further advice on this. This should include the review of the identified hazards from your baseline assessment, the level of risk attributed to the identified hazards and the relevant receptors to be considered.
- 3.4.3 The assessment must detail how significance has been defined and detail the inclusions and exclusions within the assessment. Any mitigation measures that will be employed to prevent, reduce or control significant effects should be included in the EIA Report.

3.5 Climate and Greenhouse Gases

- 3.5.1 The Scoping Report proposes that the impact of climate change effects will not be significant and there will be no standalone topic or chapter on climate change in the EIA Report. The Scottish Ministers are however mindful that Greenhouse Gas (“GHG”) emissions from all projects contribute to climate change. In this regard, the Scottish Ministers highlight the IEMA Environmental Impact Assessment Guide “Assessing Greenhouse Gas Emissions And Evaluating Their Significance” (“IEMA GHG Guidance”), which states that “GHG emissions have a combined environmental effect that is approaching a scientifically defined environmental limit, as a such any GHG emissions or reductions from a project might be considered significant.” The Scottish Ministers have considered this together with the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 and the requirement of the EIA Regulations to assess significant effects from the Proposed Works on climate. The Scottish Ministers therefore advise that the EIA Report must include a GHG Assessment which should be based on a Life Cycle Assessment (“LCA”) approach and note that the IEMA GHG Guidance provides further insight on this matter. The Scottish Ministers highlight however that this should include the pre-construction, construction, operation and decommissioning phases, including consideration of the supply chain as well as benefits beyond the life cycle of the Proposed Works. This view is supported by NatureScot and Royal Society for Protection of Birds (“RSPB”) during the scoping consultation.

4. Consultation

4.1 The Consultation Process

4.1.1 Following receipt of the Scoping Report, the Scottish Ministers, in accordance with the 2017 MW Regulations, initiated a 30 day consultation process, which commenced on 21 April 2021. The following bodies were consulted, those marked in bold provided a response:

- UK Chamber of Shipping
- Crown Estate Scotland
- **Defence Infrastructure Organisation (Ministry of Defence) (“MOD”)**
- Fisheries Management Scotland (“FMS”)
- Health and Safety Executive
- **Historic Environment Scotland (“HES”)**
- Holm Community Council
- Kirkwall Fisheries Office
- Marine Safety Forum
- **Maritime and Coastguard Agency (“MCA”)**
- **NatureScot (operating name of Scottish Natural Heritage)**
- **Northern Lighthouse Board (“NLB”)**
- Orkney Harbour Authority
- **Orkney Island Council (“OIC”)**
- Orkney Marine Planning Partnership
- Orkney Sustainable Fisheries
- **Royal Society for the Protection of Birds**
- **Royal Yachting Association (“RYA”)**
- **Scottish Environment Protection Agency (“SEPA”)**
- Scottish Fishermen’s Federation
- Scottish Fishermen’s Organisation
- **Scottish Water**
- Scottish Wildlife Trust
- Visit Scotland
- Whale and Dolphin Conservation

4.1.2 Specific advice was sought from Marine Scotland Science (“MSS”), the Marine Scotland – Marine Analytical Unit (“MAU”), Marine Planning and Policy (“MPP”) and Transport Scotland, including Transport Scotland Ports and Harbours (“TS”).

4.2 Responses received

4.2.1 From the list above a total of 10 responses were received. Advice was also

provided by MSS, MAU and TS. The purpose of the consultation was to seek representations to aid the Scottish Ministers' consideration of which potential effects should be scoped in or out of the EIA Report.

- 4.2.2 The Scottish Ministers are satisfied that the requirements for consultation have been met in accordance with the 2017 MW Regulations. The chapters below highlight issues which are of particular importance with regards to the EIA Report and any marine licence applications. The representations and advice received are attached in Appendix I and each must be read in full for detailed requirements from individual consultees. In addition, an updated representation from MOD was received and again is attached within Appendix I.

5. Interests to be considered within the EIA Report

5.1 Introduction

5.1.1 This chapter contains the Scottish Ministers' opinion on whether the impacts identified in the Scoping Report are scoped in or out of the EIA Report. The Scottish Ministers advise that the representations from consultees and advice from MAU, MSS and TS must be considered in conjunction with the Scoping Opinion and with the expectation that recommendations and advice as directed through this Scoping Opinion are implemented.

5.2 Water Environment and Coastal Processes

5.2.1 The Applicant's consideration of the potential impacts on the water environment and coastal processes during the construction and operation phases of the Proposed Works is detailed in Sections 4.4 to 4.6 of the Scoping Report. Consideration of whether they should be scoped in or out of further assessment within the EIA Report is detailed in Section 9 of the Scoping Report. The Applicant proposes to undertake qualitative assessment of coastal processes and water quality for both the construction and operational phases in the EIA Report. The Applicant proposes to scope out coastal flood risk. The Applicant defines the water environment as hydrology, hydrogeology and water quality, whilst coastal processes are defined as tides, waves and sediment transport processes. References to the water environment and coastal processes made by the consultees in this chapter should be considered to adopt the same definitions.

5.2.2 The Applicant proposes to consider the impact of the Proposed Works on wave action, tidal current and sediment transportation under the qualitative assessment for coastal processes. The Applicant considers the site of the Proposed Works to have low energy and no significant transport of sediment and therefore does not consider this study area to need fully scoped in. The Scottish Ministers agree with NatureScot that there is not currently enough information on the construction methodology, dredging and deposit of dredged material or the impacts from coastal reconfiguration or coastal processes from the use of explosives to assess the impacts of these activities. The Scottish Ministers therefore consider coastal processes, including full assessment of wave action, tidal current and sediment transportation, must be scoped in and assessed in the EIA Report. This view is supported by representations from NatureScot, OIC and MSS advice. In addition, the Scottish Ministers agree with the OIC's representation regarding further assessment of the sediment proposed to be dredged, the proposed method of deposit of dredged material and associated risks and therefore advise the Applicant to fully consider and address these comments within the EIA Report.

- 5.2.3 The representations from NatureScot and the OIC recommend that potential impacts on coastal processes, as defined in the Scoping Report, and subsequent impacts on benthic habitats, sensitive habitats – particularly Priority Marine Features (“PMF”) and foraging marine birds be assessed for the construction, dredging and deposit of dredged material and impacts from coastal reconfiguration from the deposit and use of explosives aspects of the Proposed Works. The Scottish Ministers agree with NatureScot and the OIC’s representation and highlight the OIC’s recommendation of undertaking benthic surveys to assist with determining proximity of the Proposed Works to and interactions with potentially sensitive habitat features. The OIC also recommend the use of an existing hydrodynamic model of Scapa Flow to assist with the coastal processes assessment. Benthic habitats and PMF’s will be considered further in Chapter 5.10.
- 5.2.4 The Applicant notes there is potential for significant effects including changes in infiltration rates, flood risk, drainage and contamination of the water environment from spillages, runoff or sediment transfer during both construction and operation phases of the Proposed Works. The Applicant states that the site of the Proposed Works is in a low energy area and there will be limited dredging taking place and therefore proposes to consider the potential impact of dredging on water quality and the production of suspended sediment under a qualitative assessment for the water environment. The Scottish Ministers do not consider a qualitative assessment sufficient to address these potentially significant effects.
- 5.2.5 The Applicant notes that the development of the Proposed Works has the potential to generate pollutants which could impact water quality and the prevention of pollution during both the construction and operational phases of the Proposed Works will be a key focus of the EIA. The Scottish Ministers agree that the prevention of pollution should be addressed in the EIA Report and are content with the proposed adherence to best practice, the creation of a pollution prevention plan and surface water management plan. However the Scottish Ministers do not consider a qualitative assessment sufficient to address the potential effects on the water environment and therefore this study area must be scoped in for further assessment for all phases of the Proposed Works within the EIA Report. The view is supported by representation from the OIC and MSS. The Scottish Ministers advise that the Applicant must consider the chemistry of the dredge material and the impact dredging such material will have on the water environment.
- 5.2.6 The Scottish Ministers agree with the OIC that consideration should be given to any planned onsite storage of excavated soils which may pose a risk to the nearby Burn of Deepdale / Button and associated drainage ditches, as well as

the marine environment. The Scottish Ministers direct the Applicant to representation from the OIC for further information on this risk.

- 5.2.7 The Applicant considers that coastal flood risk should be scoped out from both phases of the Proposed Works due to the scale of the Proposed Works having a negligible impact on local sea levels. The Scottish Ministers advise that due to the lack of detail in the specifics of the Proposed Works that flood risk cannot be scoped out. In its representation SEPA referred to previous advice on Flood Risk Assessment provided on the Proposed Works which welcomed the commitment from the Applicant to undertake a detailed Flood Risk Assessment. The Scottish Ministers consider this to form part of SEPA's advice and advises this should be included in EIA Report.
- 5.2.8 The Scottish Ministers agree with NatureScot that the mitigation measures are not sufficient or appropriate. The Scottish Ministers note that the measures identified in the Scoping Report are limited in detail and it is therefore difficult to provide advice on.
- 5.2.9 The Scottish Ministers advise that coastal processes and water environment are scoped in for further assessment within the EIA Report for construction and operational phases. The Scottish Ministers advise that coastal processes and water environment are addressed as two separate chapters within the EIA Report. Within the scope of coastal processes the following should be assessed for both construction and operation phases as a minimum; wave action, tidal current and sediment transportation, this should include impacts coastal processes have on benthic habitats. Within the scope of water environment the following should be assessed for both construction and operation phases as a minimum; changes in infiltration rates, flood risk, drainage, contamination of the water environment from spillages, runoff or sediment transfer.

5.3 Ecology

- 5.3.1 The Applicant's consideration of the potential impacts on ecology during the different phases of the Proposed Works and whether they should be scoped in or out of further assessment within the EIA Report are detailed in Sections 5.3, 5.4, 5.6 and 9 of the Scoping Report. The Applicant has assessed terrestrial habitats and species, birds and marine habitats, fish and mammals under the heading of ecology and proposes the above receptors will be scoped out except for marine mammals and their prey which will be scoped in. The Scottish Ministers will consider individual ecological receptors in the following chapters.
- 5.3.2 For the avoidance of doubt the Scottish Ministers advise all of the following ecology receptors be scoped in for full assessment in the EIA Report for

construction and operational phases, except for otters which may be scoped out if NatureScot's advice is followed. In addition the Scottish Ministers highlight NatureScot's representation regarding monitoring and advise the Applicant to consider the possible requirement of ongoing surveys to monitor impacts of the Proposed Works.

5.4 Designated Sites

5.4.1 The Applicant details the designated sites Orkney Mainland Moors Special Protection Area ("SPA"), the North Orkney proposed SPA ("pSPA") and the Scapa Flow pSPA in the baseline assessment under Section 5.2.1 of the Scoping Report. Consideration of whether these sites should be scoped in or out of further assessment within the EIA Report are detailed under the heading 'Birds' in Sections 5.6.2 and 9 of the Scoping Report. The Scottish Ministers do not agree with the Applicant's proposal to scope birds out of the EIA Report and note that undertaking a HRA to assess any potential likely significant effects on the qualifying species of the North Orkney pSPA and the Scapa Flow pSPA is not sufficient. This chapter will address Designated Sites whilst consideration relating directly to the study of Ornithology will be addressed in Chapter 5.6 below.

5.4.2 The Scottish Ministers agree with representation from NatureScots, RSPB, the OIC and advise that full consideration and assessment of the potential impact of the Proposed Works on the Scapa Flow pSPA, Hoy SPA, Orkney Mainland Moors SPA, Loch of Stenness Special Area of Conservation ("SAC") and Sanday SAC must be fully considered in the EIA Report. The Scottish Ministers direct the Applicant to NatureScot's comments on the potential for significant adverse effects on the Scapa Flow pSPA and the possibility of NatureScot objecting if these concerns are not addressed. The Scottish Ministers therefore direct the Applicant to engage with NatureScot to address these concerns.

5.4.3 The Scottish Ministers agree with the views of NatureScot that there is not enough information to scope Designated Sites out of the EIA Report. The Scottish Ministers therefore advise European Protected Areas must be scoped in for further assessment within the EIA Report for construction and operation phases, including the wider operational phases as detailed by NatureScot. The Scottish Ministers advise that the scoping in of European Protected Areas does not negate the requirement for a full HRA to be submitted as well.

5.5 Sites of Special Scientific Interest

5.5.1 The Applicant has not given consideration to Sites of Special Scientific Interest ("SSSI"). The Scottish Ministers direct the Applicant to representation from NatureScot and advise consideration of SSSI's is addressed as part of the

assessment of European Protected Areas for sites covering both designations. Additionally, the Scottish Ministers note Waulkmill SSSI which is not covered by any other site designation and therefore must be considered independently. This view is supported by NatureScot.

- 5.5.2 The Scottish Ministers advise that SSSI are scoped in for further assessment within the EIA Report for construction and operational phases.

5.6 Ornithology

- 5.6.1 The Applicant considers the potential significant effects on birds in Sections 5.3 and 5.4 and considers whether birds should be included in the EIA Report in Sections 5.6.2 and 9 of the Scoping Report. The Applicant proposes to scope birds out of the EIA Report but undertake a HRA to assess any potential likely significant effects on the qualifying species of the North Orkney pSPA and the Scapa Flow pSPA. The Scottish Ministers do not consider this to be sufficient. This chapter will address Ornithology whilst consideration relating to Designated Sites is addressed in Chapter 5.4 above.

- 5.6.2 The Scottish Ministers highlight representation from NatureScot, RSPB, the OIC and advice from MSS who consider there to be potential for impact on a number of SPA's and pSPAs designated for marine bird species. The Scottish Ministers agree with the views of NatureScot and consider there not to be enough detail in the Scoping Report regarding bird surveys and proposed survey timings. The Scottish Ministers advise the Applicant to fully consider representation from NatureScot and MSS advice regarding bird surveys and advise that the Applicant must engage with NatureScot to ensure methodologies are appropriate prior to survey work being undertaken.

- 5.6.3 The Scottish Ministers advise that Ornithology is scoped in for further assessment within the EIA Report for site investigation, construction and operational phases.

5.7 Otter

- 5.7.1 The Applicant considers otters in Sections 5.5.1 and 5.6.1 of the Scoping Report under 'Terrestrial Habitats and Species'. The Applicant proposes scoping terrestrial habitats and species out. This Scoping Opinion will only address the otter aspect of terrestrial habitats and species.

- 5.7.2 The Scottish Ministers are content with the proposal to scope otters out from further assessment in the EIA Report on the basis that the Applicant will undertake a pre-construction otter survey. The Scottish Ministers advise the Applicant to review and adhere to NatureScot and OIC's comments on otters and to refer to NatureScot's website for further information on requirements.

5.8 Marine Mammals – Cetaceans

- 5.8.1 The Applicant's consideration of potential impacts on marine mammals during different stages of the Proposed Works are detailed in Sections 5.3 and 5.4 and proposed mitigation in Section 5.5.3, consideration of whether to scope in marine mammals is found in Sections 5.6.3 and 9 of the Scoping Report. The Applicant proposes to scope in marine mammals and their prey for further assessment in the EIA Report for the construction phase only. This chapter will deal with cetaceans only. Seals and marine mammals prey will be dealt with in Chapters 5.9, 5.12 and 5.14 below.
- 5.8.2 The Scottish Ministers agree with the Applicant's proposal to scope in marine mammals and their prey for the construction phase. The Scottish Ministers however do not agree with the proposal to scope marine mammals and their prey out for the operational phase. The Scottish Ministers refer to representations from NatureScot and MSS advice regarding which cetacean species should be scoped in for further assessment within the EIA Report and advise there not to be enough evidence provided to only scope in the cetacean species listed in the Scoping Report. The Scottish Ministers highlight representation from the OIC that details potential impacts on cetacean species due to the location and nature of the Proposed Works, including the possibility of panic, confusion, temporary disorientation and potential for stranding due to noise disturbance in a semi-enclosed area such as at the site of the Proposed Works. The Scottish Ministers therefore agree with representation from NatureScot that consideration of all cetacean species listed by NatureScot in its representation should be fully considered in the EIA Report.
- 5.8.3 The Scottish Ministers recommend using available information to assess baseline density estimates to inform the baseline study of presence / absence, abundance and other relevant ecological data and refer the Applicant to the MSS advice and recommendations of publications to assist in an accurate baseline study.
- 5.8.4 The Scottish Ministers agree with the representation from NatureScot regarding the potential impact on cetaceans from underwater noise and advise full implementation of the advice provided by MSS regarding underwater noise modelling. In addition, the Scottish Ministers advise the EIA Report must consider the impact from construction activities, including vibropiling, use of explosives, and impact piling if there is any potential that impact piling will be required, and the Applicant must adhere to the MSS advice regarding the undertaking of a quantitative assessment to assess the underwater noise, the results of which should be used to develop a mitigation plan. The Scottish Ministers advise the Applicant to consider the MSS advice regarding mitigation

plans and implement it into the EIA Report and recommend the Applicant engage with both NatureScot and MSS for further advice on noise modelling techniques.

- 5.8.5 The Scottish Ministers consider vessel presence should be scoped in for construction and operational phases for further assessment in the EIA Report. In addition, careful consideration should be given to minimising vessel presence at the site of the Proposed Works to reduce disturbance to marine mammals. The Scottish Ministers recommend adopting a vessel management plan.
- 5.8.6 The Scottish Ministers agree with NatureScot's recommendation that the following should be scoped in for further assessment in the EIA Report for site investigation, construction (including dredge and deposit of material) and operational phases; a full assessment of any potential impacts on cetaceans, underwater noise and vessel presence. Furthermore, the Scottish Ministers alert the Applicant to the potential requirement for a licence to disturb European Protected Species.

5.9 Marine Mammals – Seal

- 5.9.1 The Applicant considers seals under the heading 'Marine Mammals' in Section 5.2.3 and the potential impact upon seals during different stages of the Proposed Works are detailed in Sections 5.3 and 5.4, proposed mitigation in Section 5.5.3 and consideration of whether to scope in marine mammals in Section 5.6.3 and Section 9 of the Scoping Report. The Scottish Ministers agree with the Applicants proposal to scope seals in for further consideration within the EIA Report during the construction phase however do not agree with the proposal to scope seals out of consideration for the operational phase.
- 5.9.2 The Scottish Ministers direct the Applicant to the representations from NatureScot, the OIC and MSS advice in relation to impacts for seals and advise that these must be fully addressed. The Scottish Ministers highlight representation from NatureScot and MSS regarding the proximity of the Proposed Works to the Sanday SAC, designated for harbour seals, and note the site also falls within a harbour seal conservation area. The OIC confirm there are a number of designated and non-designated but well known haul out areas in the vicinity of the Proposed Works. Additionally, the Scottish Ministers draw attention to the serious decline in harbour seal numbers around Scotland in recent years. The OIC add that both grey and harbour seals are susceptible to disturbance, especially during pupping season. The Scottish Ministers agree with views of the OIC and NatureScot and advise careful consideration be applied to address the decline of harbour seals and the importance of not subjecting them to additional pressures. Additionally the Scottish Ministers

direct the Applicant to representations from NatureScot and the OIC regarding noise modelling and advise the Applicant to contact NatureScot for further advice on modelling and mitigation.

- 5.9.3 The Scottish Ministers advise that there are likely to be impacts on both grey and harbour seals arising from the Proposed Works and therefore seals must be scoped in for further assessment in the EIA Report for site investigation, construction and operational phases.

5.10 Benthic Ecology, Intertidal and Subtidal Habitats and Priority Marine Features

- 5.10.1 The Scottish Ministers do not consider that sufficient information has been given to benthic ecology, intertidal and subtidal habitats and PMF's. The Applicant briefly considers potential impacts on benthic communities in Sections 5.3 and 5.4 of the Scoping Report. The Applicant has referenced intertidal habitats and noted the UK Biodiversity Action Plan / Local Biodiversity Action Plan ("LBAP") habitat Coastal vegetated shingle but has not included other intertidal habitats. Benthic ecology, intertidal and subtidal habitats and PMF's have not been addressed further in consideration of whether they should be scoped in or out.
- 5.10.2 The Scottish Ministers direct the Applicant to the representations from NatureScot, the OIC and MSS in relation to the lack of knowledge of benthic species and habitats present in the vicinity of the Proposed Works and the resulting requirement for survey work to be undertaken and advise that this must be fully addressed by the Applicant. The Scottish Ministers highlight the requirement that particular focus should be given to identifying presence of PMF's and advise the Applicant that full adherence to the advice on surveying methods and extent provided by NatureScot and MSS must be applied to inform the EIA Report. If further advice is required on video surveying techniques the Applicant should contact NatureScot. For the avoidance of doubt, the Scottish Ministers advise that the Applicant must undertake in-depth surveys of benthic habitats and species in the intertidal and subtidal areas, with a particular focus on PMF's. The Scottish Ministers refer the Applicant to the Scottish Biodiversity List and Orkney LBAP to assist in identification of intertidal habitats that might be present in the area of the Proposed Works.
- 5.10.3 The Scottish Ministers advise the Applicant to include consideration of impacts of the Proposed Works detailed in representation from MSS in the assessment of benthic ecology, intertidal and subtidal habitats and PMF's. This includes an assessment of the permanent loss of benthic habitats and rocky intertidal shoreline, temporary increase in turbidity from dredging and consideration of release of contaminated sediment during dredging. The Scottish Ministers advise that if further clarity is required on the advice provided by MSS and / or

on what impacts should be assessed then the Applicant should engage with MSS through MS-LOT. The Scottish Ministers advise the Applicant to adhere to the advice from MSS and include a description and map of the benthic, intertidal and subtidal habitats in the area of the Proposed Works, with particular focus on PMF's and the Habitats Directive Annex I features.

- 5.10.4 Further to the consideration of benthic species and habitats in intertidal and subtidal areas, the Scottish Ministers highlight representation from MSS regarding the HMS Royal Oak and recommend the Applicant includes modelling of sediment plumes arising from the dredging aspect of the Proposed Works. The Scottish Ministers advise the Applicant that inclusion of this and whether sediment plumes reach the artificial reef must be assessed to inform the EIA Report. If the sediment plumes reach the artificial reef then the impact of the temporary increase in turbidity must be assessed.
- 5.10.5 The Scottish Ministers agree with views of the OIC and NatureScot that benthic ecology, intertidal and subtidal habitat and PMF's be scoped in for further assessment in the EIA Report for construction and operational phases. The Scottish Ministers advise the following impacts be scoped in for further assessment; permanent loss of benthic habitats, rocky intertidal shoreline and subtidal habitats, temporary increase of turbidity from dredging and smothering of benthic species within the distance of sediment plumes, including the potential of these plumes reaching HMS Royal Oak and consideration of the release of contaminated sediment during dredging and impact on surrounding species and habitats. Furthermore, the Scottish Ministers advise that the impact coastal processes have on benthic ecology, as detailed in Chapter 5.2.9, be scoped in for assessment in the EIA Report.

5.11 Basking Shark

- 5.11.1 The Applicant does not provide any consideration of the impact on basking shark in the Scoping Report. The Scottish Ministers direct the Applicant to representation from NatureScot and the OIC highlight that basking shark are a protected fish species and PMF and are regularly sighted in Scapa Flow. The Scottish Ministers draw the attention to the requirement for a licence to disturb or injure basking sharks and advise that an assessment of the potential impact of the Proposed Works on basking sharks must be assessed.
- 5.11.2 The Scottish Ministers advise consideration of the OIC's comment and recommend reviewing the Orkney Wildlife Information and Recording Centre to assist in the baseline survey of basking shark. This information should be used to assess the potential impact on basking shark at all stages of the Proposed Works.

- 5.11.3 The Scottish Ministers advise that basking shark are scoped in for further assessment in the EIA Report for construction and operational phases.

5.12 Marine Fish Ecology

- 5.12.1 The Scottish Ministers do not consider that sufficient consideration has been given to the impact of the Proposed Works on marine fish and are unclear exactly which fish are proposed to be considered in the EIA Report. The Scottish Ministers note Section 5.2.4 mentions sea trout and confirms that baseline data on fish will be collated which, along with marine mammals and their prey, will be included in further assessment for the EIA Report. The Scottish Ministers agree with the proposal to undertake baseline data collection on fish and with the inclusion of marine mammal prey for further assessment in the EIA Report for the construction phase.
- 5.12.2 The Scottish Ministers do not consider that inclusion of marine fish which are prey to marine mammals to be sufficient consideration of marine fish ecology and therefore advise that the Applicant must consider all marine fish for further assessment within the EIA Report. The Scottish Ministers direct the Applicant to representation from MSS regarding inclusion of individual marine fish species, identification of PMF's, consideration of Essential Fish Habitats and consideration of fish spawning and nursery periods. The Scottish Ministers advise that the Applicant must fully address their comments within the EIA Report. In addition, the Scottish Ministers advise consideration be given to the potential negative impacts on marine fish species for both construction and operational phases.
- 5.12.3 The Scottish Ministers advise that that marine fish ecology is scoped in for further assessment within the EIA Report for construction and operational phases. The Scottish Ministers advise that mitigation measures that are beneficial to fish species should be considered.

5.13 Commercial Fisheries

- 5.13.1 The Applicant states that there are many commercial sea fish caught in the area of the Proposed Works but has not given further consideration to commercial sea fisheries in the Scoping Report. The Scottish Ministers do not consider there to be sufficient information to scope commercial fisheries out and therefore advise that commercial fisheries be scoped in for further assessment in the EIA Report for construction and operational phases.

5.14 Diadromous Fish

- 5.14.1 The Scottish Ministers note in Section 5.2.4 the mention of sea trout and confirmation that baseline data on fish will be collated to inform further

assessment for the EIA Report. The Scottish Ministers agree with the proposal to undertake baseline data collection on fish and with the inclusion of marine mammal prey for further assessment in the EIA Report for the construction phase. The Scottish Ministers however do not consider this assessment to be sufficient to address impacts of the Proposed Works on diadromous fish.

- 5.14.2 The Applicant has not given consideration to either salmon or eel which, along with sea trout, are all of high conservation value nationally and internationally. The Scottish Ministers advise that if there is a lack of information on the distribution and abundance of sea trout, salmon and eel in Orkney coastal waters then survey work is required to provide local information. In addition, the Scottish Ministers agree with representation from NatureScot that it is not possible to scope diadromous fish out from further consideration within the EIA Report due to the scale and location and lack of detail provided in the methodology of the Proposed Works.
- 5.14.3 The Scottish Ministers advise that diadromous fish must be scoped in for further assessment in the EIA Report for construction and operational phases. The Scottish Ministers recommend engaging with Orkney Trout Fishing Association, Fisheries Management Scotland and MSS through MS-LOT for further advice to assist in the assessment of diadromous fish and ensure appropriate surveys will be undertaken.

5.15 Biosecurity – INNS

- 5.15.1 The Applicant has not considered biosecurity or marine invasive non-native species (mINNS) in the Scoping Report. The Scottish Ministers note that there are currently a number of mINNS present in the area of the Proposed Works and there is high potential for the introduction and spread of mINNS during the construction and operational phases of the Proposed Works. The Scottish Ministers agree with NatureScot and RSPB and consider that biosecurity and mINNS must be scoped in.
- 5.15.2 The Scottish Ministers highlight representation from NatureScot regarding the existing presence of mINNS and agree with the view that the Proposed Works have the potential to facilitate spread and advise that this must be considered. In addition, the Scottish Ministers direct the Applicant to the MSS comment regarding the potential for colonisation of the proposed quay wall and advise that consideration of vessels bringing in new mINNS should be assessed.
- 5.15.3 The Scottish Ministers advise that biosecurity and mINNS are scoped in for construction and operational phases of the Proposed Works and advise that site-based biosecurity plans are produced for both phases of the Proposed Works to assist with managing the spread and introduction of mINNS. The Scottish Ministers advise that the potential for introduction of new mINNS

and the potential for spreading existing mINNS should both be considered in further assessment within the EIA Report. Measures to avoid and prevent the introduction and mitigation should be included in this assessment. The Scottish Ministers direct the Applicant to NatureScot for advice on biosecurity plans.

5.16 Archaeology and Cultural Heritage

- 5.16.1 The Applicants consideration of the potential impacts on archaeology and cultural heritage during the different phases of the Proposed Works and whether they should be scoped in or out of the assessment within the EIA Report are detailed in Tables 6.3 and 6.4 of the Scoping Report. The Scottish Ministers are content with the baseline assessment and agree with the receptors and potential impacts for historic environment detailed and scoped in within Table 6.3 of the Scoping Report.
- 5.16.2 The Scottish Ministers are content with the proposal to scope in the impacts on heritage assets for both phases as well as scoping in the potential for cumulative effects with the Scapa Pier project. Further, the Scottish Ministers agree with the representation from HES which notes the scoping in and further assessment of the potential effects which may affect cultural heritage assets from dredging and propeller scour should enable the identification of potential significant effects on any debris, stray finds or ordnance which has not been previously identified.
- 5.16.3 The Applicant notes that further assessment needs to be undertaken to assess the impact on cultural heritage. The Scottish Ministers direct the Applicant to the representation from HES regarding the inclusion of all receptors where the Scoping Report has identified further works that need to be undertaken to understand a potential environmental impact. The Scottish Ministers agree with the view of HES and therefore all receptors which require further works to be undertaken must be scoped in for further assessment within the EIA Report. Further, the Scottish Ministers agree with the representation from HES that even if the results from further investigation indicated there would be no impact on archaeological assets or deposits, this should be included within the EIA Report.
- 5.16.4 The Scottish Ministers advise that the proposed mitigation strategy is not sufficient to scope out any of the historic environment receptors the Applicant has proposed be scoped out with the use of mitigation. This view is agreed by HES. Further, the Scottish Ministers agree that the EIA Report should include robust mitigation measures for cultural heritage aspects that could experience significant impacts from the works. In its response HES notes that a detailed methodology for assessment of effects on the historic environment has not

been provided in the Scoping Report but welcomes the use of guidance in the EIA Handbook for drafting it. The Scottish Ministers advise the Applicant to engage with HES for advice on the methodology. The Scottish Ministers encourage the inclusion of Written Schemes of Investigation in the EIA Report and agree with representation from HES regarding the inclusion of a Protocol of Archaeological Discoveries or other mechanism to assess areas of disturbance for archaeological artefacts.

- 5.16.5 The Scottish Ministers highlight representation from MOD regarding the wreck of HMS Royal Oak which is located approximately 1km to the northwest of the proposed development, and is a designated war grave with a 200m radius exclusion zone around it. MOD highlight that a request has been made for an update to the Protection of Military Remains Act, to extend the exclusion zone to 350 metres. The Scottish Ministers agree with the view of the MOD that the scoping of cultural heritage assets must take into account this extension for the protection of HMS Royal Oak from any disturbance from the Proposed Works.
- 5.16.6 The Scottish Ministers advise that archaeology and cultural heritage is scoped in for further assessment within the EIA Report for construction and operational phases. The Scottish Ministers advise that the cumulative effect requires to be fully considered and presented clearly within the EIA Report.

5.17 Seascape, Landscape and Visual

- 5.17.1 The Applicant lists the potentially significant effects on seascape, landscape and visual resources during construction and operational phases in Section 7.3 and 7.4 and 7.6 and whether they will be considered in the EIA Report in Section 9. The Scottish Ministers agree with the Applicants proposal to scope in seascape, landscape and visual resources for further assessment within the EIA Report. In addition the Scottish Ministers provide the following comments for the Applicant to action.
- 5.17.2 The Scottish Ministers highlight representation from the OIC regarding the lack of an identified zone of theoretical visibility. The Scottish Ministers agree with representation from NatureScot and the OIC that the potential impacts on the Hoy and West Mainland National Scenic Area should be considered and therefore advise that this must be scoped in for further assessment within the EIA Report. Further, the Scottish Ministers highlight the request by the OIC and advise the Applicant to identify the zone of theoretical visibility and consult the planning authority to identify viewpoints and key receptors.
- 5.17.3 In addition, the Scottish Ministers highlight the representation made by the OIC regarding the inclusion of cumulative effects. The Scottish Ministers advise

that the cumulative effect requires to be fully considered and presented clearly within the EIA Report.

- 5.17.4 The Scottish Ministers advise that seascape, landscape and visual resources are scoped in for further assessment within the EIA Report for construction and operational phases. This must include assessment of potential impacts on the Hoy and West Mainland National Scenic Area and inclusion of cumulative effects.

5.18 Shipping and Navigation

- 5.18.1 The Applicants consideration of shipping and navigation is detailed in Section 3.3.3 under Accidents and Natural Disasters which the Applicant proposes is scoped out in Section 9. The Scottish Ministers do not consider this an appropriate consideration of shipping and navigation. The Scottish Ministers agree with representation from MCA and advise shipping and navigation must be considered as its own chapter in the EIA Report.
- 5.18.2 The Scottish Ministers advise that a Navigational Risk Assessment (“NRA”) is undertaken. The Scottish Ministers highlight the representation from MCA and agree with the inclusion of sections on ‘shipping and navigation’ and ‘impact on marine users’ in the NRA. Similarly, the Scottish Ministers advise consideration should be given to MCA’s comments on the NRA particularly that it should be informed through consultation with the Statutory Harbour Authority and other key stakeholders as considered necessary.
- 5.18.3 Further to the requirement to include the impact on marine users in the NRA, the Scottish Ministers make reference to the National Marine Plan policy GEN 4 Co-existence and advise it be assessed in the NRA or as a separate section in the EIA Report. The Scottish Ministers advise that the assessment determining how the Proposed Works will co-exist with other marine users must take into account the marine users identified by the OIC in its representation. With consideration of the RYA’s advice that recreational boating can be scoped out the Scottish Ministers agree with representations from the MCA and OIC and advise that recreational boating must be included through impact on marine users in the NRA or through co-existence and therefore must be considered within the EIA Report. The Scottish Ministers also acknowledge representation from NLB which advises a full response will be provided to the marine licence applications.
- 5.18.4 In addition, the Scottish Ministers agree with MCA regarding the inclusion of a robust Safety Management System for the operational phase of the Proposed Works. The Scottish Ministers advise consideration of all MCA comments regarding the Safety Management System and the Port Marine Safety Code.

- 5.18.5 The Scottish Ministers advise that shipping and navigation impacts during the construction and operational phases must be scoped in further assessment within the EIA Report. For the avoidance of doubt, the Scottish Ministers advise that a NRA, with inclusion of the impacts on other marine users, and a Safety Management System must be considered in the EIA Report

5.19 Population and Human Health

- 5.19.1 The Scottish Ministers agree that the assessment of population and human health can be scoped out of the EIA Report. The Scottish Ministers however advise that air quality, airborne noise and socio-economic impact will be addressed individually in Chapters 5.20, 5.21 and 5.22.

5.20 Air Quality

- 5.20.1 The Applicants considers the potential impact on air quality in Section 3.3.2 and proposes air quality be scoped out of both phases in Section 9 of the Scoping Report. The Scottish Ministers agree that the assessment of air quality can be scoped out of the EIA Report. The Applicant notes that the Proposed Works have the potential to impact local air quality in a number of ways with the key issues in relation to traffic emissions from the local road network and dust emissions during the construction. The Scottish Ministers are satisfied with the Applicants proposal to address this through a Dust Management Plan for the construction phase to be included in the Construction Environmental Management Plan. The Scottish Ministers advise that if road transport of dredge material is required the Applicant must refer to the advice from Transport Scotland regarding assessments that may be required.
- 5.20.2 The Scottish Ministers advise that air quality is scoped out of further assessment within the EIA Report for construction and operational phases.

5.21 Airborne Noise

- 5.21.1 The Applicant considers the potential impact of airborne noise during the construction and the operational phases of the Proposed Works in Section 8.3, 8.4 and 8.5 of the Scoping Report and whether it should be included in the EIA Report in Section 9. The Scottish Ministers agree that the assessment of airborne noise should be scoped in for the operational phase and should be further assessed within the EIA Report. The Applicant states that a construction noise assessment will be deferred until a contractor is identified and an exact construction methodology is confirmed.
- 5.21.2 The Scottish Ministers do not agree with the Applicants proposal to not undertake a construction noise assessment until a contractor is appointed. If

a final construction methodology has not been decided then the Scottish Ministers require a construction noise assessment be scoped in and further assessed within the EIA Report considering the worst case scenario.

- 5.21.3 The Scottish Ministers agree with representation from the OIC that airborne noise should be assessed for construction and operational phases of the Proposed Works and this should assess impacts on the amenity of local residents and businesses due to noise.
- 5.21.4 The Scottish Ministers advise that airborne noise is scoped in for further assessment within the EIA Report for construction and operational phases.

5.22 Socio-Economic

- 5.22.1 The Applicant has not given consideration to socio-economic impacts of the Proposed Works. The Scottish Ministers direct the Applicant to the representations from the OIC together with the MAU advice in relation to impacts for socio-economics and advise that these must be fully addressed. The Scottish Ministers agree with views of the OIC and MAU that there are likely to be social and economic impacts arising from the Proposed Works and therefore advise socio-economic impacts be scoped in for further assessment in the EIA Report.
- 5.22.2 The Scottish Ministers advise that a full socio-economic impact assessment must be included in the EIA Report and in completing this, direct the Applicant to the principles outlined in the advice from MAU. Similarly, the Scottish Ministers advise consideration of the OIC's comments regarding what should be included in the socio-economic assessment. Furthermore, the Scottish Ministers advise the Applicant to consult with any other marine users and sectors in the vicinity of the Proposed Works, including marine farms, in the area that might be impacted by the Proposed Works.
- 5.22.3 The Scottish Ministers advise that social and economic impacts during the construction and operational phases must be scoped in further assessment within the EIA Report.

5.23 Cumulative Assessment

- 5.23.1 The Applicants consideration of cumulative assessment is detailed in Section 3.4 of the Scoping Report. The Applicant proposes to include consideration of cumulative impacts in each chapter for environmental topics within the EIA Report rather than include a standalone section on cumulative assessment. The Scottish Ministers agree with this proposal. Further, the Scottish Ministers highlight representation from the OIC, NatureScot and RSPB regarding cumulative assessment and advise that the Applicant must consider all of

these comments when assessing cumulative assessment, including which projects should be included in the assessment and advise the Applicant to engage with the planning authority to ensure all appropriate developments are considered. In addition the Scottish Ministers highlight NatureScots representation regarding the requirement to include cumulative assessment as part of the HRA.

- 5.23.2 The Scottish Ministers advise that cumulative impacts must be considered in each relevant chapter within the EIA report.

6. Application and EIA Report

6.1 General

- 6.1.1 The EIA Report must be in accordance with the 2017 MW Regulations and the Scottish Ministers draw your attention in particular to, regulation 6. In accordance with the 2017 MW EIA Regulations, the Scottish Ministers advise that the EIA Report must be based on this Scoping Opinion.
- 6.1.2 The Scottish Ministers note the need to carry out an assessment under The Conservation (Natural Habitats, &c.) Regulations 1994. This assessment must be coordinated with the EIA in accordance with the 2017 MW Regulations.
- 6.1.3 A gap analysis template is attached at Appendix II to record the environmental concerns identified during the scoping process. This template should be completed and used to inform the preparation of the EIA Report. As part of the submission of the EIA Report the Scottish Ministers advise that Applicant must provide confirmation of how this Scoping Opinion is reflected in the EIA Report.

7. Multi-Stage Regulatory Approval

7.1 Background

- 7.1.1 The 2017 MW Regulations contain provisions regulating the assessment of environmental impacts. A multi-stage approval process arises where an approval procedure comprises more than one stage; one stage involving a principal decision and one or more other stages involving implementing decision(s) within the parameters set by the principal decision. While the effects which works may have on the environment must be identified and assessed at the time of the procedure relating to the principal decision, if those effects are not identified or identifiable at the time of the principle decision, assessment must be undertaken at the subsequent stage.
- 7.1.2 The definition in the 2017 MW Regulations is as follows: “*application for multi-stage regulatory approval*” means an application for approval, consent or agreement required by a condition included in a regulatory approval where (in terms of the condition) that approval, consent or agreement must be obtained from the Scottish Ministers before all or part of the works permitted by the regulatory approval may be begun”.
- 7.1.3 A marine licence, if granted, by the Scottish Ministers for the Proposed Works, may have several conditions attached requiring approvals etc. which fall under this definition, for example the approval of a CMS. When making an application for multi-stage approval the Applicant must satisfy the Scottish Ministers that no significant effects have been identified in addition to those already assessed in the EIA Report.
- 7.1.4 If during the consideration of information provided in support of an application for multi-stage regulatory approval the Scottish Ministers consider that the works may have significant environmental effects which have not previously been identified in the EIA Report (perhaps due to revised construction methods or updated survey information), then information on such effects and their impacts will be required. This information will fall to be dealt with as additional information under the 2017 MW Regulations, and procedures for consultation, public participation, public notice and decision notice of additional information will apply.

Signed

Anni Mäkelä

21 October 2021

Authorised by the Scottish Ministers to sign in that behalf.

Appendix I: Consultation Responses & Advice

Please refer to separate document provided alongside the Scoping Opinion

Appendix II: Gap Analysis

Applicant to complete:

Consultee	No.	Point for Inclusion	EIA Report Section	Justification
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