marinescotland

Scottish Government
Riaghaltas na h-Alba
gov.scot

T: +44 (0)300 244 5046

E: ms.majorprojects@gov.scot

Captain C. Slater
Port of Cromarty Firth
Port Office
Shore Road
Invergordon
IV18 0HD

31 August 2018

MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

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

DECISION NOTICE – MARINE LICENCE FOR THE CONSTRUCTION, LAND RECLAMATION, CAPITAL DREDGING AND DREDGE SPOIL DEPOSIT ACTIVITIES ASSOCIATED WITH THE PHASE 4 DEVELOPMENT AT INVERGORDON SERVICE BASE, PORT OF CROMARTY FIRTH

1. Application and description of the works

1.1 On 17 May 2018 Cromarty Firth Port Authority (trading as Port of Cromarty Firth ("the applicant")) having its registered office at Port Office, Shore Road, Invergordon, IV18 0HD, submitted to the Scottish Ministers applications under Part 4 of the Marine (Scotland) Act 2010 for the construction, land reclamation, capital dredging and dredge spoil deposit activities ("the works") associated with the Phase 4 Development at Invergordon Service Base ("the project"). The applications were accompanied by an Environmental Impact Assessment report ("EIA report") as required under The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) ("the 2017 MW Regulations"). The said applications are collectively hereinafter referred to as "the application".

1.2 The works involve land reclamation to provide an additional 4.5Ha of laydown space to the west of the previously completed phase 3 development, including the construction of 215m of quay wall to create a new berth adjacent to the existing Berth 5, providing a 369m long combined quay face. Fendering will then be installed along berth 5 and the new berth 6.

1.3 A rock armour revetment will be constructed along the north and west sides of the new laydown area with a tubular and sheet piled wall forming the new quay. The existing rock armour will be removed from the western edge of the phase 3 development and re-used on phase 4. The area will then be lined with a geotextile membrane and infilled, before appropriate drainage, bollards and services are installed prior to surfacing.

1.4 Dredging will be required along the toe of the new revetment structure and a second campaign will be required to create a finished depth of 12 metres along the new berth. The total dredge volume is estimated to be 110,000m^3. It is anticipated that up to 60,000m^3 of dredge material will be suitable for re-use within the land reclamation and that the remainder will be deposited at the Sutors dredge spoil deposit area.

1.5 The works cover an area of 62,760 m^2. The location and boundary of the site is shown in Appendix 1.

This decision notice contains the Scottish Ministers' decision to grant regulatory approval for the works as described above, in accordance with regulation 23 of the 2017 MW Regulations.

2. Summary of environmental information

2.1 The environmental information provided by the applicant was:

- An EIA report that provided an assessment of the impact of the works on a range of receptors.

2.2 A summary of the environmental information provided in the EIA report is given below.

In-Air Acoustics

2.3 A noise assessment was carried out which considered the likely significant noise effects associated with the construction and operational scenarios of the project on nearby residential receptors. The noise modelling was undertaken assuming a worst case scenario of all plant operating concurrently in full operational mode within the closest areas to each receptor. The modelling found that the worst case scenario construction noise levels at seven locations around the works were below the thresholds set for the project at all assessed receptors. Operational noise levels were also assessed with noise impacts expected to have no change, or be of negligible change, leading to no significant effects of noise associated with the operation of the project. Despite no significant effects of noise being identified, the applicant has committed to following best practice measures to ensure noise levels are kept to a minimum.

Underwater Acoustics

2.4 During the works both vibro and impact piling will be required for the installation of cylindrical and sheet piles, and this will result in elevated levels of underwater noise. Piling noise has the potential to disturb and possibly injure marine organisms, particularly marine mammals and fish. Vibro piling will be used in preference to impact piling as it has lower underwater noise emissions, however impact piling was considered in the noise modelling assessments as the worst case scenario. The bathymetry and geometry of the Cromarty Firth is considered to be such that most of the underwater noise will be contained within the Cromarty Firth itself. Consequently, no cumulative effects with other projects were predicted. Impact assessments for fish and marine mammal receptors were carried out and are discussed further in the respective marine mammal and diadromous fish sections.

Air Quality

2.5 The air quality assessment carried out by the applicant focussed on dust and carbon emissions from the works. The two main sources of dust emissions were identified as construction works and track out of vehicles delivering materials to the site. The impact of these was found to be significant without mitigation. To mitigate the impacts from dust emissions, a dust management plan was developed and included within the Construction Environmental Management Document ("CEMD") submitted in support of the application.

2.6 In terms of carbon emissions, it is estimated that 15,760 tonnes of carbon dioxide equivalent will be produced as a result of the construction works. However, given that it will last decades, the greenhouse gas cost should be spread over the project's lifespan, which is likely to be in excess of 50 years. Therefore, the greenhouse gas emissions associated with construction activities were deemed to be low and non-significant. Mitigation proposed to reduce greenhouse gas emission associated with construction include the optimisation of material usage through the design process and local sourcing of materials where practicable. The operational carbon footprint associated with the maintenance and operation of the project was assessed to be negligible and non-significant. In addition, the role that the project may play in realising the potential of the offshore wind sector and in supporting the large cruise ship sector was acknowledged as a beneficial effect in terms of reduction in greenhouse gas emissions.

Coastal Processes, Ground Conditions and Contamination

2.7 A current and sediment model was produced to provide an understanding of the present and predicted hydrological and sediment movements in the project area. Key coastal processes that could be impacted by the works include wave regime, current regime, sediment transport, erosion and deposition, and flood risk. Current speeds in the area are not very strong and may be reduced by the project however these changes would be very localised. The modelling predicted no changes to the intertidal area as a result of the project. There may be slight changes in scour and deposition rates around the project and existing harbour, however these changes will be dealt with through the existing maintenance dredging programme therefore the effect is deemed to be minor and non-significant.

2.8 In relation to the project area, ground investigation works were undertaken in early 2017 to understand the seabed conditions in terms of geology and potential contamination issues. The area was found to consist of marine beach deposits underlain by glacial till. Disturbance of the seabed associated with the works, primarily in regards to dredging activity, gives rise to the potential for any contamination present in seabed sediment to be re-released into the marine environment. Chemical analysis was carried out on 30 pre-disposal borehole samples. One sample was found to contain elevated levels of lead at depth however, in the context of all 30 results, this sample was contrasting therefore contaminated sediment is not considered to be an issue associated with the project area.

Ornithology

2.9 The works are located directly adjacent to the Cromarty Firth Special Protection Area ("SPA"), Ramsar and Special Site of Scientific Interest ("SSSI"), which is designated for breeding common tern and osprey, as well as for a variety of wintering waterfowl and wader species. Birds have the potential to be impacted due to disturbance and habitat changes associated with vessel movements and activity (including noise and visual disturbance) and construction and operational activity. Breeding and winter bird surveys were carried out. No disturbances were predicted to have more than minor, non-significant impacts on the bird species identified except for the accidental destruction of nests during the rock revetment removal construction stage, which was identified as

being moderately significant in the absence of any mitigation. To mitigate impacts an Environmental Clerk of Works ("ECoW") will be onsite to enforce the Breeding Bird Species Protection Plan ("BBSPP") included within the CEMD ensuring pre-construction surveys are carried out prior to rock armour removal, resulting in the moderately significant impact due to accidental nest destruction being reduced to negligible, non-significant.

2.10 Water quality effects associated with maintenance dredging and increased vessel movements during the operational phase of the project are not predicted to have any significant impacts on the birds utilising the waters close to the project area, the surrounding coastline and waters, or at the dredge spoil disposal site.

Marine Mammals

2.11 The works are proposed in an area renowned for its marine mammal populations. The Moray Firth Special Area of Conservation ("SAC"), designated for bottlenose dolphins, and the Dornoch Firth and Morrich More SAC, designated for harbour seals, both have the potential to be impacted by the works. Disturbance to marine mammals is likely to arise from increased vessel traffic, increased sediment loading from dredging and dredge spoil deposit activities and underwater noise from piling.

2.12 To mitigate potential impacts on marine mammals resulting from underwater piling noise and dredge spoil deposit activity, marine mammal monitoring and passive acoustic monitoring protocols will be employed to ensure marine mammals are not in the zone where injury is likely to occur, prior to these activities commencing. The marine mammal mitigation protocols are detailed in the CEMD, and an ECoW will be onsite to ensure that the marine mammal mitigation is effectively implemented. The ECoW will also ensure compliance with mitigation to minimise sediment loading and prevent spills of harmful substances. After the implementation of the above mitigation, the residual impacts on marine mammals associated with construction are assessed as minor, non-significant.

2.13 During the operational phase, the potential marine mammal impacts associated with increased vessel traffic, water quality, noise, and habitat loss were assessed as minor, non-significant. No significant cumulative effects were identified.

Otters

2.14 Four otter surveys were carried out which identified evidence of feeding and sprainting in numerous areas. In addition, experience from the adjacent Phase 3 works was considered in the EIA report. It was deemed likely that otters were using the area around the proposed Phase 4 site however it is possible that they are habituated to the daily activities of the area. Construction activities could give rise to disturbance however the CEMD contains a species protection plan which states that prior to any works commencing, pre-construction surveys will be carried out. If a holt or lay-up is identified, a European Protected Species ("EPS") licence will be sought from SNH and specific mitigation agreed. The ECoW will oversee construction and ensure that good practice measures with regards to the protection of otters are implemented.

2.15 An increased surface area of rock armour as a result of the completed project means there is an increase in potential resting or feeding habitat, which is considered to have an overall beneficial effect for the local otter population.

Diadromous Fish

2.16 Atlantic salmon, sea trout and European eel were identified as inhabiting the river systems in the Cromarty Firth. The potential effects on diadromous fish due to the works were identified as being through increased sediment loading from dredging and dredge spoil deposit activities, underwater noise from construction, and accidental release of hazardous substances. The increased sediment loading from the dredging and dredge deposit activities was identified as resulting in a moderate significant impact upon Atlantic salmon by potentially impairing outward smolt migration. All other disturbances are predicted to result in minor, non-significant impacts.

2.17 Mitigation measures for diadromous fish include the appointment and enforcement of an ECoW, with the power to stop works if required. To mitigate the identified significant effect upon Atlantic salmon smolts outward migration, dredging and dredge spoil disposal operations will be prohibited during the month of May, resulting in no significant effects on diadromous fish as a result of the project. No cumulative effects on diadromous fish are expected.

Benthic Ecology

2.18 To assess the potential effects on benthic ecology, the applicant sought to achieve an understanding of the baseline condition by undertaking an extensive literature review, computer modelling of the hydrodynamic and sediment regime and field surveys.

2.19 The benthic survey identified two biotopes in the proposed infilling area; infralittoral mixed sediment and infralittoral muddy sand. The intertidal survey identified multiple species and biotopes, none of which were of conservation concern.

2.20 During construction, the benthic ecology of the site may be impacted through; habitat loss, physical disturbance associated with dredging and dredge spoil deposit activities, increased sediment loading in the water column, accidental spillage of hazardous substances, and introduction of non-native marine species. The infilling will result in total habitat loss of the infralittoral biotopes within the localised construction area. However, the physical and biological features associated to the biotopes are common, and the area lost is relatively small compared to the wider Cromarty Firth. During the operation stage of the project, impacts associated with maintenance dredging activities will be localised.

2.21 A location with the least potential for impact on benthic ecology receptors was selected during the project design. Nevertheless, several potential impacts on the benthic receptors were identified as a result of the construction and operation of the project. However, none of the impacts were assessed to be significant. This was due to the localised and transient nature of the impacts, the quality and value of the receptors, together with the implementation of existing mitigation identified to preserve water quality during the construction and operation of the project. No cumulative effects with any other projects are predicted due to the distances involved.

Landscape and Visual

2.22 The effects of the proposed Phase 4 Development on the landscape and visual resources of the site and the surrounding area during construction and operation were assessed. Visual effects result from the changes in the content or character of views and visual amenity, due to changes in the landscape. The assessment of visual effects takes account of both the sensitivity of the visual receptors (individuals or groups of people) and the magnitude of the change on their views and visual amenity. Construction operations were found to have significant effects on six receptors. Four operational scenarios were considered using visual photomontages from a selection of

viewpoints with temporary significant effects predicted to arise during the cruise ship and the offshore renewables scenarios.

2.23 To minimise the likely landscape and visual effects, the project has been designed to reflect the shape and materials of Phase 3, particularly the colour and texture of the rock armour; the effects of lighting are reduced by minimising the number of active luminaires; and the project has been located to reduce the visibility of the permanent elements from the centre of Invergordon. Good practice measures will also be put in place to reduce effects where possible.

Local Community and Economics

2.24 The EIA report discusses the importance of Invergordon and the wider Cromarty Firth both economically and socially. There is a predicted increase in employment from both the cruise ship and offshore renewables scenarios for the project. The works themselves will also generate employment. In addition, onshore expenditures from cruise ship passengers is predicted to generate total wages and salaries of £1.65 million per year locally. The economic assessment concluded that there would be a positive benefit to the local community as a result of the project.

Materials and Waste

2.25 Materials will be sourced locally for the project and where practicable, a high recycled content will be sought whilst still meeting appropriate engineering standards. Materials will be delivered on a just in time basis to minimise material storage on site. Dredge spoil will be used as infill if the material is suitable, otherwise it will be deposited at the Sutors dredge spoil deposit area. Appropriately bunded oil and chemical storage cabinets will be provided on site. A Site Waste Management System will be in place to ensure that appropriate records are kept and waste transfer notes are retained. Site inductions will be given to all personnel working on site which will include a section on waste management. The applicant is also exploring the possibility of obtaining dredged material from other large projects in the area for use in the infilling at Port of Cromarty Firth ("PoCF").

Traffic and Transport

2.26 Impacts on traffic and transport were identified and quantified within a Transport Assessment ("TA"). It is acknowledged that the project will add additional pressure to the local transport network during both the construction and operational phases. During the construction phase, the applicant proposes to deliver materials by sea where possible however the revetment construction will require 194,000 tonnes of rock to be transported to the site by HGV. No significant impacts were identified as a result of the increase in HGV and staff personnel traffic associated with the project. Operational impacts were also classified as being non-significant in effect. Nonetheless, a Framework Construction Traffic Management Plan ("FCTMP") and Framework Travel Plan ("FTP") were submitted in support of the application detailing mitigation procedures to control or reduce potential impacts.

Navigation

2.27 The applicant provided an assessment of the potential change in vessel numbers as well as the potential navigational risk from the project. There will be an increase in vessel movements occurring to the west of the Invergordon Service Base, where there were minimal movements before. Construction is likely to require in the region of 150 additional vessel movements. The offshore renewable operational scenario gives rise to up to 200 additional vessel movements a year. Assuming that Berth 6 will be utilised for cruise ships in the summer and oil and gas assets in the winter, the total worst-case associated annual moves with these scenarios would be 128 additional vessel movements.

2.28 Navigation risks are considered to be low however the applicant will liaise with the Northern Lighthouse Board ("NLB") to agree the navigational lighting requirements and appropriate maritime safety information will be issued. In addition, there will be compulsory pilotage of vessels over 60m within the Cromarty Firth to reduce the risk of navigation incidents for vessels transiting the construction area. During operations, movements will be controlled as per the existing PoCF procedures. The berth pocket will be surveyed at least once every four years and dredging undertaken to maintain safe operational draft depths. The applicant also acknowledges the proximity of anchorage No. 4 and undertakes to manage its use to prevent potential collision issues associated with the swing area required by larger vessels to berth alongside Berths 5 and 6.

Water Quality

2.29 The Phase 4 Development is situated on the eastern end of the Inner Cromarty Firth, within a kilometre of the western boundary of the Outer Cromarty Firth, as defined in the River Basement Management Plan. The Inner and Outer Cromarty Firth are classified with an overall status of Good, an overall ecological status of Good and a chemical status of Pass. The Cromarty Firth can be described as relatively pristine with regard to the presence of Marine Non-Native Species ("MNNS"). No MNNS were recorded during the benthic survey, and only one species of MNNS has been recorded in the area; the Darwin's or Acorn barnacle. The Cromarty Bay on the south side of the Cromarty Firth; 1.5km southwest of the project, is classed as a Shellfish Water.

2.30 Dredging and dredge spoil deposit activities and the placement of in-fill material have the potential to increase sediments in the water column. Increased suspended sediment concentration ("SSC") can cause increased turbidity and can have negative effects on ecological receptors. The only activity considered to have the potential, without mitigation, to cause significant impacts due to increased SSC is the infilling work, resulting in a moderate significant impact. However it is proposed that isolation of the infill area with a weir arrangement, allowing appropriate residence time for sediments to drop out of the water column, will result in a minor, non-significant effect. It was recognised that materials including oils, fuels, cement washings and hydraulic fluids utilised during construction and operations would cause pollution if released into the water environment, with knock on effects on ecological receptors.

2.31 Specific pollution prevention procedures will be put in place for construction works. PoCF's existing pollution prevention response procedures will apply during the operational phase. The risk of introducing MNNS during construction and operations was deemed very unlikely, giving rise to a minor non-significant effect. However, the need to follow best practice with regard to ballast water management and the cleaning of plant and equipment prior to mobilisation to site was recognised.

2.32 A Water Framework Directive ("WFD") assessment was also completed and found that there would be no predicted reduction in the WFD statuses of the Inner and Outer Cromarty Firth transitional water quality associated with the works.

3. Consultation

3.1 In accordance with the 2017 MW Regulations advertisement of the application and EIA report was made in the local and national press and the application website. Notices were placed in the public domain and the opportunity given for those wishing to make representations to do so.

3.2 The dates of the consultation exercises are given below. The regulatory requirements regarding consultation and public engagement have been met and the responses received taken into consideration. Where matters have not been fully resolved, conditions have been included to ensure appropriate action is taken post consent.

Document	Date received	Dates of consultation	Publication
Environmental Impact Assessment Report & Appendices	17 May 2018	22 May 2018 – 29 June 2018	Port of Cromarty Firth website (22 May 2018) Edinburgh Gazette (22 May 2018) Press & Journal (22 May 2018) Highland News (24 May 2018) North Star (24 May 2018) Ross-shire Journal (25 May 2018) Inverness Courier (25 May 2018)
Marine licence applications & supporting documentation			

3.3 A summary of the responses is set out at sections 4, 5 and 6. The responses are available to view in full here.

4. Summary of statutory consultee responses

4.1 The Highland Council ("THC"), in their initial response of 29 June 2018, stated no over-riding objection to the application, subject to a number of conditions. THC indicated that if the recommended conditions were not attached to any construction licence granted, a holding objection was lodged. The applicant's comments in response to the recommended conditions were forwarded to THC on 10 July 2018. THC provided an updated response on the 20 July 2018, recommending revised conditions taking into consideration the applicant's comments. Following further correspondence with the applicant and MS-LOT, THC provided additional responses on 15 August 2018 and 24 August 2018. The following conditions, taking into account all of THC's consultation responses, are attached to the construction marine licence:

- The licensee must adhere to the approved CEMD (revision 3, dated 07 August 2018) and ensure that all mitigation measures listed are fully implemented. In the event that the licensee wishes to update or amend any of the protocols in the CEMD, the licensee must submit, in writing, details of proposed updates or amendments to the licensing authority for their written approval, no later than one month or at such a time as agreed with the licensing authority, prior to the planned implementation of the proposed updates or amendments. It is not permissible for any works associated with the proposed updates or amendments to proceed prior to the granting of such approval.
- Prior to the commencement of operations, full details of any external lighting to be used within the site and/or along its boundaries and/or access must be submitted

to, and approved in writing by, The Highland Council. Such details must include full details of the, type, angle of direction and wattage of each light which shall be so positioned and angled to prevent any direct illumination, glare or light spillage outwith the site boundary. Thereafter only the approved details shall be implemented.

- Within 14 days of the date of this licence the licensee must invite The Highland Council (Local Roads Authority) and Transport Scotland (Trunk Roads Authority) to form a Joint Working Group ("JWG") to regularly monitor and manage parking, transport and road safety issues on the local road network arising from both the construction phase and from on-going port operations connected to the licensed activities. The remit of the JWG shall be to promote effective communication and to discuss and resolve local transport issues including the on-going review and agreement of the Construction Traffic Management Plan ("CTMP"). Construction must proceed in accordance with the Framework CTMP or any subsequent CTMP agreed by the JWG.
- Within 14 days of the date of this licence the licensee must invite The Highland Council (Local Roads Authority) and Transport Scotland (Trunk Roads Authority) to attend the first meeting of the JWG, prior to the commencement of the works. Thereafter, the licensee must invite the members of the group to meet every 3 months, or other such time period as may be agreed by the members of the group, for the duration of the construction period and every twelve months thereafter, or other such time period as may be agreed by the members of the group.
- The licensee must develop an appropriate Travel Plan ("TP"), subject to the agreement of the JWG. Port operations associated with the licensed construction must proceed in accordance with the agreed TP.
- Unless otherwise agreed in writing with the licensing authority, in consultation with The Highland Council, the licensee must adhere to the following in regards to the quayside storage and assembly of offshore wind turbine components:
    - Up to 4 full height towers can be stored awaiting load out in the quayside under normal conditions for no more than 10 days
    - There will normally be no more than 12 complete towers in the assembly locations at any one time
    - Storage of 13-16 complete towers in the assembly area at the same time should not exceed 8 consecutive weeks in any 6 month period, except in exceptional circumstances.

4.2 The Maritime and Coastguard Agency ("MCA") responded on 19 June 2018 confirming no objection to consent being granted, subject to all maritime safety legislation being followed and the inclusion of standard conditions on the marine licences. In addition, they provided general good practice advice which will be passed to the applicant.

4.3 NLB responded on 18 June 2018 stating no objections. Their recommendations with regards to navigational concerns associated with the works will be included as conditions of the marine licences.

4.4 Scottish Environmental Protection Agency ("SEPA") responded on 23 May 2018 referring to their standing advice which states that they do not anticipate any adverse environmental impacts of the dredging activities providing it is carried on in line with

dredging best practice. In addition, measures should be put in place to minimise the release of sediment plumes. With regards to the construction works, they again emphasise the importance of good working practices to prevent water pollution and minimise disturbance to sensitive receptors.

4.5 Historic Environment Scotland ("HES") responded on 14 June 2018 stating that the historic environment issues within their remit had been scoped out of the EIA assessment and that the EIA report did not contain a cultural heritage chapter. However, they had considered the information contained in the submitted Protocol for Archaeological Discoveries ("PAD") (contained within the CEMD) relating to the proposed development as HES is named in the PAD. HES confirmed that the PAD follows accepted guidelines and standards and is what they would expect in such a case therefore they considered it to be acceptable. HES also confirmed that in their view the proposals do not raise historic environment issues of national significance, therefore they do not wish to object to the proposed development.

4.6 SNH responded on 29 June 2018 stating that although there are natural heritage interests of international importance on the site of the works, in their view, these will not be adversely affected by the project.

SNH advised that increased vessel movements/activity, the deposit of dredge spoil at the Sutors disposal area and the use of piling are likely to have a significant effect on the bottlenose dolphins of the Moray Firth SAC however, the works will not adversely affect the integrity of the site providing noise monitoring is undertaken during piling activity, a vessel management plan ("VMP") is included in the CEMD, and the CEMD (including marine mammal mitigation measures) is adhered to. SNH also advised that the vessel movements associated with the project should be coordinated with other projects and activities taking place at the same time, in order to spread out and minimise the number of simultaneous vessel movements and/or activities. Subsequently, an updated CEMD (revision 3, dated 07 August 2018), has been submitted by the applicant including a VMP and noise monitoring requirements, which meets the requirements of SNH, except for the provision of full details of their vessels and their anticipated movements. The applicant has confirmed that this information will be provided, once a contractor has been appointed, prior to the commencement of the works.

SNH also advised that the works have the potential to have a significant effect on the subtidal sandbank interest of the Moray Firth SAC due to the redistribution of sediments however, the proposed dredge spoil disposal activities will not adversely affect the integrity of the subtidal sandbanks or associated features such as horse mussel beds given that the coastal processes will be substantially unchanged as far as the feature is concerned. Furthermore, the Sutors disposal site has been in use for a long period of time without any adverse impacts with the volume of material for disposal being less than previous operations.

SNH advised that the works are likely to have a significant effect on the common seal interest of the Dornoch Firth and Morrich More SAC as a result of increased vessel traffic and underwater noise from piling causing disturbance. However, in their opinion, the works will not adversely affect the integrity of the site due to the applicant's commitment to adhere to the marine mammal mitigation measures described and the VMP (subsequently included) in the CEMD.

SNH advised the works are also likely to have a significant effect on the bird features of the Cromarty Firth SPA (and Ramsar site) and the Moray Firth pSPA in relation to disturbance and habitat changes associated with vessel movement and activity (including noise and visual disturbance) and construction/operation activity. However,

in their assessment, the conservation objectives for the designated bird species will be met and the works will not adversely affect the integrity of the sites providing that no dredging or dredge spoil deposit activities take place during the month of May. SNH noted that their advice in relation to the Cromarty Firth SPA also applies to the Cromarty Firth SSSI.

SNH further advised that a number of cetacean EPS species are present in the Moray Firth and that EPS licences would be required for both the dredging and construction works however, providing the mitigation set out in the EIA report and CEMD is followed (including a VMP), the proposal will not impact on the favourable conservation status of these species.

SNH were also content with the inclusion of otters in the Species Protection Plan within the CEMD; the appointment of an ECoW to oversee construction; the undertaking of a pre-construction otter survey to understand up to date activity levels in the area and potential for holts and layups within 200m of the construction site; and an EPS licence being applied for, if required, depending on the outcome of the surveys.

5. Summary of non-statutory consultee responses

5.1 Health and Safety Executive responded on 25 May 2018 advising they had no comments on the EIA report.

5.2 Royal Yachting Association Scotland had no objections in their response dated 24 May 2018.

5.3 Whale and Dolphin Conservation responded on 28 June 2018 stating they were content with the application documentation and that the impact of underwater noise will be sufficiently mitigated through adherence to the mitigation methods proposed, emphasising that Marine Mammal Observers and Passive Acoustic Monitoring should be used in conjunction at all times.

5.4 Defence Infrastructure Organisation did not raise any objections in their response of 23 May 2018.

5.5 The UK Chamber of Shipping responded on 31 May 2018 stating that they support the need for the proposed works however would like to stress the need for minimum disruption to ongoing operations at the port. They request that all stakeholders and users of the area are consulted on the programme of works to ensure that they are given relevant information so that disruption can be minimised.

5.6 The Royal Society for the Protection of Birds ("RSPB"), in their response of 19 June 2018, confirmed they were satisfied that strict adherence to the BBSPP contained within the CEMD will act to protect nesting birds during construction. RSPB further confirmed they were supportive of the proposal to remove the rock armour outwith the breeding season. RSPB recommended, however, that the same measures listed in the BBSPP should be applied to the removed rock to prevent nesting attempts. RSPB, noted that the installation of rock armour may result in greater numbers of breeding terns at the port, however, RSPB acknowledged that the presence of these colonies could lead to conflicts between the birds and port operations. RSPB therefore recommended a management plan be developed to control ongoing interactions between the terns and the port operations. The RSPB recommendations have subsequently been incorporated

in an updated version of the CEMD (Revision 3, dated 07 August 2018) and agreed with RSPB.

6. Representations from other organisations and members of the public

6.1 No representations were received from other organisations or members of the public.

7. Advice from 3rd Parties

7.1 No advice was sought or received from 3rd parties.

8. The Scottish Ministers' Considerations and Main Determinative Issues

8.1 The Scottish Ministers, having taken account of all relevant information, consider that the main determining issues are:

- the extent to which the works accord with and are supported by Scottish Government policy and the terms of the national marine plan and relevant local development plans

- the significant effects of the works on the environment, which are in summary:

    - ornithological impacts;
    - impacts on marine mammals;
    - impacts on diadromous fish;
    - impacts on air quality;
    - landscape and visual impacts; and
    - water quality impacts.

Policy Context

8.2 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 2015 Scottish National Marine Plan ("NMP") covering inshore waters is a requirement of the 2010 Act. The NMP lays out the Scottish Minister's policies for the sustainable development of Scotland's seas and provides General Planning Principles ("GEN"), and sector specific objectives and policies, which were considered as part of the EIA process.

8.3 Although the proposed works do not require planning consent, the planning policy context was still taken into consideration by the applicant due to the close proximity of the works to land. In Scotland, the frameworks for considering planning applications are:

- The National Planning Framework (NPF);
- Strategic Development Plans (SDPs); and
- Local Development Plans (LDPs).

8.4 The National Renewables Infrastructure Plan – Stage 2 ("NRIP2") was also considered. NRIP2 seeks to assist the development of a globally competitive offshore renewables industry in Scotland through the creation of infrastructure, to support large scale manufacturing, assembly, deployment and operations, and maintenance of offshore renewable energy devices. NRIP2 identifies the cluster of proposed marine developments in the Cromarty and Moray Firths, including the proposed Phase 4 Development, as having excellent potential for private developers to base their

manufacturing operations. A strong supply chain in offshore renewables is essential for Scotland to remain involved in related economic activity. The proposed Phase 4 Development will address the need for additional deep-water berthing and laydown area, to accommodate the growing requirements of the renewable energy sector.

8.5 The Scottish Ministers are satisfied that works accord with and are supported by Scottish Government policy and the terms of the NMP and relevant local development plans.

Environmental Matters

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

8.7 The Scottish Ministers have considered fully and carefully the application, EIA report, supporting documentation and all relevant responses from consultees.

Possible Effects on European Protected Sites and Ornithological and Marine Mammal Impacts

8.8 The Conservation of Habitats and Species Regulations 2017 and the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) ("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 or European offshore marine site (either alone or in combination with other plans or projects), as defined in the 1994 Habitats Regulations.

8.9 Owing to the view of SNH that the works are likely to have a significant effect on the qualifying interests of Moray Firth SAC, Dornoch Firth and Morrich More SAC, Cromarty Firth SAC, Cromarty Firth SPA and Moray Firth pSPA, MS-LOT, on behalf of the Scottish Ministers, as the "competent authority", were required to carry out an Appropriate Assessment ("AA"). Having had regard to the representations made by SNH, RSPB Scotland and WDC it can be ascertained that the works will not adversely affect the integrity of the SAC, SPA or pSPA. Having determined that the project will not adversely affect the integrity of the sites, and having regard to the reasons for which they were designated and the associated conservation objectives, MS-LOT concludes that the project will not, on its own or in combination with other projects, adversely affect the integrity of Moray Firth SAC, Dornoch Firth and Morrich More SAC, Cromarty Firth SAC, Cromarty Firth SPA and Moray Firth pSPA.

8.10 In Scotland, the Scottish Ministers are currently in the process of identifying a suite of new marine SPAs. In 2014 advice was received from the Statutory Nature Conservation Bodies ("SNCB") on the sites most suitable for designation and at this stage they became draft SPA ("dSPA"). Once Scottish Ministers have agreed the case for a dSPA to be the subject of a public consultation, the proposal is given the status of proposed SPA ("pSPA") and receives policy protection, which effectively puts such sites in the same position as designated sites, from that point forward until a decision on classification of the site is made. This policy protection for pSPA is provided by Scottish Planning Policy (paragraph 210), the UK Marine Policy Statement (paragraph 3.1.3) and the National Marine Plan for Scotland (paragraph 4.45). The Moray Firth pSPA is currently at consultation and therefore is included in the AA.

8.11 It is not a legal requirement under the Habitats Directive or relevant domestic regulations for the AA to assess the implications of the proposal on the pSPA. The AA includes an

assessment of implications upon those sites in accordance with domestic policy. Scottish Ministers are also required to consider article 4(4) of Council Directive 2009/147/EC on the conservation of wild birds ("the Birds Directive") in respect of the pSPA. The considerations under article 4(4) of the Birds Directive are separate and distinct to the considerations which must be assessed under this Habitats Directive assessment but they are, nevertheless, set out within the AA.

8.12 In accordance with regulation 50 of the Conservation (Natural Habitats, &c.) Regulations 1994, regulation 33 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 and regulation 65 of the Conservation of Habitats and Species Regulations 2017 the Scottish Ministers will, as soon as reasonably practicable following the formal designation of the pSPA, review their decisions authorising the proposal. This will include a supplementary AA being undertaken concerning the implications of the proposal on the sites as designated if LSE is identified (as they are currently pSPAs their conservation objectives are currently in draft form, their conservation objectives are finalised at the point the sites are designated).

8.13 A full explanation of the issues and justification for decisions regarding site integrity is provided in the AA (available here). SNH agreed with all conclusions reached in the AA.

8.14 The Scottish Ministers are content that significant ornithological and marine mammal impacts will be appropriately mitigated providing the applicant adheres to the conditions set out in the AA and marine licences and to the mitigation measures detailed in the EIA report and CEMD.

Diadromous Fish Impacts

8.15 The Scottish Ministers are satisfied that the appointment of an ECoW, as detailed in the CEMD, with the power to stop works if required, and the prohibition of dredging and dredge spoil deposit activities during the month of May, to mitigate the identified significant effect upon Atlantic salmon smolts outward migration, will result in no significant effects on diadromous fish. Appropriate conditions are attached to the marine licences to ensure adherence to this mitigation.

Impacts on Air Quality

8.16 The Scottish Ministers are content that significant air quality impacts resulting from dust emissions associated with construction activities and track out of vehicles delivering materials to site will be sufficiently mitigated through the implementation of the dust management plan included within the CEMD. A condition ensuring adherence to the CEMD is attached to the construction marine licence.

Landscape and Visual Impacts

8.17 The Scottish Ministers are satisfied that significant landscape and visual impacts associated with the project will be sufficiently mitigated on the basis that the project has been designed and located to minimise landscape and visual impacts and the applicant has committed to implementing good practice measures to reduce effects where possible. Furthermore, conditions addressing concerns raised by THC, in regards to the quayside storage and assembly of wind turbine components, are attached to the construction marine licence.

Impacts on Water Quality

8.18 The Scottish Ministers are content that significant impacts on water quality associated with the works will be sufficiently mitigated on the basis that increased SSC associated with the infilling work will be contained through the isolation of the infill area with a weir arrangement and that pollution prevention measures and best practice with regards to ballast water management and the cleaning of plant and equipment prior to mobilisation

will be implemented. The Scottish Ministers are also content with the WFD assessment completed by the applicant and its conclusion of no predicted reduction in the WFD statuses of the Inner and Outer Cromarty Firth transitional water quality associated with the works.

9. The Scottish Ministers' Determination and Reasoned Conclusion

9.1 The Scottish Ministers are satisfied that an environmental impact assessment has been carried out, and that the applicable procedures regarding publicity and consultation in respect of the application have been followed.

9.2 The Scottish Ministers have weighed the impacts of the works, and the degree to which these can be mitigated, against the economic and renewable energy sector benefits which would be realised. 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 project accords with and is supported by Scottish Government policy, the terms of the NMP and local development plans and the environmental impacts of the project, in particular: the impact on Moray Firth SAC, Dornoch Firth and Morrich More SAC, Cromarty Firth SAC, Cromarty Firth SPA and Moray Firth pSPA; ornithological impacts; marine mammal impacts; impacts on air quality; the landscape and visual impact of the project; and impacts on water quality.

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 project and mitigation. In particular Ministers are satisfied that the proposal will not adversely affect the integrity of the Moray Firth SAC, Dornoch Firth and Morrich More SAC, Cromarty Firth SAC, Cromarty Firth SPA and Moray Firth pSPA.

9.5 The Scottish Ministers have had regard to the requirements of Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds, and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

9.6 In their consideration of the environmental impacts of the project, the Scottish Ministers have identified conditions to be attached to the licences to reduce environmental impacts. These include adherence to the CEMD submitted in support of the applications, which has subsequently been updated to address consultee concerns and is available to view here.

9.7 The Scottish Ministers are satisfied, having regard to current knowledge and methods of assessment, that this reasoned conclusion is still up to date.

9.8 The Scottish Ministers **grant marine licences subject to conditions** under Part 4 of the Marine (Scotland) Act 2010 for the construction, land reclamation, capital dredging and dredge spoil deposit activities associated with the Phase 4 Development at Invergordon Service Base. The marine licences are attached at Appendix 2.

9.9 In accordance with the 2017 MW Regulations, the applicant must publicise notice of this determination and how a copy of this decision letter may be inspected on the application website, in the Edinburgh Gazette and a newspaper circulating in the locality to which the application relates is situated.

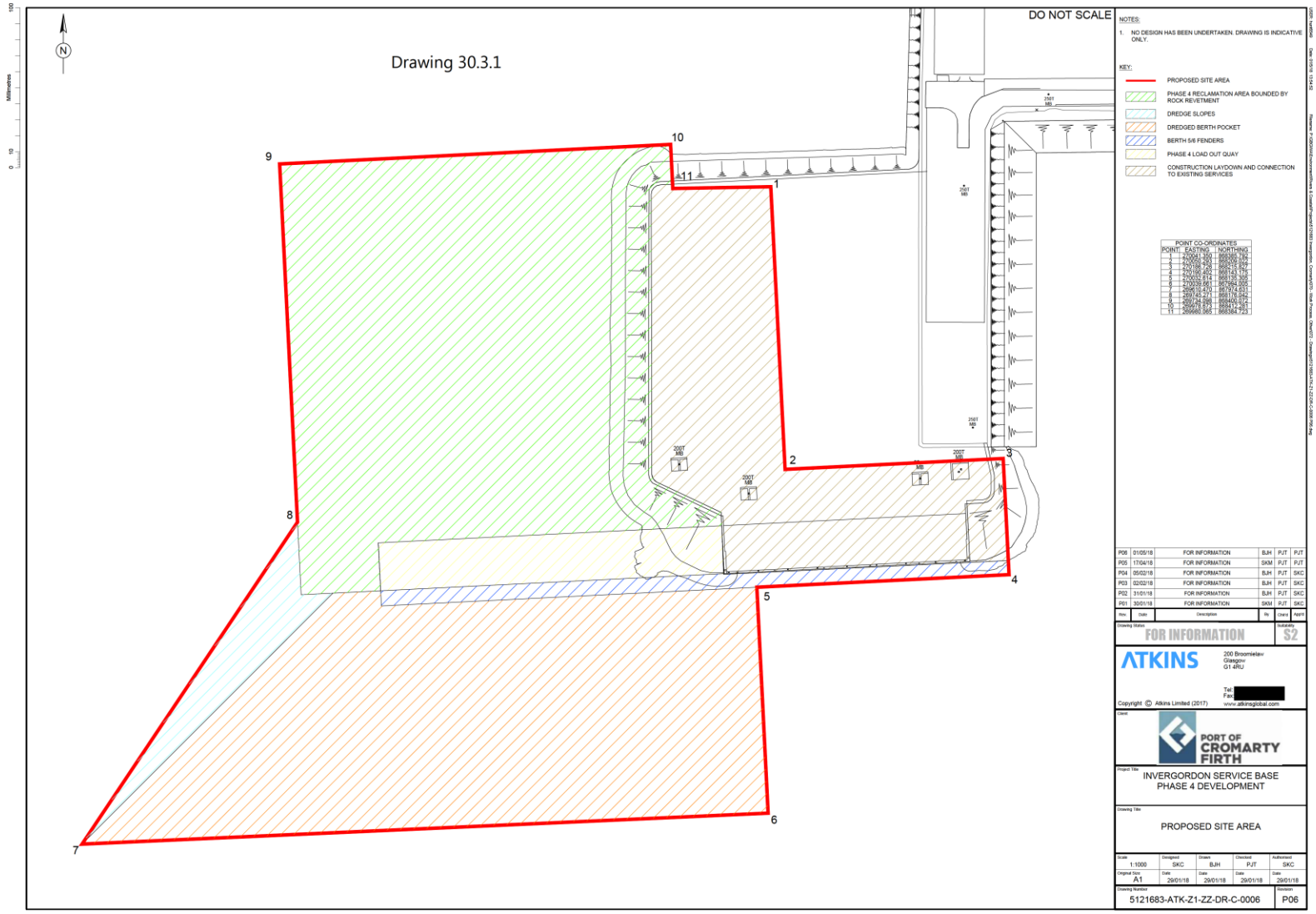
9.10 Copies of this decision notice have been sent to the bodies consulted on the application including the relevant planning authority, SNH, SEPA and HES.

9.11 The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for consent. The rules relating to the judicial review process can be found on the website of the Scottish Courts –http://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/court-of-session-rules. Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Marine Licensing Group Leader, Marine Scotland Licensing Operations Team

A member of the staff of the Scottish Ministers

31 August 2018



Appendix 1 – Port of Cromarty Firth Phase 4 Development Location