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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

October 2021

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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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Historic Environment Scotland

MacFarlane M (Marc)

From: Laura Denholm <laura.denholm@hes.scot>
Sent: 17 May 2021 10:19
To: MS Marine Licensing
Subject: Orkney Islands Council Harbour Authority - Scapa Deep Water Quay - Scapa Flow, Orkney Islands
Attachments: 20210517ScapaDeepWaterQuayScoping(MS)-HESresponse.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

Kind regards

Laura
Laura Denholm |Business Support Officer – Casework Technician | Heritage Directorate Historic Environment Scotland | Àrainneachd Eachdraidheil Alba Longmore House, Salisbury Place, Edinburgh, EH9 1SH
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By email to:

MS.MarineLicensing@gov.scot

Jack Versiani Holt
Marine Scotland
Marine Laboratory
375 Victoria Road
Aberdeen
AB11 9DB

Longmore House
Salisbury Place
Edinburgh
EH9 1SH

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

Our case ID: 300045527

17 May 2021

Dear Jack Versiani Holt

**The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017
Orkney Islands Council Harbour Authority - Scapa Deep Water Quay - Scapa Flow,
Orkney Islands
Scoping Consultation**

Thank you for your consultation which we received on 21 April 2021 about the above scoping report. We have reviewed the details in terms of our historic environment interests. This covers World Heritage Sites, scheduled monuments and their settings, category A-listed buildings and their settings, inventory gardens and designed landscapes, inventory battlefields and historic marine protected areas (HMPAs). In this case, our advice also includes matters relating to marine archaeology outwith the scope of the terrestrial planning system.

The relevant local authority archaeological and cultural heritage advisors will also be able to offer advice on the scope of the cultural heritage assessment. This may include heritage assets not covered by our interests, such as unscheduled archaeology, and category B- and C-listed buildings. In this case, you should contact the Orkney Islands Council Archaeologist, who can be contacted at Julie.Gibson@uhi.ac.uk.

Proposed Development

We understand that the proposed development comprises the creation of a 575m quayside with water depth of -15m CD, a 110m x 75m quay extension with water depth of -20m CD, and formation of a laydown area including an access road from the A961 to the laydown area. The works will include excavation of current landform, reclamation of shore and dredging adjacent to the quays.

Scope of assessment

Marine assets

There are no recorded marine historic environment assets within the construction area itself and the Scoping Report provides sufficient information to conclude that the risk of there being any unidentified assets is extremely low. We consider that those sites that



have been identified in the baseline assessment are sufficiently far away that impacts from the majority of construction work should not be a risk.

We agree that potential significant construction effects from the proposed dredging works should be scoped in to further detailed assessment to ensure that potential impacts on MBES contact 1 are addressed in the final EIA.

We also agree that potential significant operational effects from propeller scour should be scoped in to further detailed assessment to ensure that potential impacts on MBES contact 1 are addressed in the final EIA.

We note that the scoping report identified the potential for debris/stray finds/ordnance which have not been identified by previous surveys and may rest within the development area. Further survey is proposed to help understand the potential for such material within the development area. Given that it is proposed to scope in potential effects which may affect such assets from dredging and propeller scour this should also identify any potential significant effects on these assets. We have provided further comment on the scoping report's approach to mitigation in the section below.

Terrestrial assets

We can confirm that there are no scheduled monuments, category A listed buildings, Inventory battlefields, gardens and designed landscapes or World Heritage Sites within the proposed development boundary.

We note and welcome the commitment to scope in cumulative operational impacts on the settings of cultural heritage assets given in Section 6.4 of the Scoping Report. We are content that the proposed development is unlikely to have significant effects on the site or setting of any terrestrial assets within our statutory remit and we therefore have no further comments on the potential effects of the development for our statutory terrestrial interests.

Scoping Report

We are content with the study area identified in the Scoping Report for marine historic environment assets. We are content that the baseline assessment provided identifies the known marine historic environment assets within the development area and in the surrounding study area.

A detailed assessment methodology for assessment of effects on the historic environment is not provided within the Scoping Report, however, we welcome that the report indicates that the guidance in the EIA Handbook will be used. We would be happy to provide advice on a detailed methodology if that would be helpful.



We note the frequent references throughout the cultural heritage section of the report to the use of a mitigation strategy to avoid the need for full detailed assessment in the EIA. For example, at section 6.3.1 of the Scoping Report it is stated that:

“If this mitigation strategy is agreed prior to the EIA process then there would be no requirement to include impacts on unknown marine assets in that process, because the necessary mitigations to reduce/eliminate impacts would already be in place. This management of the risk is likely to be part of planning consent conditions.”

The process outlined in section 6.3.1 for further survey work is not a mitigation strategy, it is a brief statement about future investigations. Survey is not mitigation; it provides background information for mitigation.

We would not expect mitigation to be controlled through planning conditions. The EIA process is intended to assess the potential environmental impacts and then address them in the design of the project. Any further mitigation required following the design should also be laid out clearly in the resulting EIA Report. This process should be adhered to, both to enable the decision maker to make an informed decision and to comply with the relevant legislation.

The proposed works are welcome but it is not possible at this stage to understand how they would result in anything being scoped out of the EIA process. Even if the results indicate that there would be no impact on archaeological assets or deposits, this would be an essential component of the cultural heritage section of the EIA. If the Scoping Report has identified further works that need to be undertaken to understand a potential environmental impact, then that area of interest cannot be scoped out of the ongoing EIA process.

The EIA Report should include robust mitigation measures for cultural heritage assets that could experience significant impacts from the works.

There is no mention of a Protocol of Archaeological Discoveries or other mechanism to check areas of disturbance for archaeological artefacts. It is possible that the potential for such material in the affected areas is so low that such an exercise is not merited in this case, but we would expect this issue to be addressed in the EIA.

Further information

The Historic Environment Policy for Scotland (HEPS 2019) was adopted on the 01 May 2019 and replaced the Historic Environment Scotland Policy Statement (HESPS 2016). The Historic Environment Policy for Scotland is a strategic policy document for the whole of the historic environment and is underpinned by detailed policy and guidance. This includes our Managing Change in the Historic Environment Guidance Notes. All of these documents are available online at www.historicenvironment.scot/heps.



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Practical guidance and information about the EIA process can also be found in the [EIA Handbook \(2018\)](#). Technical advice is available on our Technical Conservation website at <http://conservation.historic-scotland.gov.uk/>.

We hope this is helpful. Please contact us if you have any questions about this response. The officer managing this case is Victoria Clements who can be contacted by phone on 0131 668 8730 or by email on Victoria.Clements@hes.scot.

Yours sincerely

Historic Environment Scotland

Maritime and Coastguard Agency

MacFarlane M (Marc)

From: navigation safety <navigationsafety@mcga.gov.uk>
Sent: 21 May 2021 20:57
To: MS Marine Licensing
Cc: James Hannon; Calvin Baugh
Subject: RE: Orkney Islands Council Harbour Authority – Scapa Deep Water Quay – Scapa Flow, Orkney Islands - Scoping Consultation - By 21 May 2021

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Jack,

Thank you for the opportunity to comment on the Scoping Consultation for the Scapa Deep Water Quay in the Orkney Islands.

The Scoping Report has been considered by representatives of UK Technical Services Navigation. We note that works include (but not limited to) land reclamation, creation of a berthing by formation of a quay, excavation, extension of the quay area, and dredging activities. The MCA has an interest in the works associated with the marine environment, and the potential impact on the safety of navigation, access to ports, harbours and marinas and any impact on our search and rescue obligations. We would therefore like to comment as follows on the Scoping Report:

It is our understanding that EnviroCentre Ltd has been appointed by Orkney Island Council Harbour Authority (OICHA) to undertake an Environmental Impact Assessment (EIA) in relation to the proposed development of Scapa Deep Water Quay, and that OICHA are the Statutory Harbour Authority at this location. They are therefore responsible for the safety of navigation before, during and after the works.

We note that there is no consideration in the Scoping Report of the navigation impact as result of the works during construction, nor the ongoing safe operation of the Deep Water Quay. We would usually expect to see consideration of a Navigation Risk Assessment, relative to the scale of the works, with a section on 'shipping and navigation', or 'impact on marine users'. The report does not explain why this has been scoped out.

However, I note in section 3.3.3 Accidents and Natural Disasters :

“Similar to other ports, there is potential for accidents to occur, however OICHA operate a Marine Safety Management System / Standard Operating Procedures to promote safe and efficient harbour operations and is compliant with the Port Marine Safety Code. The OIC Marine Services division of OICHA ensures that all operations under their jurisdiction are done in such a manner so as to keep safe its users, the public, the harbour area and the environment. The proposed development is not located within an area of significant seismic activity, nor is climatic factors prone to creating disasters such as tsunamis, hurricanes or catastrophic flooding. Accordingly consideration of accidents and natural disasters is scoped out of the EIA”.

We would not necessarily consider 'Accidents and Natural Disasters' as an appropriate chapter to address shipping and navigation aspects. We would be interested in the views of OICHA here. Usually, a NRA is used to support the EIA, which is informed through consultation with the Statutory Harbour Authority and other key stakeholders as considered necessary. The MCA would expect no effects to be scoped out of the assessment with regards to shipping and navigation, pending the outcome of the Navigation Risk Assessment and further stakeholder

consultation. Following the identification of impacts and likely effects to the environment their significance will be assessed within the EIA. This will determine whether the project's residual effects will be reduced ALARP. It is not clear why this has not being undertaken on this occasion.

We would also expect the SHA to consider whether any amendments need to be made to their existing byelaws as a result of these works.

Finally, to address the ongoing safe operation of the marine interface for this project, we would like to point the developers in the direction of the Port Marine Safety Code (PMSC) and its Guide to Good Practice. They will need to liaise and consult with the Statutory Harbour Authority and develop a robust Safety Management System (SMS) for the project under this code.

The sections that we feel cover navigational safety under the PMSC and its Guide to Good Practice are as follows:

From the Guide to Good Practice, section 7 Conservancy, a Harbour Authority has a duty to conserve the harbour so that it is fit for use as a port. The harbour authority also has a duty of reasonable care to see that the harbour is in a fit condition for a vessel to be able to use it safely. Section 7.8 Regulating harbour works covers this in more detail and have copied the extract below from the Guide to Good Practice.

7.8 Regulating harbour works

7.8.1 Some harbour authorities have the powers to license works where they extend below the high watermark, and are thus liable to have an effect on navigation. Such powers do not, however, usually extend to developments on the foreshore.

7.8.2 Some harbour authorities are statutory consultees for planning applications, as a function of owning the seabed, and thus being the adjacent landowner. Where this is not the case, harbour authorities should be alert to developments on shore that could adversely affect the safety of navigation. In any case harbour authorities should ensure that the MMO or appropriate licensing authority consults them with regard to any applications for works or developments in or adjacent to the harbour area. Where necessary, consideration should be given to requiring the planning applicants to conduct a risk assessment in order to establish that the safety of navigation is not about to be put at risk. Examples of where navigation could be so affected include:

- high constructions, which inhibit line of sight of microwave transmissions, or the performance of port radar, or interfere with the line of sight of aids to navigation;
- high constructions, which potentially affect wind patterns; and
- lighting of a shore development in such a manner that the night vision of mariners is impeded, or that navigation lights, either ashore and onboard vessels are masked, or made less conspicuous.

7.8.3 There is a British Standards Institution publication on Road Lighting, BS5489. Part 8 relates to a code of practice for lighting which may affect the safe use of aerodromes, railways, harbours and navigable Inland waterways.

We hope you find this useful at Scoping stage.

Kind regards

Helen

Helen Croxson
Space Launch Lead
Marine Licensing and Consenting
UK Technical Services Navigation Helen.Croxson@mcga.gov.uk
+44 (0) 203 8172426
[Redacted]



Maritime & Coastguard Agency
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Southampton SO15 1EG



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www.gov.uk/mca

Please note my working days are Tuesday, Wednesday and Thursdays.

From: MS.MarineLicensing@gov.scot <MS.MarineLicensing@gov.scot>
Sent: 21 April 2021 15:59
To: north@nature.scot; planning.north@sepa.org.uk; planning@orkney.gov.uk; navigation safety <navigationsafety@mcga.gov.uk>; navigation@nlb.org.uk; hmconsultations@hes.scot; Robert Merrylees <rmerrylees@ukchamberofshipping.com>; marine@crownestatescotland.com; DIO-safeguarding-offshore@mod.gov.uk; brian@fms.scot; alan@fms.scot; FOKirkwall2@gov.scot; harbours@orkney.gov.uk; Scotland-EIA.Scoping-Opinions@hse.gov.uk; Jim.Watson@gov.scot; Vanessa.Brown@gov.scot; Stuart.Bell@gov.scot; katew@orkneysustainablefisheries.co.uk; orkneyfisheries@btconnect.com; secretary@marinesafetyforum.org; David.Pratt@gov.scot; Karl.Zaczek@transport.gov.scot; Pauline.McGrow@ryascotland.org.uk; planning.scotland@rspb.org.uk; renewables@sff.co.uk; m.morrison@sff.co.uk; info@scottishfishermen.co.uk; planningconsultations@scottishwater.co.uk; reception@scottishwildlifetrust.org.uk; scollin@scottishwildlifetrust.org.uk; development_management@transport.gov.scot; Dario.dallaCosta@transport.gov.scot; Chris.Wilcock@transport.gov.scot; Douglas.Keith@visitscotland.com; fiona.read@whales.org; sarah.dolman@whales.org
Cc: Helen Croxson <Helen.Croxson@mcga.gov.uk>; Nick Salter <Nick.Salter@mcga.gov.uk>; holmcc@btinternet.com; kirkwallandstolacc@gmail.com; Katrina Ross (UK Chamber of Shipping) (External) <kross@ukchamberofshipping.com>; migoe@ukchamberofshipping.com
Subject: Orkney Islands Council Harbour Authority – Scapa Deep Water Quay – Scapa Flow, Orkney Islands - Scoping Consultation - By 21 May 2021

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Dear Sir/Madam,

The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) (“the EIA Regulations”)

Orkney Islands Council Harbour Authority – Scapa Deep Water Quay – Scapa Flow, Orkney Islands

In respect of the proposed marine licence applications for the above works under the Marine (Scotland) Act 2010, Orkney Island Council Harbour Authority has requested the Scottish Ministers adopt a scoping opinion in relation to the above proposed works under regulation 14(1) of the EIA Regulations.

The scoping report submitted by the applicant can be found at:

<https://marine.gov.scot/data/scoping-scapa-deep-water-quay-scapa-flow-orkney>

To assist the Scottish Ministers in adopting a comprehensive scoping opinion, which will outline the scope and level of detail of information to be provided in the Environmental Impact Assessment (EIA) Report to be submitted by the applicant with their proposed marine licence applications, please review the scoping report and advise on **what you consider should be included within or excluded from the scope of the EIA for the proposed works**. In doing so you may wish to consider any comments you may have regarding data sources, proposed methodologies or the requirement for specific studies.

Please submit your response electronically to ms.marinelicensing@gov.scot by 21 May 2021. If you are unable to meet this deadline, please contact us as soon as possible to discuss the possibility of an extension to the consultation period. If you have no comments to make please submit a “nil return” response.

Please be advised that the scoping report and this consultation request relate to the proposed marine licence applications and not the onshore elements of the works.

Yours faithfully,

Jack Versiani Holt
Marine Licensing Casework Officer
Marine Scotland - Marine Planning & Policy

Scottish Government | Marine Laboratory | 375 Victoria Road | Aberdeen | AB11 9DB

COVID-19: Marine Scotland - Licensing Operations Team(MS-LOT) is working from home and as a result determination of applications may take longer than our stated timelines. In addition MS-LOT is unable to respond to phone enquiries, please communicate with MS- LOT via email. Email addresses are MS.MarineRenewables@gov.scot for marine renewables correspondence or MS.MarineLicensing@gov.scot for all licensing queries.

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Ministry of Defence

MacFarlane M (Marc)

From: DIO-Safeguarding-Offshore (MULTIUSER) <DIO-Safeguarding-Offshore@mod.gov.uk>
Sent: 22 April 2021 14:05
To: MS Marine Licensing
Subject: RE: 20210422-Scoping Opinion-Orkney Islands Council Harbour Authority – Scapa Deep Water Quay – Scapa Flow, Orkney Islands - DIO 10051317-O

Follow Up Flag: Follow up
Flag Status: Flagged

Good Afternoon,

FAO Jack Versiani Holt

Further to your e-mail below regarding a scoping opinion for the Scapa Deep Water Quay, I can confirm a nil return from the MOD. I hope this information is sufficient for your purposes.

Regards

Michael Billings

Assistant Safeguarding Manager
Estates – Safeguarding

Defence
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Organisation

Building 49, DIO Sutton Coldfield, Kingston Road, B75 7RL

Due to COVID-19 I am working from home until further notice.

In line with the latest guidance, I am working offline where possible to ease the pressure on the IT network. Therefore I will only check emails and Skype periodically which will mean that I might not respond as promptly as usual.

Mob: [Redacted] | Email: michael.billings950@mod.gov.uk

Website: www.gov.uk/dio/ | Twitter: @mod_dio

Read DIO's blog: <https://insidedio.blog.gov.uk/>

From: MS.MarineLicensing@gov.scot <MS.MarineLicensing@gov.scot>
Sent: 21 April 2021 15:59
To: north@nature.scot; planning.north@sepa.org.uk; planning@orkney.gov.uk; navigationsafety@mcga.gov.uk; navigation@nlb.org.uk; hmconsultations@hes.scot; rmerrylees@ukchamberofshipping.com; marine@crownstatescotland.com; DIO-Safeguarding-Offshore (MULTIUSER) <DIO-Safeguarding-Offshore@mod.gov.uk>; brian@fms.scot; alan@fms.scot; FOKirkwall2@gov.scot; harbours@orkney.gov.uk; Scotland-EIA.Scoping-Opinions@hse.gov.uk; Jim.Watson@gov.scot; Vanessa.Brown@gov.scot; Stuart.Bell@gov.scot; katew@orkneysustainablefisheries.co.uk; orkneyfisheries@btconnect.com; secretary@marinesafetyforum.org; David.Pratt@gov.scot; Karl.Zaczek@transport.gov.scot;

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reception@scottishwildlifetrust.org.uk; scollin@scottishwildlifetrust.org.uk;
development_management@transport.gov.scot; Dario.dallaCosta@transport.gov.scot;
Chris.Wilcock@transport.gov.scot; Douglas.Keith@visitscotland.com; fiona.read@whales.org;
sarah.dolman@whales.org
Cc: helen.croxson@mcga.gov.uk; nick.salter@mcga.gov.uk; holmcc@btinternet.com;
kirkwallandstolacc@gmail.com; kross@ukchamberofshipping.com; migoe@ukchamberofshipping.com
Subject: Orkney Islands Council Harbour Authority – Scapa Deep Water Quay – Scapa Flow, Orkney Islands - Scoping Consultation - By 21 May 2021

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Please be advised that the scoping report and this consultation request relate to the proposed marine licence applications and not the onshore elements of the works.

Yours faithfully,

Jack Versiani Holt
Marine Licensing Casework Officer
Marine Scotland - Marine Planning & Policy

Scottish Government | Marine Laboratory | 375 Victoria Road | Aberdeen | AB11 9DB

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MOD Updated Representation

Gibson N (Naomi)

From: Billings, Michael Mr (DIO Estates-AsstSafegdgMgr1) <Michael.Billings950@mod.gov.uk>
Sent: 04 June 2021 10:40
To: MS Marine Licensing
Subject: FW: 20210604-Scoping Opinion-Orkney Islands Council Harbour Authority – Scapa Deep Water Quay – Scapa Flow, Orkney Islands - DIO 10051317-O

Good Morning,

FAO Jack Versiani Holt

Further to my e-mail below, I have now received the required advice regarding the Scapa Deep Water Quay development. Please note that the wreck of HMS Royal Oak is located approximately 1km to the northwest of the proposed development, marked by a large green buoy. It is a designated war grave of national importance and protected from any disturbance under The Protection of Military Remains Act 1986, with a 200m radius exclusion zone around it. I understand that a request has been made for an update to the Protection of Military Remains Act, to extend the exclusion zone to 350 metres. In this respect, I can confirm, that although we have no concerns relating to this project, It is strongly recommended that any scoping takes into account this extension for the protection of HMS Royal Oak from any disturbance from any activity undertaken. I hope this information is sufficient for your purposes.

Regards

Michael Billings

Assistant Safeguarding Manager
Estates – Safeguarding

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Building 49, DIO Sutton Coldfield, Kingston Road, B75 7RL

Due to COVID-19 I am working from home until further notice.

In line with the latest guidance, I am working offline where possible to ease the pressure on the IT network. Therefore I will only check emails and Skype periodically which will mean that I might not respond as promptly as usual.

Mob: [Redacted] | Email: michael.billings950@mod.gov.uk

Website: www.gov.uk/dio/ | Twitter: @mod_dio

Read DIO's blog: <https://insidedio.blog.gov.uk/>

From: Billings, Michael Mr (DIO Estates-AsstSafegdgMgr1)
Sent: 06 May 2021 17:09
To: MS.MarineLicensing@gov.scot
Subject: FW: 20210506-Scoping Opinion-Orkney Islands Council Harbour Authority – Scapa Deep Water Quay – Scapa Flow, Orkney Islands - DIO 10051317-O

Good Afternoon,

FAO Jack Versiani Holt,

Further to my e-mail advice below dated 22/04/2021, please note that I have had to refer to our Advisors for further advice and await their responses. As soon as I am in receipt of the relevant advice, I will respond in due course.

Regards

Michael Billings

Assistant Safeguarding Manager
Estates – Safeguarding

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Mob: [Redacted] | Email: michael.billings950@mod.gov.uk

Website: www.gov.uk/dio/ | Twitter: @mod_dio

Read DIO's blog: <https://insidedio.blog.gov.uk/>

From: DIO-Safeguarding-Offshore (MULTIUSER)

Sent: 22 April 2021 14:05

To: 'MS.MarineLicensing@gov.scot' <MS.MarineLicensing@gov.scot>

Subject: RE: 20210422-Scoping Opinion-Orkney Islands Council Harbour Authority – Scapa Deep Water Quay – Scapa Flow, Orkney Islands - DIO 10051317-O

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Read DIO's blog: <https://insidedio.blog.gov.uk/>

From: MS.MarineLicensing@gov.scot <MS.MarineLicensing@gov.scot>

Sent: 21 April 2021 15:59

To: north@nature.scot; planning.north@sepa.org.uk; planning@orkney.gov.uk; navigationsafety@mcga.gov.uk; navigation@nlb.org.uk; hmconsultations@hes.scot; rmerrylees@ukchamberofshipping.com; marine@crownestatescotland.com; DIO-Safeguarding-Offshore (MULTIUSER) <DIO-Safeguarding-Offshore@mod.gov.uk>; brian@fms.scot; alan@fms.scot; FOKirkwall2@gov.scot; harbours@orkney.gov.uk; Scotland-EIA.Scoping-Opinions@hse.gov.uk; Jim.Watson@gov.scot; Vanessa.Brown@gov.scot; Stuart.Bell@gov.scot; katew@orkneysustainablefisheries.co.uk; orkneyfisheries@btconnect.com; secretary@marinesafetyforum.org; David.Pratt@gov.scot; Karl.Zaczek@transport.gov.scot; Pauline.McGrow@ryascotland.org.uk; planning.scotland@rspb.org.uk; renewables@sff.co.uk; m.morrison@sff.co.uk; info@scottishfishermen.co.uk; planningconsultations@scottishwater.co.uk; reception@scottishwildlifetrust.org.uk; scollin@scottishwildlifetrust.org.uk; development_management@transport.gov.scot; Dario.dallaCosta@transport.gov.scot; Chris.Wilcock@transport.gov.scot; Douglas.Keith@visitscotland.com; fiona.read@whales.org; sarah.dolman@whales.org

Cc: helen.croxson@mcga.gov.uk; nick.salter@mcga.gov.uk; holmcc@btinternet.com; kirkwallandstolacc@gmail.com; kross@ukchamberofshipping.com; migoe@ukchamberofshipping.com

Subject: Orkney Islands Council Harbour Authority – Scapa Deep Water Quay – Scapa Flow, Orkney Islands - Scoping Consultation - By 21 May 2021

Dear Sir/Madam,

The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) (“the EIA Regulations”)

Orkney Islands Council Harbour Authority – Scapa Deep Water Quay – Scapa Flow, Orkney Islands

In respect of the proposed marine licence applications for the above works under the Marine (Scotland) Act 2010, Orkney Island Council Harbour Authority has requested the Scottish Ministers adopt a scoping opinion in relation to the above proposed works under regulation 14(1) of the EIA Regulations.

The scoping report submitted by the applicant can be found at:

<https://marine.gov.scot/data/scoping-scapa-deep-water-quay-scapa-flow-orkney>

To assist the Scottish Ministers in adopting a comprehensive scoping opinion, which will outline the scope and level of detail of information to be provided in the Environmental Impact Assessment (EIA) Report to be submitted by the applicant with their proposed marine licence applications, please review the scoping report and advise on **what you consider should be included within or excluded from the scope of the EIA for the proposed works**. In doing so you

may wish to consider any comments you may have regarding data sources, proposed methodologies or the requirement for specific studies.

Please submit your response electronically to ms.marinelicensing@gov.scot by 21 May 2021. If you are unable to meet this deadline, please contact us as soon as possible to discuss the possibility of an extension to the consultation period. If you have no comments to make please submit a “nil return” response.

Please be advised that the scoping report and this consultation request relate to the proposed marine licence applications and not the onshore elements of the works.

Yours faithfully,

Jack Versiani Holt
Marine Licensing Casework Officer
Marine Scotland - Marine Planning & Policy

Scottish Government | Marine Laboratory | 375 Victoria Road | Aberdeen | AB11 9DB

COVID-19: Marine Scotland - Licensing Operations Team(MS-LOT) is working from home and as a result determination of applications may take longer than our stated timelines. In addition MS-LOT is unable to respond to phone enquiries, please communicate with MS- LOT via email. Email addresses are MS.MarineRenewables@gov.scot for marine renewables correspondence or MS.MarineLicensing@gov.scot for all licensing queries.

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NatureScot

MacFarlane M (Marc)

From: Kim McEwen <Kim.McEwen@nature.scot>
Sent: 21 May 2021 12:15
To: MS Marine Licensing
Subject: Scoping Opinion request - Orkney Islands Council Harbour Authority - Scapa Deep Water Quay - Scapa Flow, Orkney Islands - NatureScot response - 21 May 2021
Attachments: Scoping Opinion request - Orkney Islands Council Harbour Authority - Scapa Deep Water Quay - Scapa Flow, Orkney - NatureScot response - 21 May 2021.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Good Afternoon,

Thank you for consulting us on the above proposal, please find our response attached.

If you need any further information please do not hesitate to get in touch.

Kind regards,
Kim

Kim McEwen | Operations Officer, Northern Isles and North Highland
NatureScot | Eastbank, East Road, Kirkwall, Orkney, KW15 1LX | T: 01463 701 671 M: [Redacted]
nature.scot | @nature_Scot | *Scotland's Nature Agency* | *Buidheann Nàdair na h-Alba*

NatureScot is the operating name of Scottish Natural Heritage.

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Thoiribh an aire airson adhbharan gnothaich, 's dòcha gun tèid sùil a chumail air puist-dealain a' tighinn a-steach agus a' dol a-mach bho NatureScot.

Jack Versiani Holt
Marine Scotland – Marine Planning and Policy

Sent by email to: ms.marinelicensing@gov.scot

Our ref: CDM162820

21 May 2021

Dear Mr Versiani Holt,

The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017
Orkney Islands Council Harbour Authority – Scapa Deep Water Quay – Scapa Flow, Orkney Islands

Thank you for your email of 21 April 2021, requesting our scoping advice for the above proposal.

Summary

We advise that there is the potential for this proposal to result in significant adverse effects on the Scapa Flow proposed Special Protection Area (pSPA). **If it is not possible to mitigate these impacts then we may object to the proposal.**

Background

We were previously consulted on the Strategic Environment Assessment (SEA) and Habitats Regulations Appraisal (HRA) of the Orkney Harbour Masterplan, of which this proposal is a component. Considerable advice was given on the potential impacts from this proposed development on the natural heritage and we encourage the applicant to review the Post Adoption Statement and HRA, as well as the advice provided, to help inform the Environmental Impact Assessment (EIA).

We have also subsequently provided advice to the applicant on wintering bird survey methodology. However, we have not seen a final methodology from the applicant or any survey results. It was made clear in our advice that the draft methodology reviewed would not be suitable to inform project level assessment but could be used to supplement existing survey work to inform the design of project level surveys or pre-application.

Scoping Advice

Based on the information provided in the Scoping Report, we have concerns that potentially significant impacts to the natural heritage from this proposed development have not been recognised.

There are potentially significant impacts on ecological interests of international importance that may be difficult to mitigate. In particular, the most significant natural heritage interests likely to be affected are the features of the Scapa Flow pSPA. We have provided advice to the applicant on the assessment of these impacts, particularly wintering bird survey methods. We are keen to continue to support the applicant in progressing the EIA and in the development of mitigation where possible.

It is noted in the Scoping Report that the applicant wishes to scope out all ecological receptors from full assessment within the EIA apart from 'marine mammals and their prey during the construction phase only'. At this stage, due to the location and scale of the development, and with no details on proposed construction methodology and mitigation, it is not possible in our opinion to scope out the majority of ecological receptors from full assessment.

Furthermore, it is unclear how impacts from certain construction activities such as dredge spoil disposal and use of explosives to reconfigure coastline will be assessed as these options will not be determined until later in the process following Site Investigations. Therefore, at this stage it is not possible to judge likely impacts unless a clear worst case scenario (Rochdale envelope approach) be defined with respect to these and other relevant aspects of the proposal against which potential impacts can be assessed.

Details on the key natural heritage issues and specific comments on the scope of work required in relation to these is provided in the annex to this letter. Our advice is proportionate to the information presented in the Scoping Report. With respect to the scope of the EIA more generally, please refer to our advice noteⁱ.

Habitats Regulations Appraisal (HRA)

There appears to be some confusion in the Scoping Report over the HRA process. As detailed above considerable advice was given to the applicant on the HRA of the Orkney Harbour Masterplan and we advise the applicant to review this advice. Further information on the HRA process is available on our websiteⁱⁱ.

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

The advice in this letter is provided by NatureScot, the operating name of Scottish Natural Heritage.

I hope you find these comments helpful. Should you wish to discuss this response then please don't hesitate to contact me.

Yours sincerely,

Kim McEwen
Operations Officer – Northern Isles and North Highland
Kim.mcewen@nature.scot
01463 701671

Annex 1. We advise that the proposed development raises the following key issues in relation to natural heritage.

European Protected Areas

The proposed development is likely to have a significant effect on qualifying interests of the Scapa Flow pSPA, Hoy SPA, Orkney Mainland Moors SPA, Loch of Stenness Special Area of Conservation (SAC) and Sanday SAC. Therefore, effects on these sites features should be assessed for all phases of the development in the EIAR, as well as HRA. The EIA must provide sufficient information for the Competent Authority to be able to undertake appropriate assessments in view of these site's conservation objectives for their qualifying interests. Details of qualifying interests and conservation objectives can be found on our websiteⁱⁱⁱ.

Scapa Flow pSPA

The proposal is located within the Scapa Flow pSPA designated for its breeding red-throated diver and non-breeding black-throated diver, eider, goldeneye, great northern diver, long-tailed duck, red-breasted merganser, shag and Slavonian grebe. Potential impacts to features may arise from the permanent displacement of birds from the development footprint; disturbance of birds in the vicinity of the proposal during site investigation, construction and/or operational phases and the temporary or permanent loss of or damage to prey-supporting habitats in the development vicinity or at dredge spoil disposal sites. Of potentially greater importance than direct impacts is the associated increased levels of vessel traffic that are the intended consequence of the proposal. Many of the features of this site exhibit high or very high levels of behavioural sensitivity to vessel movements and the potential for impact on site integrity is highest for those species with relatively high levels of habitat specialisation and/or relatively small populations within this site. This includes black-throated diver, red-throated diver and Slavonian grebe. It remains unclear how the nature, routing and frequency/volume of vessel traffic through the Scapa Flow pSPA are anticipated to change as a consequence of this development. Therefore, it is important that the EIA and HRA also includes an assessment of these wider operational phase impacts.

Hoy SPA

The proposal has connectivity to cliff-nesting seabird interests of the Hoy SPA, including fulmar, great-black backed gull, great skua, common guillemot, kittiwake and puffin, as well as breeding red-throated diver. The proposal is well within foraging ranges of the cliff-nesting seabird features of the Hoy SPA and there is potential for disturbance to these features, although likely sensitivities are less than for wintering waterbirds. The footprint of the proposal itself is outwith the 10km foraging range for breeding red-throated diver associated with the Hoy SPA. However, as detailed above increased vessel traffic associated with the proposal within wider parts of Scapa Flow could have connectivity to the Hoy SPA population and should be assessed.

Orkney Mainland Moors SPA

The proposal is within 10km of parts of the Orkney Mainland Moors SPA, and hence potentially within the foraging range of breeding red-throated divers from this site, although actual diver nesting locations within the SPA may be more distant. Associated vessel movements across wider parts of Scapa Flow could have connectivity to red-throated divers from this site and should also be assessed.

North Orkney SPA

We would not consider there to be any connectivity for assessment purposes with the North Orkney pSPA, unless there are associated vessel movements during the construction phase (e.g. to deliver equipment or materials or to remove dredge spoil). If this is the case then information on the features of this site can be found on our websiteⁱⁱⁱ.

Loch of Stenness Special Area of Conservation (SAC)

The Loch of Stenness SAC is designated for its coastal lagoon feature and is of particular importance due to its large size and northern location. There is connectivity between the proposal and the SAC, and the potential that invasive non-native species could be introduced during construction or operation. Therefore, in our view, there is the potential for significant effects on this protected area.

Sanday SAC

The proposal is located within the 50km buffer radii of the Sanday SAC designated for harbour seal. Therefore, we would consider any harbour seal present within Scapa Flow to be connected to this SAC and should be assessed.

In order to comply with the Habitats Regulations, **Habitats Regulations Appraisals will have to demonstrate that the proposed development will not adversely affect the integrity of European Sites** listed above.

Sites of Special Scientific Interest (SSSI)

A number of the European sites detailed above are also designated as SSSIs. The designated features of these SSSIs that may be affected by the proposal are the same features covered by the European site designations and thus impacts to these features should be covered. The only exception to this is Waulkmill SSSI located approximately 7km west of the proposal, whose saltmarsh feature could be affected. This site may need to be considered in further detail when information is available on potential impacts to coastal processes and dredge spoil disposal.

Ornithology

As detailed above the proposal has the potential to impact upon a number of SPAs designated for marine birds. It is not clear from Section 5.5.2 exactly what terrestrial and marine bird surveys are proposed and in which season. Autumn through spring (September/October to April) surveys will be required for wintering waterbird features of the Scapa Flow pSPA. In addition, the new proposed location has a shallower water depth than the original location at Gaitnip and as such is potentially of greater importance to foraging red-throated diver in the breeding season. Surveys to determine usage of the development footprint and surrounding area by red-throated divers in the main chick-rearing period (late June to mid-August) would be helpful to assessing potential impacts for this species.

For a development of this scale and location we would recommend two years of bird survey to inform impacts to marine birds. However, one year may be sufficient depending on the results of the first year's survey. We recommend that the applicant provides details of the findings of the first relevant year's surveys, including full analyses and consideration of any relevant additional contextual or supporting information, in sufficient time to enable us to advise on the requirement for a second years survey.

Although we have previously provided advice to the applicant on aspects of the marine survey work required we have not yet seen a final survey methodology. Therefore, we would be keen to review methodology prior to survey work commencing to ensure that it is sufficient to inform the development.

Section 5.6.2 of the Scoping report suggests that the proposed area of terrestrial works is within grazing land that contains limited foraging opportunities for a low range of species and as such are being scoped out of the EIA. While the nature of the land is pasture, this does not necessarily imply it has no value. Furthermore, the proposal is located immediately adjacent to the Gaitnip Hill, Holm Local Nature Conservation Site designated for a number of breeding birds, including Schedule 1 hen harrier, merlin and short-eared owl. In addition, peregrine may be utilising this undeveloped coastline for foraging and breeding. Therefore, we recommend that simple survey work over the area, with an appropriate buffer zone of 500m around the site layout would adequately characterise the species present. A single year's survey of terrestrial bird species will be all that is required. At this stage we think it is unlikely that there will be any *terrestrial* bird cumulative impacts but this should be explicitly stated in the EIAR if this is the case.

European Protected Species (EPS)

Otter

It is noted and welcomed that an otter survey will be undertaken. We have advice on survey requirements, mitigation and licensing on our website^{iv}. If any impacts on otters are identified then mitigation measures should be provided in a Species Protection Plan.

Cetaceans

As detailed in Section 5.2.3 of the Scoping Report all species of dolphin, porpoise and whale are EPS. However, the list of species to be scoped in for assessment should also include humpback, fin, sperm, long-finned pilot and sei, curvier's beaked whale along with striped dolphin. Marine mammals, including cetaceans should be scoped in for all phases of the development. We previously provided advice on underwater noise modelling as part of the consultation on the Orkney Harbour Masterplan, and can provide further advice to the applicant if required. Mitigation should be proposed relating to the findings of this modelling and the applicant should be made aware that they may require a licence.

Benthic ecology and Priority Marine Features (PMF)

There is limited existing information available regarding benthic species and habitats present in the vicinity of the proposal. However, there are known kelp beds, a PMF, in the immediate vicinity that may be affected. Given the limited data and scale of the proposal we recommend survey work is undertaken to inform the EIA. The purpose of surveys would be to establish the benthic habitats and species present at the development location with particular focus on identifying presence of any PMFs. Where PMFs are identified, the extent and quality (e.g. condition, density etc.) of the features should be confirmed to help inform assessment. A combination of video/photo methods and grab sampling would be appropriate, but of these two methods collection of video/photo data would be the priority. We can provide further advice to the applicant on video survey methodology if required.

Seals

We agree that there is the potential for impacts to both grey and harbour seals from the proposed development but at this stage we recommend impacts to seals are assessed for all phases of the development. As mentioned above harbour seals in Scapa Flow may be connected to the Sanday SAC. Furthermore, the proposal is within a harbour seal conservation area^v and there are a number of

designated seal haul-outs close to the proposal. Information on designated seal haul-outs can be found on the NMPi website^{vi}. As above we previously provided advice to the applicant on underwater noise modelling and can provide further advice if needed. Mitigation should be proposed relating to the findings of this modelling.

Basking shark

There is no mention of basking shark within the Scoping Report. Basking sharks are a protected fish species and PMF, and regularly sighted in Scapa Flow. Therefore, an assessment on potential impacts on this species should be undertaken as part of the EIA and any mitigation should be detailed in the EIAR. The applicant should be made aware that they may require a basking shark licence.

Intertidal habitat

Section 5.3 of the Report identifies the potential for negative impacts on intertidal and subtidal habitats during construction through direct loss but there is no further mention of assessment within the Report. Our advice regarding subtidal habitats is covered above but impacts to the intertidal habitat should also be included within the EIAR.

Marine Invasive Non-Native Species (mINNS)

There is no mention of mINNS or biosecurity within the Scoping Report and we recommend that the potential impacts of mINNS be considered in the EIAR. There is the potential for introduction and spread of mINNS as a result of the proposed development during construction and operation. Furthermore, a number of mINNS are already present in Orkney waters and activities during construction and operation could facilitate spread. We recommend that site-based biosecurity plans for the proposal at the construction and operational phases to assist with managing the spread and introduction of mINNS are produced. There are a wide range of additional potential biosecurity measures that could be developed and we would be happy to advise further and on biosecurity plans if required.

Landscape and visual

Due to the location and scale of the proposal, including the potential for large vertical structures to be present during construction and operation, it is recommended that potential impacts on the Hoy and West Mainland National Scenic Area (NSA) is given further consideration in the EIAR.

Climate change

It is noted in Section 3.3.1 of the Report that it is proposed to exclude climate change impacts on the grounds that any negative impacts would be insignificant, as the facility may be used to support decarbonisation of marine fuels and support future offshore windfarm developments. However, it states in Section 2.2.1 potential use of the facility by the oil and gas sector. Due to the scale of the development we would expect some impacts from construction. If there are potentially significant positive or negative climate change benefits, including from the construction phase, these should be considered within the EIA.

Coastal processes

It states in Section 4.6 of the Scoping Report that it is not anticipated for the development to lead to any significant changes to coastal processes and thus a qualitative assessment is all that's required. At present, due to the scale of the development and without any detailed information regarding construction methodology, dredge spoil disposal, impacts from coastal reconfiguration from use of explosives or

appropriate mitigation measures, it is recommended that potential impacts on coastal processes and subsequent impacts on benthic habitat and foraging marine birds are assessed within the EIA.

Site investigation phase

Section 3.2 states that appraisals will consider the potential environmental impacts related to both the construction and operational phases, where applicable. Just to note that there is mention of a site-investigation phase within the Report and thus potential impacts relating to site investigation works should be included in the assessment where appropriate, in particular with respect to marine and terrestrial birds.

Cumulative Assessment

We note the intention of undertaking a cumulative assessment as part of the EIA, cumulative impacts will also need to be assessed as part of the HRA. Section 3.4 of the Scoping Report focusses on cumulative assessment with regards to other proposed harbour developments. However, the cumulative assessment needs to take into consideration other sectors including aquaculture, renewable energy developments, cable installations etc... further information on cumulative assessment was provided to the applicant as part of the consultation on the Orkney Harbour Masterplan. We consider that the Orkney Islands Council are best placed to advise the applicants on which proposals to include in the cumulative assessment.

Monitoring

Depending on the results of the ecological survey work to inform the development and on mitigation proposed it may be worth highlighting at this stage that ongoing surveys may be required to monitor construction and operational impacts.

Assessment of alternatives

The EIAR should also include an assessment of alternative locations or layouts to the proposed development.

Biodiversity enhancements

As part of the SEA process it was hoped that consideration could be given to the inclusion of opportunities for environmental enhancement as well as economic and social benefits. Potential examples of this was provided as part of the SEA consultation and we would be happy to discuss this further with the applicant.

ⁱ <https://www.nature.scot/handbook-environmental-impact-assessment-guidance-competent-authorities-consultees-and-others>

ⁱⁱ <https://www.nature.scot/professional-advice/planning-and-development/environmental-assessment/habitats-regulations-appraisal-hra>

ⁱⁱⁱ <https://sitelink.nature.scot/home>

^{iv} <https://www.nature.scot/professional-advice/planning-and-development/planning-and-development-advice/planning-and-development-protected-species>

^v <https://marine.gov.scot/information/conservation-areas-common-seals>

^{vi} <https://marinescotland.atkinsgeospatial.com/nmpi/default.aspx?layers=446>

Northern Lighthouse Board

MacFarlane M (Marc)

From: Gillian Burns <Gillian.Burns@nlb.org.uk>
Sent: 05 May 2021 10:29
To: MS Marine Licensing
Subject: RE: Orkney Islands Council Harbour Authority – Scapa Deep Water Quay – Scapa Flow, Orkney Islands - Scoping Consultation - By 21 May 2021
Attachments: O2_01_123.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Jack,

Please see the attached response from the Northern Lighthouse Board Ref : Orkney Islands Council Harbour Authority – Scapa Deep Water Quay – Scapa Flow, Orkney Islands.

If any further information is required please get in touch.

Best wishes,

Gillian

Official - Northern Lighthouse Board Email

Gillian Burns

Navigation Officer

NLB Navigation, 84 George Street, Edinburgh, EH2 3DA
0131 473 2431 / [Redacted]

Gillian.Burns@nlb.org.uk

www.nlb.org.uk



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Our values: Safety, Pride, Integrity, Teamwork, Fairness, Innovation, Respect, Environment

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From: MS.MarineLicensing@gov.scot <MS.MarineLicensing@gov.scot>

Sent: 21 April 2021 15:59

To: north@nature.scot; planning.north@sepa.org.uk; planning@orkney.gov.uk; navigationsafety@mcga.gov.uk; navigation <navigation@nlb.org.uk>; hmconsultations@hes.scot; rmerrylees@ukchamberofshipping.com; marine@crownestatescotland.com; DIO-safeguarding-offshore@mod.gov.uk; brian@fms.scot; alan@fms.scot; FOKirkwall2@gov.scot; orkney island council <harbours@orkney.gov.uk>; Scotland-EIA.Scoping-

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planning.scotland@rspb.org.uk; renewables@sff.co.uk; m.morrison@sff.co.uk; info@scottishfishermen.co.uk;
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Subject: Orkney Islands Council Harbour Authority – Scapa Deep Water Quay – Scapa Flow, Orkney Islands - Scoping Consultation - By 21 May 2021

Dear Sir/Madam,

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Orkney Islands Council Harbour Authority – Scapa Deep Water Quay – Scapa Flow, Orkney Islands

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Please submit your response electronically to ms.marinelicensing@gov.scot by 21 May 2021. If you are unable to meet this deadline, please contact us as soon as possible to discuss the possibility of an extension to the consultation period. If you have no comments to make please submit a “nil return” response.

Please be advised that the scoping report and this consultation request relate to the proposed marine licence applications and not the onshore elements of the works.

Yours faithfully,

Jack Versiani Holt
Marine Licensing Casework Officer
Marine Scotland - Marine Planning & Policy

Scottish Government | Marine Laboratory | 375 Victoria Road | Aberdeen | AB11 9DB

COVID-19: Marine Scotland - Licensing Operations Team(MS-LOT) is working from home and as a result determination of applications may take longer than our stated timelines. In addition MS-LOT is unable to respond to phone enquiries, please communicate with MS- LOT via email. Email addresses are MS.MarineRenewables@gov.scot for marine renewables correspondence or MS.MarineLicensing@gov.scot for all licensing queries.

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Northern Lighthouse Board

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Email: enquiries@nlb.org.uk

Your Ref: EIA Scoping email dated 21/04/21
Our Ref: GB/ML/O2_01_123

Mr. Jack Versiani Holt
Marine Licensing Casework Officer
Marine Scotland – Marine Planning and Policy
Marine Laboratory
375 Victoria Road
Aberdeen
AB11 9DB

04 May 2021

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

Orkney Islands Council Harbour Authority – Expansion of Hatston Pier and Harbour – Hatston and Construction of Scapa Deep Water Quay – Scapa Flow – Orkney Islands

Thank you for your e-mail correspondence dated 21st April 2021 relating to the EIA Scoping opinion submitted by **Orkney Islands Council Harbour Authority** for their proposals to extend Hatston Pier/ Harbour and construct a new Scapa Deep Water Quay, Scapa Flow, Orkney Islands.

Northern Lighthouse Board are content with the proposed EIA study and will respond in full to the Marine Licence application.

Yours sincerely
[Redacted]

Peter Douglas
Navigation Manager

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Orkney Islands Council

MacFarlane M (Marc)

From: Shona Turnbull <Shona.Turnbull@orkney.gov.uk>
Sent: 20 May 2021 12:44
To: MS Marine Licensing
Subject: OIC Scapa Deep Water - scoping consultation
Attachments: 21_186_MLSCO Scapa Deep Water Quay - OIC Delegate Response.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Classification: OFFICIAL

Response attached.

Regards,
Shona

Dr Shona Turnbull
Marine Planner
Orkney Islands Council

Working from home, so email is the best contact

Customer Survey

Your feedback is important to us. Please take a few moments to complete our online survey (see link below) in respect of your recent contact with the Planning Service.
Many thanks for your time.

[Planning Service Survey](#)

21/186/MLSCO – Scapa Deep Water Quay

Overview

The proposed development site is spread over three locations: construction of an access road leading from the A961 down through the valley to the coast; excavation and levelling of an area of land above the shore and in the intertidal zone; and construction of the quay within the Bay of Deepdale. The construction phase would impact on a range of natural resources, including land, soil, water and biodiversity; and there is also potential for impacts on water, biodiversity and marine processes during the operational phase.

Policy Context

Scotland's National Marine Plan should inform the preparation of the EIAR for this proposed development and any subsequent consent applications.

The Orkney Local Development Plan policies should be considered in relation to this proposed development. Policy 12 Coastal Development is of particular relevance. The environmental effects of the proposed development should be assessed and addressed in line with the requirements of Orkney Local Development Plan Policy 9: Natural Heritage and Landscape, and Supplementary Guidance: Natural Environment. These documents are available on the Council's website at <http://www.orkney.gov.uk/Service-Directory/O/Orkney-Local-Development-Plan.htm> and <http://www.orkney.gov.uk/Service-Directory/D/natural-environment.htm>

The developer is also advised to refer to the Orkney Local Biodiversity Action Plan which is available at <https://www.orkney.gov.uk/Service-Directory/L/Local-Biodiversity-Plan.htm>. Please note that, although the current version of the LBAP covers the period 2018-2022, the Audit and Habitat Action Plans from the 2002 Plan provide much of the context to the current Plan and continue to be relevant to the protection and enrichment of biodiversity in the Orkney Isles.

The Pilot Pentland Firth and Orkney Waters Marine Spatial Plan should be considered in relation to the proposed development. The Plan has been approved by Scottish Ministers for use by the Marine Scotland Licensing Operations Team (MS-LOT) as a material consideration in the determination of marine licence and section 36 consent applications within the Pentland Firth and Orkney Waters area. The Plan's Sectoral and General Policies should be considered alongside the relevant legislation, policies and plans set out in Section 3 and Annex 2 of the Plan. As a non-statutory Plan, it complements and supports existing ambitions and responsibilities rather than replace them.

The Highland Council and Orkney Islands Council have adopted the pilot Plan as non-statutory planning guidance, acknowledging the status of the Plan as a material consideration in the determination of relevant planning applications. Orkney Islands Council has also adopted the Plan as a material consideration in the determination of works licence applications in the Orkney Harbour Area.

To implement the Plan's overall vision, aims and objectives, the Plan's policy framework consists of a suite of General Policies and Sectoral Policies. All the policies in the Plan are afforded equal weight in decision-making and should be read in conjunction with each other.

The pilot Plan's General Policies, in principle, apply to all development(s) and activities and should be considered in relation to port and harbour development. The relevance of the General Policies to any given development and/or activity varies depending on the particular circumstances including type, scale, location and any potential impacts. All the General Policies, Sectoral Policy 6 and Sectoral Policy 7 are considered relevant to the proposal to excavate hillside and reclaim land to create a laydown area, construct a deep water pier and an access road at the Bay of Deepdale.

The conclusions reached in the scoping report should not determine what should or should not be scoped in until such time as the feedback from the statutory consultees has been received and considered.

Scapa Flow pSPA

The site of the proposed quay development is located within the Scapa Flow proposed Special Protection Area (pSPA) where the qualifying features are breeding red-throated diver, and non-breeding (wintering) great northern diver, black-throated diver, Slavonian grebe, common eider, long-tailed duck, red-breasted merganser, and European shag. Bird surveys should therefore be undertaken at the appropriate times of year, in line with guidance provided by NatureScot, to obtain updated information about the numbers and distribution of species which may be affected by the development proposal including potential disturbance by vessel movements associated with the development.

Benthic habitat surveys should also be undertaken, to assess likely effects on the availability of foraging habitat for these species, as well as the capacity for species to move to alternative areas within the pSPA to avoid disturbance.

The findings from these surveys should then inform assessment of the likely effects of all stages of the development on the pSPA and its qualifying features. The conclusions of the assessment should be used to help shape the final development proposal and inform mitigation plans.

Effects on pSPA bird features should be considered in the EIAR, as well as in the HRA.

Gaitnipp Hill Local Nature Conservation Site (LNCS)

The proposed development site is located immediately to the south of the Gaitnipp LNCS, a site which is important for a variety of breeding birds, including birds of prey. Although no development is proposed on any part of the LNCS there is still potential for indirect effects, for example from light pollution. The EIA should assess the likely effects on the LNCS and identify mitigation measures where appropriate.

Wider ornithology

Landward elements of the development have potential to impact on a number of bird species which may nest in the area, so breeding bird surveys should be undertaken in line with guidance provided by NatureScot, to obtain updated information about the species which may be affected. The findings of these surveys should inform mitigation measures to avoid or minimise disturbance to breeding birds and their fledglings.

Intertidal habitats

An intertidal survey should be undertaken to identify the habitats and species that are likely to be impacted by the development. The UK BAP / LBAP habitat Coastal vegetated shingle is listed in Section

5.2.2 of the Scoping Report; however, other intertidal habitats included in the Scottish Biodiversity List / Orkney LBAP may be present within the area.

Benthic habitats and Priority Marine Features

Benthic surveys should identify the range of benthic habitats and species within the area that could be affected by the proposal, focussing particularly on the potential presence of Priority Marine Features (PMFs). Further information on those habitats and species that are identified as PMFs is available on the NatureScot website at <https://www.nature.scot/naturescot-commissioned-report-406-descriptions-scottish-priority-marine-features-pmfs>

The findings of these surveys should inform mitigation plans to avoid or minimise disturbance and/or damage to benthic habitats and species, in particular those identified as PMFs.

Cetaceans and basking sharks

Cetaceans are regularly sighted within Scapa Flow where, due to the semi-enclosed nature of the Flow and the limited availability of escape routes, noise disturbance could lead to panic, confusion and temporary disorientation, with potential for cetacean strandings to occur. It could also cause exclusion from feeding areas.

All cetacean species (whales, dolphins and porpoise) are classed as European Protected Species. If any activity is likely to cause disturbance or injury to a European Protected Species, a license is required to undertake the activity legally. Additionally, if any activity associated with the development proposal is likely to cause disturbance or injury to basking sharks, a licence would also be required to undertake activity legally. Records of basking shark sightings along the Holm coast have been reported to the Orkney Wildlife Information and Recording Centre. The locations of these records are indicated at <https://orkneylibrary.org.uk/orkney-wildlife-information-and-records-centre/mapping/>

Assessment should therefore be undertaken to determine the potential effects on cetaceans and basking sharks at all stages of the development proposal and to identify mitigation measures that would avoid or minimise the risk of disturbance.

Any EPS licensing requirement should be discussed with the Marine Scotland Licencing Operations Team (MS-LOT). Information on licensing is available on the Scottish Government website at <https://www.gov.scot/policies/marine-and-fisheries-licensing/european-protected-species/>

Seals

Both grey and harbour seals are found within Orkney waters and the Scapa Flow coastline includes several designated seal haulout sites. The locations of these sites are displayed on the National Marine Plan interactive map at <https://marinescotland.atkinsgeospatial.com/nmpi/default.aspx?layers=446>

Seals also haul out in other, undesignated locations and significant numbers of the animals have been seen hauled out on the rocky intertidal to the south of the proposed development site between Deepdale and the Westerbister fish farm.

Both grey and harbour seals are susceptible to disturbance, including underwater noise and the animals are particularly vulnerable during their pupping seasons. Grey seal pups remain on land for the first three weeks of their life and are reliant on their mothers returning onshore to feed them. Harbour seal

numbers in Orkney waters have decreased significantly in recent years and it is important that they are not subjected to additional pressures. Assessment should therefore be undertaken of the likely effects of all stages of the development on both grey and harbour seals and the findings used to identify mitigations measures that would avoid or minimise disturbance.

European Protected Species – otter

[Redacted]

The findings of the survey should enable any licensing requirement to be determined. Guidance on otter licences for development is available on the NatureScot website at <https://www.nature.scot/professional-advice/protected-areas-and-species/licensing/species-licensing-z-guide/otters/otters-licences-development>

A species protection plan should be drawn up if evidence of otters, their holts, couches or other places of shelter are found on or near the development site.

The water environment

The habitat 'Burns and Canalised Burns' is identified in the Orkney Local Biodiversity Action Plan as a locally important habitat and should be added to the list in Section 5.2.2. The Burn of Deepdale / Button may support spawning habitat for seatrout, a Priority Marine Species. Although seatrout spend much of their time at sea, they return to freshwater to spawn. The developer is advised to contact the Orkney Trout Fishing Association for further information.

The potential effects of all stages of the development on the water environment should be assessed and addressed. Careful consideration should be given to any planned onsite storage of excavated soils, as stockpiles of bare soil are vulnerable to erosion, particularly during wet weather. Poorly sited stockpiles may pose a risk to the Burn of Deepdale / Button and associated drainage ditches, as well as the marine environment. These assessments should be undertaken in line with guidance which is available from the SEPA website at www.SEPA.org.uk/.

Coastal processes

Section 4.6 of the scoping report states that 'the construction activities involved within the proposed development including dredging, construction of the quay, and land reclamation all have the potential to impact the coastal processes within Scapa Flow. However, the development site is considered to have low energy without significant sediment transport, with an absence of fine sediment. In this context it is considered that a qualitative assessment of the impact of the proposed development on coastal processes, including wave action, tidal current and sediment transport is appropriate'.

The assessment of effects on coastal processes should be informed by advice from NatureScot regarding sediment transport in the vicinity of the proposed development and benthic habitat surveys to determine proximity to and interactions with potentially sensitive habitat features, particularly PMFs. There is a hydrodynamic model of Scapa Flow that may be useful for the purposes of assessment.

Further information is also required to determine the nature of the sediment proposed to be dredged and the proposed method of disposal of dredged materials and associated effects.

Assessment of alternatives

The EIAR should include an assessment of the alternatives considered to this development including factors to minimise environmental impacts.

Local communities – Amenity and noise

The scoping report concludes that increases in traffic on the local road network as a result of the development are regarded as insignificant. It is recommended that OIC Roads be consulted to establish any potential requirement for a traffic impact assessment.

The EIA process should assess construction and operational impacts on the amenity of local residents and businesses due to noise, vibration, dust or other impacts. The scoping report states that an assessment of construction noise should be deferred until later in the development process.

Seascape/landscape and visual

The effects on landscape, seascape and coastal character are likely to be significant as a result of the proposed development and a full SLVIA should be required as part of the EIAR. This should include an assessment of cumulative effects.

In the absence of an identified zone of theoretical visibility it is not possible to comment at this stage on the identification of seascape, landscape and visual receptors. Due to the proposed nature and scale of the development including large vertical structures (e.g. cranes, assembly of offshore wind turbines etc) it is likely that seascape, landscape and visual impacts will be experienced across a geographically widespread area. It is therefore considered premature to conclude in the scoping report at para. 7.4.2 that 'Considering the relatively long distance from the site to the NSA, it is unlikely that any significant effects on NSA Special Qualities would be experienced'. It is recommended that the developer should identify the zone of theoretical visibility and consult the planning authority to identify viewpoints and key receptors. This is likely to include historic environment assets.

Socio-economic impact assessment

The EIA will need to demonstrate that significant adverse social, economic and operational effects on existing activities and/or infrastructure have been avoided or, where avoidance is not possible, adverse effects have been appropriately mitigated. The assessment should consider the significant direct economic impacts, indirect/wider economic impacts, demographic impacts, impacts local infrastructure and services.

Other users of the coastal and marine environment

An assessment of how the development proposal will comply with National Marine Plan policy GEN 4 Co-existence should be undertaken as part of the EIA process. This should include any significant effects on:

- Fish farms and operations due to noise, water quality (silt, smothering etc) during construction phase, and noise and disturbance during operational phase.

- Commercial fishing opportunities taking into account seasonality and the year-round operation of the affected fishery and any displacement effects.
- Coastal and/or marine recreational activities.

Cumulative impact assessment

National Marine Plan policy Gen 21 Cumulative impacts states the requirement for public authorities to address cumulative impacts on ecosystems in decision making. The scoping report explains that cumulative impacts will be assessed for each relevant EIA topic.

The assessment of cumulative effects should consider whether other projects would make potential effects more likely to occur, would make potential effects more likely to occur at a significant level or would generate any new or different effects.

The cumulative impact assessments should consider likely significant cumulative effects from:

- Other harbour developments, including the proposed development/activities at Hatston.
- Offshore wind and marine renewable energy development/activities.
- Aquaculture development/activities.
- General shipping activities.

It is recommended that the developer should consult the planning authority to determine which new developments are currently live within the planning system prior to undertaking the cumulative impacts assessments.

It is likely that appropriate planning and timing of works will help to minimise the potential for negative cumulative and in-combination effects.

Positive effects for biodiversity

As required by the Planning (Scotland) Act 2019, National Planning Framework 4 will establish outcomes for how development will contribute to securing 'positive effects for biodiversity'. As the Scapa Deep Water Quay is a Candidate National Development, it is recommended that the developer should consider potential options for delivering such positive effects for biodiversity at the earliest opportunity.

Royal Society for the Protection of Birds

MacFarlane M (Marc)

From: Josephine Wells <Josephine.Wells@rspb.org.uk>
Sent: 20 May 2021 10:19
To: planningconsultation@orkney.gov.uk
Cc: MS Marine Licensing
Subject: RE: Scoping Application Consultation 21/159/SCO and 21/160/SCO
Attachments: 21_159_SCO_RSPB.pdf; 21_160_SCO_RSPB.pdf

Good morning,

Unfortunately I had noted the consultation deadline for this application down as the 21st (tomorrow) but have just realised this was in fact the 17th. I have copied our responses to MS Marine Licensing as I note from the report they have also been requested to adopt a scoping consultation based on the same available information. I would be very appreciative if our comments could still be considered and apologise for the late submission.

Many thanks,

Jo

Josephine Wells
Conservation Officer

Orkney Office 12-14 North End Road, Stromness, KW16 3AG Mobile [Redacted]

rspb.org.uk

RSPB Scotland is part of the RSPB, the UK's largest nature conservation charity, inspiring everyone to give nature a home. Together with our partners, we protect threatened birds and wildlife so our towns, coast and countryside will teem with life once again. We play a leading role in BirdLife International, a worldwide partnership of nature conservation organisations.

The Royal Society for the Protection of Birds (RSPB) is a registered charity: England and Wales no. 207076, Scotland no. SC037654

-----Original Message-----

From: planningconsultation@orkney.gov.uk <planningconsultation@orkney.gov.uk>
Sent: 26 April 2021 12:03
To: Orkney <Orkney@rspb.org.uk>; Josephine Wells <Josephine.Wells@RSPB.ORG.UK>
Subject: Scoping Application Consultation 21/159/SCO

See attached documents

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Orkney Islands Council Planning Department
By email: planningconsultation@orkney.gov.uk

Cc. Marine Scotland Licensing Operations Team
By email: MS.MarineLicensing@gov.scot

20 May 2021

Dear Margaret,

Scoping – Scapa Deep Water Quay – Scapa Flow, Orkney (Orkney Islands Council Reference: 21/160/SCO)

Thank you for consulting RSPB Scotland on the above scoping report.

We believe Marine Scotland has received a separate request for the adoption of a scoping opinion under The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017. The same report (EnviroCentre Report No 9435, Project No 673702, Status: final, dated 30 March 2021) has been supplied to accompany both requests. Our comments are therefore relevant to both organisations.

RSPB Scotland advises that this proposal has potential to impact on a number of bird species of conservation importance. Having reviewed the Scoping report, we wish to highlight the following comments.

Location

The proposed location lies within the Scapa Flow proposed Special Protection Area (pSPA), designated for the areas' international importance for large numbers of great northern diver, red-throated diver, black-throated diver, Slavonian grebe as well as migratory populations of European shag, common eider, long-tailed duck, common goldeneye and red-breasted merganser. These species are attracted to the sheltered sounds and bays of the coastline in order to forage and rest and are also utilised by breeding species such as common eider and red-throated diver during the spring and summer.

Appropriate Assessment

Given the nature of the development and the proximity to the pSPA, we wish to highlight that that the OIC/ Marine Scotland, as the competent authority, must consider the Habitat Regulations and will need to undertake an appropriate assessment on the basis of potential adverse impacts to the pSPA species.

Terrestrial ecology

**RSPB Scotland
Orkney Office**
12 – 14 North End Road
Stromness
KW16 3AG

Tel 01856 850176
Fax 01856 851311

Facebook: RSPB Scotland
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rspb.org.uk

The proposed location is adjacent to the Gaitnip Hill Local Nature Conservation Site (LNCS) which has been classified for supporting nationally important species such as hen harrier, short-eared owl, curlew and lapwing. Given the proximity and scale of the development, Gaitnip Hill LNCS and the species it supports is likely to be impacted by the development through disturbance from construction and operational activity due to increased noise, lighting and vehicle movements. We would therefore welcome inclusion of this site in the Environmental Impact Assessment Report (EIAR).

Climate

We are surprised that the development's impact on climate change has been scoped out of further analysis based on the rationale that there will be a negligible impact from the development, which includes the construction of a large new quay, reclaimed laydown area and new access road. Whilst the development includes the provision of suitable handling facilities for renewable energy components and the storage of alternative fuels, it would also facilitate future oil and gas supply operations (see section 2.2.1 of the Scoping Report). Given the Scottish Government's ambitious targets for net-zero emissions by 2045, we consider further analysis of the carbon-cost of this development and the indirect climate impacts should be included in the EIAR.

Biosecurity

The scoping report makes no mention of Biosecurity. This is an important matter – invasive non-native species can spread quickly, damage human health and overwhelm native ecosystems. It can also result in substantial economic expenditure on control and eradication under the Environmental Liability (Scotland) Regulations, the "polluter pays" principle. As highlighted in NatureScot's Marine Biosecurity planning report,¹ there is now a legal requirement to take all reasonable steps and all due diligence to avoid "*causing an animal to be in a place outwith its native range*", and "*planting or causing any plant species to grow in the wild outwith its native range*",² which includes through the accidental transfer and spread on non-native species. We recommend Biosecurity is fully considered and advise that the measures to avoid and prevent this possible significant adverse effect on the environment, along with any proposed monitoring arrangements, are included within the scope of the Ecology chapter within the EIAR.

Cumulative Impacts

A screening consultation was carried out in July 2020 for a further development at Scapa Pier (planning reference **20/239/SCR**). Although this is at an early stage, an assessment of what cumulative impacts may occur should both developments be granted permission should be included in the EIAR. Additionally, the cumulative impact assessment should include all other existing and planned developments with the potential to impact upon Scapa Flow pSPA.

We hope you find these comments helpful. Should you wish to discuss any of the above please do not hesitate to contact me.

Yours sincerely,

[Redacted]

Josephine Wells
Conservation Officer
josephine.wells@rspb.org.uk.

¹ Payne, R.D., Cook, E.J. and Macleod, A. (2014). Marine Biosecurity Planning – Guidance for producing site and operation-based plans for preventing the introduction of non-native species. Report by SRSL Ltd. in conjunction with Robin Payne to the Firth of Clyde Forum and Scottish Natural Heritage

² Wildlife and Natural Environment (Scotland) Act 2011 (legislation.gov.uk)

Royal Yachting Association

MacFarlane M (Marc)

From: Pauline McGrow <Pauline.McGrow@ryascotland.org.uk>
Sent: 19 May 2021 13:45
To: MS Marine Licensing
Subject: RE: Orkney Islands Council Harbour Authority – Scapa Deep Water Quay – Scapa Flow, Orkney Islands - Scoping Consultation - By 21 May 2021

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Jack,

I write to inform you that RYA Scotland agrees that recreational boating can be scoped out.

Kind Regards

Pauline

Pauline McGrow
Senior Administrator
Mob: [Redacted]

Royal Yachting Association Scotland
T: 0131 317 7388
E: pauline.mcgrow@ryascotland.org.uk



RYA Scotland, Caledonia House, 1 Redheughs Rigg, South Gyle, Edinburgh, EH12 9DQ
T: 0131 317 7388, Fax: 0844 556 9549

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From: MS.MarineLicensing@gov.scot <MS.MarineLicensing@gov.scot>
Sent: 21 April 2021 15:59
To: north@nature.scot; planning.north@sepa.org.uk; planning@orkney.gov.uk; navigationsafety@mcga.gov.uk; navigation@nlb.org.uk; hmconsultations@hes.scot; rmerrylees@ukchamberofshipping.com;

marine@crownestatescotland.com; DIO-safeguarding-offshore@mod.gov.uk; brian@fms.scot; alan@fms.scot; FOKirkwall2@gov.scot; harbours@orkney.gov.uk; Scotland-EIA.Scoping-Opinions@hse.gov.uk; Jim.Watson@gov.scot; Vanessa.Brown@gov.scot; Stuart.Bell@gov.scot; katew@orkneysustainablefisheries.co.uk; orkneyfisheries@btconnect.com; secretary@marinesafetyforum.org; David.Pratt@gov.scot; Karl.Zaczek@transport.gov.scot; Pauline McGrow <Pauline.McGrow@ryascotland.org.uk>; planning.scotland@rspb.org.uk; renewables@sff.co.uk; m.morrison@sff.co.uk; info@scottishfishermen.co.uk; planningconsultations@scottishwater.co.uk; reception@scottishwildlifetrust.org.uk; scollin@scottishwildlifetrust.org.uk; development_management@transport.gov.scot; Dario.dallaCosta@transport.gov.scot; Chris.Wilcock@transport.gov.scot; Douglas.Keith@visitscotland.com; fiona.read@whales.org; sarah.dolman@whales.org
Cc: helen.croxson@mcga.gov.uk; nick.salter@mcga.gov.uk; holmcc@btinternet.com; kirkwallandstolacc@gmail.com; kross@ukchamberofshipping.com; migoe@ukchamberofshipping.com
Subject: Orkney Islands Council Harbour Authority – Scapa Deep Water Quay – Scapa Flow, Orkney Islands - Scoping Consultation - By 21 May 2021

Dear Sir/Madam,

The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) (“the EIA Regulations”)

Orkney Islands Council Harbour Authority – Scapa Deep Water Quay – Scapa Flow, Orkney Islands

In respect of the proposed marine licence applications for the above works under the Marine (Scotland) Act 2010, Orkney Island Council Harbour Authority has requested the Scottish Ministers adopt a scoping opinion in relation to the above proposed works under regulation 14(1) of the EIA Regulations.

The scoping report submitted by the applicant can be found at:

<https://marine.gov.scot/data/scoping-scapa-deep-water-quay-scapa-flow-orkney>

To assist the Scottish Ministers in adopting a comprehensive scoping opinion, which will outline the scope and level of detail of information to be provided in the Environmental Impact Assessment (EIA) Report to be submitted by the applicant with their proposed marine licence applications, please review the scoping report and advise on **what you consider should be included within or excluded from the scope of the EIA for the proposed works**. In doing so you may wish to consider any comments you may have regarding data sources, proposed methodologies or the requirement for specific studies.

Please submit your response electronically to ms.marinelicensing@gov.scot by 21 May 2021. If you are unable to meet this deadline, please contact us as soon as possible to discuss the possibility of an extension to the consultation period. If you have no comments to make please submit a “nil return” response.

Please be advised that the scoping report and this consultation request relate to the proposed marine licence applications and not the onshore elements of the works.

Yours faithfully,

Jack Versiani Holt
Marine Licensing Casework Officer
Marine Scotland - Marine Planning & Policy

Scottish Government | Marine Laboratory | 375 Victoria Road | Aberdeen | AB11 9DB

COVID-19: Marine Scotland - Licensing Operations Team(MS-LOT) is working from home and as a result determination of applications may take longer than our stated timelines. In addition MS-LOT is unable to respond to phone enquiries, please communicate with MS- LOT via email. Email addresses are

MS.MarineRenewables@gov.scot for marine renewables correspondence or MS.MarineLicensing@gov.scot for all licensing queries.

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Scottish Environmental Protection Agency

MacFarlane M (Marc)

From: Planning.North <Planning.North@sepa.org.uk>
Sent: 18 May 2021 17:05
To: MS Marine Licensing
Subject: Re: Orkney Islands Council Harbour Authority – Scapa Deep Water Quay – Scapa Flow, Orkney Islands - Scoping Consultation - By 21 May 2021. SEPA response 1088
Attachments: SEPA response 1088_2021-05-18_16-00.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

OFFICIAL – BUSINESS

Thank you for consulting SEPA on the above proposal. Please find our response attached.

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From: MS.MarineLicensing@gov.scot <MS.MarineLicensing@gov.scot>
Sent: 21 April 2021 15:59
To: north@nature.scot <north@nature.scot>; Planning.North <Planning.North@sepa.org.uk>; planning@orkney.gov.uk <planning@orkney.gov.uk>; navigationsafety@mcga.gov.uk <navigationsafety@mcga.gov.uk>; navigation@nlb.org.uk <navigation@nlb.org.uk>; hmconsultations@hes.scot <hmconsultations@hes.scot>; rmerrylees@ukchamberofshipping.com <rmerrylees@ukchamberofshipping.com>; marine@crownestatescotland.com <marine@crownestatescotland.com>; DIO-safeguarding-offshore@mod.gov.uk <DIO-safeguarding-offshore@mod.gov.uk>; brian@fms.scot <brian@fms.scot>; alan@fms.scot <alan@fms.scot>; FOKirkwall2@gov.scot <FOKirkwall2@gov.scot>; harbours@orkney.gov.uk <harbours@orkney.gov.uk>; Scotland-EIA.Scoping-Opinions@hse.gov.uk <Scotland-EIA.Scoping-Opinions@hse.gov.uk>; Jim.Watson@gov.scot <Jim.Watson@gov.scot>; Vanessa.Brown@gov.scot <Vanessa.Brown@gov.scot>; Stuart.Bell@gov.scot <Stuart.Bell@gov.scot>; katew@orkneysustainablefisheries.co.uk <katew@orkneysustainablefisheries.co.uk>; orkneyfisheries@btconnect.com <orkneyfisheries@btconnect.com>; secretary@marinesafetyforum.org <secretary@marinesafetyforum.org>; David.Pratt@gov.scot <David.Pratt@gov.scot>; Karl.Zaczek@transport.gov.scot <Karl.Zaczek@transport.gov.scot>; Pauline.McGrow@ryascotland.org.uk <Pauline.McGrow@ryascotland.org.uk>; planning.scotland@rspb.org.uk <planning.scotland@rspb.org.uk>; renewables@sff.co.uk <renewables@sff.co.uk>; m.morrison@sff.co.uk <m.morrison@sff.co.uk>; info@scottishfishermen.co.uk <info@scottishfishermen.co.uk>; planningconsultations@scottishwater.co.uk <planningconsultations@scottishwater.co.uk>; reception@scottishwildlifetrust.org.uk <reception@scottishwildlifetrust.org.uk>; scollin@scottishwildlifetrust.org.uk <scollin@scottishwildlifetrust.org.uk>; development_management@transport.gov.scot <development_management@transport.gov.scot>; Dario.dallaCosta@transport.gov.scot <Dario.dallaCosta@transport.gov.scot>; Chris.Wilcock@transport.gov.scot <Chris.Wilcock@transport.gov.scot>; Douglas.Keith@visitscotland.com <Douglas.Keith@visitscotland.com>; fiona.read@whales.org <fiona.read@whales.org>; sarah.dolman@whales.org <sarah.dolman@whales.org>
Cc: helen.croxson@mcga.gov.uk <helen.croxson@mcga.gov.uk>; nick.salter@mcga.gov.uk <nick.salter@mcga.gov.uk>; holmcc@btinternet.com <holmcc@btinternet.com>; kirkwallandstolacc@gmail.com <kirkwallandstolacc@gmail.com>; kross@ukchamberofshipping.com <kross@ukchamberofshipping.com>;

migoe@ukchamberofshipping.com <migoe@ukchamberofshipping.com>

Subject: Orkney Islands Council Harbour Authority – Scapa Deep Water Quay – Scapa Flow, Orkney Islands - Scoping Consultation - By 21 May 2021

CAUTION: This email originated from outside the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Sir/Madam,

The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) (“the EIA Regulations”)

Orkney Islands Council Harbour Authority – Scapa Deep Water Quay – Scapa Flow, Orkney Islands

In respect of the proposed marine licence applications for the above works under the Marine (Scotland) Act 2010, Orkney Island Council Harbour Authority has requested the Scottish Ministers adopt a scoping opinion in relation to the above proposed works under [regulation 14\(1\)](#) of the EIA Regulations.

The scoping report submitted by the applicant can be found at:

<https://marine.gov.scot/data/scoping-scapa-deep-water-quay-scapa-flow-orkney>

To assist the Scottish Ministers in adopting a comprehensive scoping opinion, which will outline the scope and level of detail of information to be provided in the Environmental Impact Assessment (EIA) Report to be submitted by the applicant with their proposed marine licence applications, please review the scoping report and advise on **what you consider should be included within or excluded from the scope of the EIA for the proposed works**. In doing so you may wish to consider any comments you may have regarding data sources, proposed methodologies or the requirement for specific studies.

Please submit your response electronically to ms.marinelicensing@gov.scot by 21 May 2021. If you are unable to meet this deadline, please contact us as soon as possible to discuss the possibility of an extension to the consultation period. If you have no comments to make please submit a “nil return” response.

Please be advised that the scoping report and this consultation request relate to the proposed marine licence applications and not the onshore elements of the works.

Yours faithfully,

Jack Versiani Holt
Marine Licensing Casework Officer
Marine Scotland - Marine Planning & Policy

Scottish Government | Marine Laboratory | 375 Victoria Road | Aberdeen | AB11 9DB

COVID-19: Marine Scotland - Licensing Operations Team(MS-LOT) is working from home and as a result determination of applications may take longer than our stated timelines. In addition MS-LOT is unable to respond to phone enquiries, please communicate with MS- LOT via email. Email addresses are MS.MarineRenewables@gov.scot for marine renewables correspondence or MS.MarineLicensing@gov.scot for all licensing queries.

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OFFICIAL – BUSINESS



Jack Versiani Holt
Marine Licensing Casework Officer
Marine Scotland - Marine Planning & Policy
Scottish Government
Marine Laboratory
375 Victoria Road
Aberdeen
AB11 9DB

Contact by email:
Alison Wilson

18 May 2021

By email only to: ms.marinelicensing@gov.scot

Dear Mr Holt

**The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) ("the EIA Regulations")
Orkney Islands Council Harbour Authority – Scapa Deep Water Quay – Scapa Flow, Orkney Islands**

Thank you for consulting SEPA on the scoping opinion for the above development proposal by way of your email received on 21 April 2021.

Further to our advice on the Orkney Harbours Masterplan Phase 1, which this is part of, and our site-specific comments on this proposal at the screening stage, refer our letter of 5 August 2020 (our reference PCS/172174), in regard to impacts on the marine environment, it would seem that all of the proposed activities, will be covered by our [SEPA standing advice for The Department of Energy and Climate Change and Marine Scotland on marine consultation](#), which should be referred to for further information. We have no further site-specific comments or advice to add.

If you have any queries relating to this letter, please contact me by email at planning.north@sepa.org.uk.



001

Chairman
Bob Downes

Chief Executive
Terry A'Hearn

SEPA Aberdeen Office
Inverdee House, Baxter Street
Torry, Aberdeen AB11 9QA
tel 01224 266600 fax 01224 896657
www.sepa.org.uk • customer enquiries 03000 99 66 99

Yours sincerely

Alison Wilson
Senior Planning Officer
Planning Service

Disclaimer

This advice is given without prejudice to any decision made on elements of the proposal regulated by us, as such a decision may take into account factors not considered at this time. We prefer all the technical information required for any SEPA consents to be submitted at the same time as the planning or similar application. However, we consider it to be at the applicant's commercial risk if any significant changes required during the regulatory stage necessitate a further planning application or similar application and/or neighbour notification or advertising. We have relied on the accuracy and completeness of the information supplied to us in providing the above advice and can take no responsibility for incorrect data or interpretation, or omissions, in such information. If we have not referred to a particular issue in our response, it should not be assumed that there is no impact associated with that issue. For planning applications, if you did not specifically request advice on flood risk, then advice will not have been provided on this issue. Further information on our consultation arrangements generally can be found on our [website planning pages](#).

Scottish Water

MacFarlane M (Marc)

From: Planning Consultations <PlanningConsultations@scottishwater.co.uk>
Sent: 07 May 2021 15:56
To: MS Marine Licensing
Subject: SW Ref: DSCAS-0038399-D4K - Your Ref: Orkney Scapa Deep Water
Attachments: Planning Consultation Orkney Deep Water Quay.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Local Planner,

Please see the attached letter regarding SW Case: **DSCAS-0038399-D4K**

If you have any questions then please do not hesitate to contact Scottish Water.

Kind Regards,

Angela Allison.

Angela Allison

Technical Analyst

Scottish Water

Dedicated Freephone Helpline : 0800 389 0379

Business Email: Angela.Allison@scottishwater.co.uk

Team Mailbox: DevelopmentOperations@scottishwater.co.uk

Business Weblink: <https://www.scottishwater.co.uk/Business-and-Developers/Connecting-to-Our-Network>

The Bridge

Buchanan Gate Business Park

Cumbernauld Road

Stepps

Glasgow G33 6FB

Scottish Water

Trusted to serve Scotland

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Scottish Water

www.scottishwater.co.uk

Friday, 07 May 2021



Local Planner
Development Management, Development and Infrastructure
Orkney Islands Council
Kirkwall
KW15 1NY

Development Operations
The Bridge
Buchanan Gate Business Park
Cumbernauld Road
Stepps
Glasgow
G33 6FB

Development Operations
Freephone Number - 0800 3890379
E-Mail - DevelopmentOperations@scottishwater.co.uk
www.scottishwater.co.uk

Dear Sir/Madam

SITE: Scapa Deep Water Quay, Scapa Flow, Orkney, KW15 1SD
OUR REF: DSCAS-0038399-D4K
PROPOSAL: Construction, alteration or improvement of any works

Please quote our reference in all future correspondence

Audit of Proposal

Scottish Water has no objection to this planning application; however, the applicant should be aware that this does not confirm that the proposed development can currently be serviced and would advise the following:

Water Capacity Assessment

Scottish Water has carried out a Capacity review and we can confirm the following:

- ▶ This proposed development will be fed from Kirbister Water Treatment Works. Unfortunately, Scottish Water is unable to confirm capacity currently so to allow us to fully appraise the proposals we suggest that the applicant completes a Pre-Development Enquiry (PDE) Form and submits it directly to Scottish Water via [our Customer Portal](#) or contact Development Operations.
- ▶ The PDE should include calculations for any onshore water demand and an initial timescale for the build, including temporary accommodation work.

Waste Water Capacity Assessment

- ▶ Unfortunately, according to our records there is no public Scottish Water, Waste Water infrastructure within the vicinity of this proposed development therefore we would advise applicant to investigate private treatment options.



SW Public
General

To find out more about connecting your property to the water and waste water supply visit:



Please Note

- ▶ The applicant should be aware that we are unable to reserve capacity at our water and/or waste water treatment works for their proposed development. Once a formal connection application is submitted to Scottish Water after full planning permission has been granted, we will review the availability of capacity at that time and advise the applicant accordingly.
-

Asset Impact Assessment

According to our records, the development proposals impact on existing Scottish Water assets.

The applicant must identify any potential conflicts with Scottish Water assets and contact our Asset Impact Team via [our Customer Portal](#) to apply for a diversion.

The applicant should be aware that any conflict with assets identified may be subject to restrictions on proximity of construction. Please note the disclaimer at the end of this response.

Surface Water

For reasons of sustainability and to protect our customers from potential future sewer flooding, Scottish Water will not accept any surface water connections into our combined sewer system.

There may be limited exceptional circumstances where we would allow such a connection for brownfield sites only, however this will require significant justification from the customer taking account of various factors including legal, physical, and technical challenges.

In order to avoid costs and delays where a surface water discharge to our combined sewer system is anticipated, the developer should contact Scottish Water at the earliest opportunity with strong evidence to support the intended drainage plan prior to making a connection request. We will assess this evidence in a robust manner and provide a decision that reflects the best option from environmental and customer perspectives.

General notes:

- ▶ Scottish Water asset plans can be obtained from our appointed asset plan providers:
 - ▶ Site Investigation Services (UK) Ltd
 - ▶ Tel: 0333 123 1223
 - ▶ Email: sw@sisplan.co.uk
 - ▶ www.sisplan.co.uk



- ▶ Scottish Water's current minimum level of service for water pressure is 1.0 bar or 10m head at the customer's boundary internal outlet. Any property which cannot be adequately serviced from the available pressure may require private pumping arrangements to be installed, subject to compliance with Water Byelaws. If the developer wishes to enquire about Scottish Water's procedure for checking the water pressure in the area, then they should write to the Customer Connections department at the above address.
- ▶ If the connection to the public sewer and/or water main requires to be laid through land out-with public ownership, the developer must provide evidence of formal approval from the affected landowner(s) by way of a deed of servitude.
- ▶ Scottish Water may only vest new water or waste water infrastructure which is to be laid through land out with public ownership where a Deed of Servitude has been obtained in our favour by the developer.
- ▶ The developer should also be aware that Scottish Water requires land title to the area of land where a pumping station and/or SUDS proposed to vest in Scottish Water is constructed.
- ▶ Please find information on how to submit application to Scottish Water at [our Customer Portal](#).

Next Steps:

▶ All Proposed Developments

All proposed developments require to submit a Pre-Development Enquiry (PDE) Form to be submitted directly to Scottish Water via [our Customer Portal](#) prior to any formal Technical Application being submitted. This will allow us to fully appraise the proposals.

Where it is confirmed through the PDE process that mitigation works are necessary to support a development, the cost of these works is to be met by the developer, which Scottish Water can contribute towards through Reasonable Cost Contribution regulations.

▶ Non Domestic/Commercial Property:

Since the introduction of the Water Services (Scotland) Act 2005 in April 2008 the water industry in Scotland has opened to market competition for non-domestic customers. All Non-domestic Household customers now require a Licensed Provider to act on their behalf for new water and waste water connections. Further details can be obtained at www.scotlandontap.gov.uk

▶ Trade Effluent Discharge from Non Dom Property:

- ▶ Certain discharges from non-domestic premises may constitute a trade effluent in terms of the Sewerage (Scotland) Act 1968. Trade effluent arises from activities including; manufacturing, production and engineering; vehicle,



plant and equipment washing, waste and leachate management. It covers both large and small premises, including activities such as car washing and launderettes. Activities not covered include hotels, caravan sites or restaurants.

- ▶ If you are in any doubt as to whether the discharge from your premises is likely to be trade effluent, please contact us on 0800 778 0778 or email TEQ@scottishwater.co.uk using the subject "Is this Trade Effluent?". Discharges that are deemed to be trade effluent need to apply separately for permission to discharge to the sewerage system. The forms and application guidance notes can be found [here](#).
- ▶ Trade effluent must never be discharged into surface water drainage systems as these are solely for draining rainfall run off.
- ▶ For food services establishments, Scottish Water recommends a suitably sized grease trap is fitted within the food preparation areas, so the development complies with Standard 3.7 a) of the Building Standards Technical Handbook and for best management and housekeeping practices to be followed which prevent food waste, fat oil and grease from being disposed into sinks and drains.
- ▶ The Waste (Scotland) Regulations which require all non-rural food businesses, producing more than 50kg of food waste per week, to segregate that waste for separate collection. The regulations also ban the use of food waste disposal units that dispose of food waste to the public sewer. Further information can be found at www.resourceefficientscotland.com

I trust the above is acceptable however if you require any further information regarding this matter please contact me on **0800 389 0379** or via the e-mail address below or at planningconsultations@scottishwater.co.uk.

Yours sincerely,

Angela Allison

Development Operations Analyst

developmentoperations@scottishwater.co.uk

Scottish Water Disclaimer:

"It is important to note that the information on any such plan provided on Scottish Water's infrastructure, is for indicative purposes only and its accuracy cannot be relied upon. When the exact location and the nature of the infrastructure on the plan is a material requirement then you should undertake an appropriate site investigation to confirm its actual position in the ground and to determine if it is suitable for its intended purpose. By using the plan you agree that Scottish Water will not be liable for any loss, damage or costs caused by relying upon it or from carrying out any such site investigation."



MARINE SCOTLAND SCIENCE

T: +44 (0)131 244 2500
E: MSS_Advice@gov.scot

Naomi Gibson
Marine Scotland Licensing Operations Team
Marine Laboratory
375 Victoria Road
Aberdeen
AB11 9DB

28 May 2021

OICHA (PER ENVIROCENTRE) - SCAPA DEEP WATER QUAY - ORKNEY - SCOPING CONSULTATION

Marine Scotland Science (MSS) have reviewed the relevant documentation and has provided the following comments.

Marine Ornithology

MSS have considered the Scoping Report from the applicant for the Environmental Impact Assessment (EIA) for the Scapa Deep Water Quay development, in preparing this advice on marine ornithology we also considered the consultation response of NatureScot (NS, dated 21 May 2021) and of the Royal Society for the Protection of Birds (RSPB, dated 20 May 2021). Note we only consider marine ornithology aspects in this advice.

The Scoping Report is focussed on the EIA for the Development, however Habitats Regulations Appraisal (HRA) issues are also partially considered. NS note that there appears to be some confusion over the HRA process, MSS agree with this view and advise that clarification is sought on this, e.g. will the applicant provide a separate HRA screening report that will identify which features of SPA sites have potential for likely significant effect (LSE), thus requiring HRA to assess potential for adverse effect on site integrity (AESI)?

The Scoping Report concludes that all ecological receptors (other than marine mammals and their prey) can be scoped out from the EIA report (EIAR). MSS are in agreement with NS and RSPB that ornithology receptors should be scoped in for assessment in the EIAR, with effects possible during both construction and operation. As noted by NS, the greatest impacts may occur during operation from associated increased levels of vessel traffic that would presumably be a consequence of the development. MSS suggest that the report of Jarrett et al. (2018) is considered here, which looked at the short-term behaviour responses of winter waterbirds to marine activities (such as vessel movements) in Orkney waters.

The Scoping Report briefly outlines plans for bird surveys (section 5.5.2), however little detail is given so it is not possible to advise on whether the planned surveys will be sufficient to inform the EIA and HRA. NS's consultation response indicates that preliminary discussions have been held between them and the developer on survey methodologies but that a final survey methodology has not been agreed. MSS recommend that the developer provides a draft survey methodology for NS to consider which MSS would welcome the opportunity to also advise on.

Marine Mammals

Species of marine mammal

MSS agree with the list of potential marine mammal species occurring in the waters around Orkney provided by the applicant. We acknowledge the list of additional cetacean species outlined by NatureScot that have previously been recorded in Orkney waters, however MSS consider that due to the extremely low likelihood of occurrence of these additional species in the waters proximal to the development, and the atypical nature of any such occurrences, they can be scoped out of further assessment. However we advise that a full assessment of any potential impacts on the cetacean species listed in the scoping report, along with both seal species, is undertaken as part of the EIA. If impacts are identified then mitigation measures should be identified and outlined.

No details have been provided to indicate where information on presence/absence, abundance and other relevant ecological data may be available. MSS recommend using robust baseline density estimates for the ES, such as the most recent SCANS block estimates (currently Hammond et al. 2017) for cetaceans and the Marine Scotland seal usage maps (Russell et al. 2017) for seals. A recent comprehensive review of density estimates for all commonly occurring marine mammal species in Scottish waters is also available (Hague et al. 2020).

MSS note, in agreement with the advice from NatureScot, that the proposed development is in proximity to the Sanday SAC, designed for harbour seals, and that this site is not mentioned in the scoping report. Impacts on this species should be assessed for all phases of the development as part of the EIA, and sufficient information should be provided to assess impacts to the species as a qualifying features of Sanday SAC as part of the HRA.

When considering potential impacts on seals, the serious decline in harbour seal populations on the east coast of Scotland will need to be taken into account, which is reflected in the small Potential Biological Removal (PBR) limit calculated for harbour seals in the management area. This may also have implications for the HRA.

Construction phase

During the construction phase, underwater noise is likely to be generated during the piling, blasting works, dredging and disposal activities and increased vessel traffic to the site. These activities have the potential to disturb or injure marine mammals in the area and MSS therefore agree that these impacts should be scoped into the EIA process. Underwater noise modelling of any activities likely to cause acoustic injury or disturbance should be used to predict corresponding impact zones, which can be used to estimate of the numbers of marine mammals expected to be impacted. MSS are happy to provide further advice on appropriate noise modelling techniques, and the EIAR should provide sufficient detail of the modelling undertaken to allow assessment of whether it is appropriate.

The applicant states that vibropiling will be used to install both sheet and tubular piles to the required depth during the Reclamation and Quay Works in all phases of construction, and MSS welcome the use of this technique to reduce sound emission (relative to percussive piling) to the marine environment. However, we note that vibropiling still produces increased levels of underwater noise (Graham et al. 2017) that will require quantitative assessment. The results of this assessment should be used to develop appropriate mitigation plans, which are likely to require the use of Marine Mammal Observers and/or Passive Acoustic Monitoring. The JNCC piling guidance (JNCC 2010) should be used to inform such plans, including details of how observations will be carried out and how communication will be maintained with the construction team to avoid injury to marine mammals. It is possible that noise abatement techniques may be appropriate and they should be considered as part of the mitigation.

MSS agree that disturbance from the physical presence of vessels should be scoped in for the construction phase. MSS recommends that the applicant minimises vessel presence onsite to reduce disturbance to marine mammals. It may be useful to adopt a vessel management plan.

MSS agree that impacts to prey species of marine mammals should be scoped in for the construction phase.

MSS advise that dredging and disposal also has the potential to cause non-acoustic physical injury to marine mammals, and this pathway should therefore be scoped into the EIA report, along with any appropriate mitigation.

Operation phase

MSS share the view of NatureScot, regarding the applicant's intention to scope out all ecological impacts other than '*the risk to marine mammals associated with piling during the construction phase*', that it is not possible to scope out all other impact pathways from full assessment. Disturbance to marine mammals through underwater noise or physical presence may also have an impact through the operation phase, both from increased vessel traffic and from dredging and other maintenance activities. This has been acknowledged in section 5.4 (Potentially Significant Effects - Operation), and therefore MSS recommend that this impact pathway is scoped in for the operation phase.

European protected species licensing

MSS consider that some of the activities proposed may require EPS licensing because of the potential to disturb cetaceans. Although a separate application will need to be made for this licensing, we recommend that the assessments undertaken for the ES are done so in a way that the information can also be used for the EPS process. Guidance on EPS licensing is available on the Marine Scotland website ([Marine European protected species: protection from injury and disturbance - gov.scot \(www.gov.scot\)](http://www.gov.scot))

Marine fish ecology

The consideration of marine fish within this Scoping Opinion is very limited, as only sea trout are mentioned specifically. We have made the assumption that the phrase '*Marine mammals and their prey will be included in the EIA*' relates to other marine fish species as well as sea trout as the prey, however we request clarification from the applicant that other marine fish species will be considered.

MSS understand that fish will be included in the EIA however MSS recommend that marine fish are considered under their own section and not just those fish species which are prey for marine mammals. MSS advise that the developer considers individual marine fish species which are present in the development area and that may be impacted by the development. MSS recommend highlighting any fish species which are designated as Priority Marine Features and also considering if there are any Essential Fish Habitats such as fish spawning and nursery habitats present in the development area. In addition to this, MSS recommends providing information on fish spawning and nursery periods such as those listed in Coull *et al.* 1998 and Ellis *et al.* 2012 which are key sensitive periods for fish species and considering this in line with the construction programme timeline.

With regard to potentially negative impacts on marine fish species, MSS notes the list of impact pathways identified under section 5.3 for the construction phase and 5.4 for the operational phase. However MSS recommends that these impacts are considered specifically for marine fish species in the full EIA.

MSS note that the developer will undertake underwater noise modelling for construction activities and that it will focus on marine mammal and fish species. MSS also note that JNCC may be consulted to help design a site specific mitigation protocol for marine mammals in relation to piling activities; we recommend that the applicant also considers any mitigation measures which may be beneficial to fish species.

Commercial fisheries

Commercial Fisheries have not been considered in the scoping opinion yet Section 5.2.4 Fish, states that there are many commercial sea fish caught in the area. MSS recommends that commercial fisheries are considered within the scoping opinion and any potential impacts should be assessed.

Diadromous Fish

As noted in the scoping report, the Orkney coastline is well known for its sea trout angling, although few, if any of the fish caught are reported through Marine Scotland's annual questionnaire survey of salmon and sea trout catches. It is likely that many of the sea trout will originate from, and spawn in Orkney streams, but it is also possible that sea trout from Scottish mainland rivers may also be present. Adult salmon, probably mainly *en route* to rivers of the Scottish mainland also occur in Orkney coastal waters. Eel are also present. All three species are of high conservation value, both nationally and internationally.

Ordinarily, the local District Salmon Fishery Board and Fisheries Trust would be consulted for information and comment, but there are neither in Orkney. In their absence, MSS suggest that the Orkney Trout Fishing Association and Fisheries Management Scotland should be consulted. MSS would also be able to provide any relevant information they currently hold. However, it is likely that there will be a lack of information on the distribution and local abundance of sea trout, salmon and eel in Orkney coastal waters, and in view of the potential for the construction work and operation to impact on diadromous fish species, MSS advise that the developer should discuss with MSS and MS-LOT what survey work they may need to carry out to provide local information.

Insofar as they apply to diadromous fish, MSS agree with the comments in NatureScot's response, including that it is not possible, due to the location and scale of the development and the lack of detail on proposed construction methodology and mitigation, to scope out the majority of ecological receptors, including diadromous fish, from full assessment in the EIA at this stage.

MSS also endorse RSPB's comments that there is a need for consideration of biosecurity.

Physical environment / coastal processes

MSS have reviewed the relevant information, which state that there are potential impacts to coastal processes including wave action, tidal currents and sediment transport, changes in infiltration rates, flood risk and drainage; contamination of the water environment from spillages, runoff or sediment transfer during construction and operation phases of the proposed works.

Due to the extent of the proposed development, the lack of details on construction methodology, dredging, disposal, etc., MSS advise that impacts on the physical environment/coastal processes should be scoped in and assessed within the EIA.

Benthic ecology and intertidal habitats

MSS agree with NatureScot, that the EIAR should include a section assessing impacts on benthic ecology and intertidal habitats.

MSS recommend that the benthic and intertidal habitats are surveyed using video and grabs (as described by NatureScot), together with geophysical information if it is scheduled for other purposes. A description and map of the benthic and intertidal habitats in the development area should be provided with particular regard to Priority Marine Features and Annex I (Habitats Directive) features.

The impacts that should be scoped in are:

- Permanent loss of benthic habitats and rocky intertidal shoreline.
- Temporary increase in turbidity from dredging and smothering of benthic species within the distance of the sediment plume. Note that kelp habitats have a low tolerance for increases in turbidity.
- Introduction of non-native species. MSS agrees with the comments from NatureScot and RSPB on mINNS and biosecurity. The new ecological niche formed by the harbour wall will provide an

opportunity for colonisation from species that favour hard-substrate, and these species may not be indigenous to the local ecosystem. Studies such as McCollin and Brown (2014) and Ashton et al. (2006) have found non-natives on commercial vessels and harbours. The impact of non-natives should be scoped in along with risk of colonising the surrounding habitats.

- Consideration of release of contaminated sediment during dredging and impact on surrounding species and habitats.

Another aspect which MSS recommend MS-LOT considers being scoped in a temporary increase in turbidity on the artificial reef habitats and species at the HMS *Royal Oak* during the construction phase. The *Royal Oak* is approximately 1500 metres from the area to be dredged. The wrecks in Scapa Flow are superb examples of artificial reefs. They are colonised by an exceptionally diverse array of species with a preference for hard-substrate. The scoping report considers impacts from a marine heritage point of view, but MSS would recommend expanding this to cover the artificial reef as well. As such, MSS would expect that modelling is carried out to map whether the sediment plumes arising from dredging are predicted to reach the Royal Oak or whether they are dispersed by currents. If they do reach the wreck, impact of this temporary increase in turbidity on the artificial reef species should be assessed.

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Hopefully these comments are helpful to you. If you wish to discuss any matters further then please contact the REEA Advice inbox at MSS_Advice@gov.scot

Yours sincerely,

Renewable Energy Environmental Advice group
Marine Scotland Science

Transport Scotland

MacFarlane M (Marc)

From: Erskine A (Andrew)
Sent: 18 May 2021 11:05
To: MS Marine Licensing
Cc: McPhillips G (Gerard); LOGAN Lesley (llogan@systara.com)
Subject: Scapa Flow Deep Water Quay TS Scoping Response May 2021
Attachments: Scapa Flow Deep Water Quay TS Scoping Response May 2021.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Sir/Madam,

Please find attached the Transport Scotland response to the Scapa Flow Deep Water Quay application.

Regards,

Andrew Erskine

Jack Versiani Holt
Marine Scotland
Marine Laboratory
375 Victoria Road
Aberdeen
AB11 9DB

Your ref:

Our ref:
GB01T19K05

Date:
18/05/2021

ms.marinelicensing@gov.scot

Dear Sirs,

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

**ORKNEY ISLANDS COUNCIL HARBOUR AUTHORITY – SCAPA DEEP WATER QUAY –
SCAPA FLOW, ORKNEY ISLANDS**

With reference to your recent correspondence on the above development, we acknowledge receipt of the Scoping Report (SR) prepared by EnviroCentre in support of the above development.

This information has been passed to SYSTRA Limited for review in their capacity as Term Consultant to Transport Scotland – Roads Directorate. Based on the review undertaken, Transport Scotland would provide the following comments.

Proposed Development

The proposal comprises the creation of a 575m Scapa Deep Water Quay (SDWQ), located approximately 8km south of Kirkwall, Orkney and 4km south of the existing Scapa Pier. The new facility will provide an opportunity for the offshore wind and the oil and gas sectors to access deep water pier infrastructure, with the main usage being the construction/ assembly and maintenance of offshore wind turbines.

The SR states that the contract for construction of the facility will be awarded as a design and build, therefore, until the preferred contractor is identified, the exact construction methodologies cannot be confirmed. An indicative Construction Methodology is provided within the SR which states that as a design principle, it has been attempted to balance any dredging or cut into the land with construction and/or reclamation requirements. Sea disposal of dredging material will be avoided as far as possible. We note, however, that it is envisaged that the majority of armour stone will be brought to site by sea.

Assessment of Environmental Impacts

Given there are no trunk roads on Orkney, Transport Scotland has no comment to make on the potential environmental impact of construction related vehicles in the vicinity of the site. We would, however, state that in the event of the supply of construction materials from the Scottish Mainland or disposal material going to the mainland, the applicant will require to determine whether there are likely to be any significant environmental issues associated with increased traffic on the trunk road network. If this is the case, we would request that the thresholds for further detailed assessment as indicated within the Institute of Environmental Management and Assessment (IEMA) Guidelines for the Environmental Assessment of Road Traffic be used as a screening process for the assessment.

Abnormal Loads Assessment

The SR makes no mention of the need for any Abnormal Indivisible Loads (AIL) to be utilised during construction, however, Transport Scotland would state that in the event any AILs are required to be transported on the trunk road network, we will require to be satisfied that the size of loads proposed can negotiate the selected route and that their transportation will not have any detrimental effect on structures within the trunk road route path.

In this case, a full Abnormal Loads Assessment report should be provided with the Environmental Impact Assessment Report (EIAR) that identifies key pinch points on the trunk road network. Swept path analysis should be undertaken and details provided with regard to any required changes to street furniture or structures along the route.

I trust that the above is satisfactory and should you wish to discuss any issues raised in greater detail, please do not hesitate to contact me or alternatively, Alan DeVenny at SYSTRA's Glasgow Office on 0141 343 9636.

Yours faithfully

[Redacted]

Gerard McPhillips

**Transport Scotland
Roads Directorate**

cc Alan DeVenny – SYSTRA Ltd.

MARINE ANALYTICAL UNIT

Scoping response: Hatston Pier and Harbour Expansion and Scapa Deep Water Quay Development

Marine Analytical Unit Response

In the scoping reports for both the 'Hatston Pier and Harbour Expansion' and 'Scapa Deep Water Quay Development' an assessment of impacts on the 'Population and Human Health' receptor has been judged to be out of scope. There is, therefore, no information contained within either scoping report regarding socio-economic impacts and how they will be assessed.

We expect there are likely to be social and economic impacts arising from each of the proposed developments and so we recommend that a Socio-economic Impact Assessment be scoped in. The following paragraphs will provide a summary of what should be included in the socio-economic impact assessment and how it should be carried out.

Skills required to carry out SEIA

Specialist skills are required to carry out each part of a socio-economic impact assessment appropriately. We, therefore, recommend that a social researcher be contracted to carry out the social impact assessment, and an economist be contracted to carry out the economic impact assessment. They should then work together to produce the SEIA.

Methods and data to be used

We recommend using a combination of desk-based assessments of literature and existing data sets, as well as primary data as required. Primary data collection may involve survey, interviews, workshops, focus groups.

Stakeholder engagement

Stakeholder engagement is an important part of the SEIA process. Efforts should be made to ensure that stakeholders understand the project and its implications. It is important to involve communities and stakeholder in any discussions of potential impacts, especially regarding which impacts to include and how to assign significance.

Range of social and economic impacts considered

We would expect to see a comprehensive assessment of the potential social and economic impacts that might occur as a result of a development. An example of potential impacts can be seen in Figure 1. In particular, for these developments the following impacts could be explored:

- Potential positive impacts arising from the expanded ports e.g. greater capacity for certain industries
- Employment during construction – who is carrying out the work? Will workers be employed locally or will they come from elsewhere? If from elsewhere, where would they come from, how long would they stay and where would they stay?
- Are there employment benefits from construction for the local area? Or for the nation?
- What might the social impacts be of a temporary increase in population, if workers move into the community from outside?
- Will the construction and associated disruption affect industries currently using the ports?
- Will the construction and associated disruption affect the community e.g. through increased traffic, noise etc?

Figure **Error! No text of specified style in document.** Types of socio-economic impact

1. **Direct economic:**
 - employment, including employment cohort and safeguarding of existing employment;
 - unemployment and underemployment
 - characteristics of employment (e.g. skill group);
 - labour supply and training; and
 - other labour market effects, including wage levels and commuting patterns
2. **Indirect/induced/wider economic/expenditure:**
 - employees' retail expenditure (induced);
 - linked supply chain to main development (indirect);
 - labour market pressures;
 - wider multiplier effects;
 - effects on existing commercial activities (eg tourism; fisheries);
 - effects on development potential of area; and
 - GVA and GNP.
3. **Demographic:**
 - changes in population size; temporary and permanent;
 - changes in other population characteristics (e.g. family size, income levels, socio-economic groups); and
 - settlement patterns
4. **Housing:**
 - various housing tenure types;
 - public and private;
 - house prices and rent / accommodation costs;
 - homelessness and other housing problems; and
 - personal and property rights, displacement and resettlement
5. **Other local services:**
 - public and private sector;
 - educational services;
 - health services; social support;
 - others (e.g. police, fire, recreation, transport); and
 - local authority finances
6. **Socio-cultural:**
 - lifestyles/quality of life;
 - gender issues; family structure;
 - social problems (e.g. crime, ill-health, deprivation);
 - human rights;
 - community stress and conflict; integration, cohesion and alienation; and
 - community character or image
7. **Distributional effects:**
 - effects on specific groups in society (eg: by virtue of gender, age, religion, language, ethnicity and location); environmental justice

(taken from Glasson 2017¹)

The impacts described here and in Figure 1 are not exhaustive or prescriptive. The impacts relevant to this project should be decided upon through the collaborative efforts of skilled contractors and relevant stakeholders.

Key components of a Social Impact Assessment

Baseline

Gain a good understanding of the communities and stakeholders likely to be affected by the project (i.e. profiling) including their needs and aspirations and any key social issues that may arise as a result of the project.

¹ Glasson J (2017a) "Socio-economic impacts 2: Overview and economic impacts" in Therivel R and Wood G (eds.), *Methods of Environmental and Social Impact Assessment*, Abingdon: Routledge

- Develop social and economic profile of the area including history, culture and context
- Engage with community to learn of any other important features/indicators to include in baseline. There may be useful local datasets
- Analysis may draw on a combination of existing datasets and primary data

We would recommend the collection of primary data through fieldwork using methods such as workshops, surveys or interviews. These methods will allow for a more accurate assessment of the potential social and economic impacts, and their magnitude/local importance.

Prediction

Forecasting the social changes that may result from the project and the impacts these are likely to have on different groups of people. A list of potential socio-economic impacts can be seen in Figure 1. Many of these impacts can be considered from a social and economic perspective.

- Identify potential/anticipated social impacts
- Identify suitable method for predicting impacts
- Collect necessary evidence to conduct analysis
- Engage with community to check predictions and assign significance to predicted impacts
- Impact prediction should include
 - Assessment of different phases of the project e.g. construction and operation

Mitigation and enhancement

Identifying ways of mitigating potential negative impacts and maximising positive opportunities. We recommend that stakeholders and impacted communities are involved in the process of identifying impacts and agreeing upon mitigation measures.

Monitoring

Developing a monitoring plan to track implementation, variations from mitigation actions, and unanticipated social changes, especially negative impacts.

- Develop management plan and monitoring strategy
- Engage with community – especially with regard to both
 - Community may have concerns that they particularly want to be monitored
 - There may be local considerations regarding timing of monitoring and methods used e.g. access to internet for particular groups

Key components of an economic impact assessment

1. Establishing the life and stages of the Project

2. Establishing and developing the baseline

- It is the starting point for the economic assessment and the benchmark against which to measure impacts
- Start with a study of the local and regional area:
 - Industrial structure
 - Socio-economic conditions
 - Related industries
 - Local planning policies, where relevant
- Select a range of indicators, eg:
 - Employment and unemployment levels
 - Structure of working age population/skills/qualifications
 - GVA

3. Identifying and scoping the economic factors

- Economic impacts ideally clearly stated in:
 - Life and stages of project
 - Local, Scottish, UK, International
 - Direct, indirect, induced
- Economic Factors
 - Impacts related to GVA
 - Impacts related to employment, skills and training
 - Impact on related industries – tourism, fishing, etc.
 - Impacts related to the use of natural resources (depletion risks, resource use considerations)

4. Other economic considerations

- Displacement - an assessment of the effect of the intervention on the structure of local factor and final goods markets
- Substitution - where the intervention causes an employed factor to be replaced by a currently unemployed factor
- Deadweight - This is the net impact, after taking into account what would have happened in the absence of the intervention
- Cumulative effects - effects from multiple pressures and/or activities

5. Assessing uncertainty

- Optimism Bias - demonstrated systematic tendency for appraisers to be over-optimistic about key project parameters
- Risk Bias – manage risks by identifying and estimating when designing an intervention - Port location, supply chain and changes in technology
- Scenario and sensitivity Analysis

- Scenarios (low, medium, high) might be chosen for local, regional and UK employment and supply chain content for example
- Sensitivity analysis explores sensitive of impacts to potential variation in key variables such as wages, multipliers, etc

6. Distributional Impacts

- Distribution of impacts across different individuals, groups or businesses.
- Screening – identification of likely impacts
- Assessment – confirmation of area impacted and analysing the characteristics of the groups in the area which will be impacted
- Appraisal – Core analysis of the impacts

The following datasets/reports can be considered to inform the socio-economic impact assessment:

1. Scotland's Marine Economic Statistics 2018 -
<https://www.gov.scot/publications/scotlands-marine-economic-statistics-2018/>
2. Scottish Marine Recreation & Tourism Survey 2015-
<http://marine.gov.scot/information/scottish-marine-recreation-tourism-survey-2015>
3. Annual Business Survey, ONS; <http://www.ons.gov.uk/ons/rel/abs/annual-business-survey/index.html>
4. *Additionality Guide Fourth Edition 2013*, HCA;
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/378177/additionality_guide_2014_full.pdf
5. The Green Book
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685903/The_Green_Book.pdf