

**Marine Directorate - 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**

Port of Cromarty Firth

Invergordon Service Base Phase 5

April 2024

Contents

1. Introduction	3
1.1 Background	3
2. The Proposed Works	4
2.1 Introduction	4
2.2 Description of the Proposed Works	4
2.3 The Scottish Ministers' Comments	6
3. Contents of the EIA Report	9
3.1 Introduction	9
3.2 EIA Scope	9
3.3 Mitigation and Monitoring	9
4. Consultation	111
4.1 The Consultation Process	111
4.2 Responses received	122
5. Interests to be considered within the EIA Report	13
5.1 Introduction	133
5.2 In-Air Acoustics	133
5.3 Underwater Noise	13
5.4 Air Quality	133
5.5 Water Quality	144
5.6 Coastal Processes and Flooding	144
5.7 Ground Conditions	14
5.8 Biodiversity - Terrestrial	15
5.9 Biodiversity – Marine	17
5.10 Landscape and Visual	188
5.11 Materials and Waste	188
5.12 Navigation	18
5.13 Traffic and Transport	19
5.14 Socioeconomics	19
5.15 Climate Change	20
5.16 Archaeology and Cultural Heritage	20
5.17 Major Accidents and Natural Disasters	21
5.18 Human Health	222
5.19 Aviation	22
5.20 Cumulative Impacts	23

6. Application and EIA Report.....	24
6.1 General	24
7. Multi-Stage Regulatory Approval.....	25
7.1 Background.....	255
Appendix I: Consultation Responses & Advice	266
Appendix II: Gap Analysis	27

1. Introduction

1.1 Background

1.1.1 On 01 December 2023, the Scottish Ministers received a scoping report (“the Scoping Report”) from Port of Cromarty Firth (“the Applicant”) as part of its request for a scoping opinion relating to Invergordon Service Base Phase 5 (“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 Directorate 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 section 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 Invergordon Service Base ("ISB") is part of an industrial port located on the northern shore of the Cromarty Firth, at the south of the town of Invergordon. Over a number of years, the ISB has been upgraded and expanded, with the Proposed Works being the latest phase in this development. Phases 1 to 4 have been completed since 2012, increasing lay down space and berthing to accommodate demand from the energy sector as well as other industries, including the leisure cruise, marine structure decommissioning, and bulk cargo sectors. There is currently more than 1 kilometre ("km") of quayside, incorporating 8 berths of up to 14 metres water depth, and lay down areas totalling 11 hectares providing open storage space and heavy load bearing capacity.

2.2.2 The Proposed Works- Phase 5 of the expansion- will be located at the western end of the ISB. The actual footprint of the development site has yet to be confirmed, but the current design drawing is included on page 319 of the Scoping Report document, showing an indicative area of 207,378 square metres. In any case, the development is likely to be smaller than the red line boundary detailed on page 320 of the Scoping Report document. The larger footprint has been assessed to provide flexibility when drawing up the final design. Likewise, the Applicant has indicated that the extent of the project covered by the Scoping Report is sufficiently broad to encompass as many of the potential features of the development as possible, but includes elements that may not ultimately be required. In addition, timescales for the project have not been provided at this stage.

2.2.3 Whilst still at the conceptual design stage, with no finalised plans currently in place, the objectives of the Proposed Works include:

- Providing additional berthing.
- Provision of an area of the quay which could be used by a Roll-on Roll-off (Ro/Ro) vessel.
- Providing additional laydown space.
- A deepwater berth.

- Heavy lift capacity.
- Increased connectivity between previous phases of development whilst maintaining suitable berthing areas to support the multiple users.
- Provision of appropriate services (lighting, water, drainage and power).
- Provision of elements to support Offshore Wind activities, (as described below).

2.2.4 In order to achieve these objectives, the Applicant intends to reclaim land to the north and west of the ISB Phase 3 and 4 reclamations, and potentially infill the existing Queens Dock. The construction phase would involve the creation of a barrier through the formation of an initial bund then placement of the rock revetment and the piled quay walls. Once created, the bund will be infilled prior to the materials being compacted to obtain the appropriate height and structural performance of the development. The construction techniques considered in the Scoping Report are vibro and impact piling, and land reclamation activities (infilling and rock placement). Where appropriate, the Scoping Report also considers the installation of associated services. It is the intention to have the majority of construction materials delivered by sea. The Proposed Works will also involve dredging and the deposit of dredge material- subject to Best Practicable Environmental Option (“BPEO”) findings- at Sutors sea deposit site (CR019).

2.2.5 The operational phase of the Proposed Works is expected to be primarily focussed on providing facilities and services for the offshore wind renewable energy industry, over the course of an expected lifespan of approximately 60 years. The main activities the Phase 5 development could support are likely to be:

- The delivery of cement dry product and aggregate by sea, for onsite storage and concrete batching.
- The production of concrete floating substructures.
- Storage of floating bases at quayside.
- The delivery by sea of the main wind turbine components for construction of floating wind turbines at the quayside
- The delivery by road of other minor equipment and tools.
- Construction of the turbine components (tower, nacelle, blades) onto the concrete floating bases, utilising cranes located on the quay side or alternatively on a jack-up installation vessel. The ISB as a whole could accommodate up to 3 fully constructed turbines, each with a maximum blade height of 330 metres above sea level, with a minimum blade clearance of 22 metres.

- Wind turbine pre-commissioning and initial testing activities will be carried out at the quay side to ensure that they can safely and effectively operate. Once assembled, the rotor will be allowed to yaw in all directions and rotate at less than one revolution per minute (“rpm”). Initial testing will require the speed to increase to 7 rpm for 4 to 6 hours with a maximum speed of 12 rpm for a minute overspeed test.

2.2.6 Under Section 21 of the Marine (Scotland) Act 2010, the licensable marine activities for the construction and operation of the Proposed Works below mean high water springs are:

- Capital dredging
- Deposit of dredged material at sea
- Construction of quayside including land reclamation
- Construction, alteration and improvement of wind turbines.

2.3 The Scottish Ministers' Comments

Description of the Proposed Works

2.3.1 The Applicant has acknowledged that the extent of the project covered by the Scoping Report is broad in order to encompass as many of the potential features of the development as possible. This approach has impacted on the level of detail contained in respect of the Proposed Works and methodology. Overall, the lack of detail presented has impacted on Scottish Ministers ability to provide specific scoping advice in respect of some elements of the Proposed Works. The EIA Report and associated applications will require relevant, up to date and specific information in order to provide a full understanding of the scale, methodology, timings, and future usage of the Proposed Works.

2.3.2 There is a lack of detail regarding the quantities of materials, both in relation to those to be used in the construction / land reclamation, and that to be dredged. No estimations or worst-case scenario volumes have been provided. The overall size of the land reclamation is unclear, with Drawing Number 1024-PH5-015 (Revision C) indicating an area of 207,378 square metres, but no indications provided throughout the rest of the Scoping Report. Nor has the area to be dredged been detailed. The redline boundary demarcated in Drawing 1024-PH5-032 provides parameters within which the Proposed Works are expected to be located within, but the Applicant has indicated that this represents a larger envelope footprint than is likely to be utilised at the detailed design stage. Whilst the methods adopted within the Scoping Report provide flexibility for the Applicant, the Scottish Ministers

opinion can only be based on the information provided, and in that respect, scoping advice has been limited by the lack of detail. The EIA Report will require the missing information to be included.

- 2.3.3 The Scottish Ministers will require more information on how the Proposed Works will be carried out, both in relation to the construction and dredging elements. Whilst the Scoping Report state that the sea deposit of dredged material will be at the Sutors Licensed Disposal Site (CR019), no details have been provided with regard to where the construction materials will be sourced from for land reclamation and associated activities.
- 2.3.4 No timings or timescales have been provided for the Proposed Works. The Applicant has stated that no dredging will take place during May, to avoid the Atlantic Salmon smolt run, but no other indication has been given in respect of timings. No anticipated duration has been provided for any aspect of the Proposed Works. The Scottish Ministers will require further detail with regard to this in the EIA.
- 2.3.5 Detail has been provided by the Applicant regarding the operational phase of the Proposed Works, including but not limited to the construction of turbines. The Scottish Ministers require that the operational aspects of the works, including but not limited to the construction of wind turbines, are fully considered in the EIA Report.
- 2.3.6 There is some degree of reliance in parts of the Scoping Report on data from, and similarities with, the previous phases of the expansion of the ISB. The Scottish Ministers note that the Proposed Works are on a larger scale and serve separate purposes to the ISB Phases 2-4 works. In addition, given the time which has elapsed since the ISB Phase 4 EIA Report was produced, data from that period may be out-dated. The Phase 5 EIA Report will need to evidence that information being used is current and relevant to the activities during the construction and operational phases of the Proposed Works. The Scottish Ministers will assess the EIA Report and associated applications as a separate entity, and will not cross-reference with previous EIA Reports for other phases of works at the ISB.

Design Envelope

- 2.3.7 The Scottish Ministers note the Applicant's intention to apply a 'Design Envelope' approach. Where the details of the Proposed Works cannot be defined precisely, the Applicant will apply a worst case scenario.
- 2.3.8 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.

- 2.3.9 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 Section 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.
- 2.3.10 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

- 2.3.11 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.
- 2.3.12 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 section 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 noted in the EIA report.

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 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.

3.3.3 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. The Scottish Ministers note that an 'Initial Schedule of Mitigation' is included in the Scoping Report, and this must be expanded upon in the EIA Report when the representations and advice have been fully considered by the Applicant.

- 3.3.4 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.

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 consultation process, which commenced on 22 December 2023. The following bodies were consulted, those marked in bold provided a response and those marked in italics sent nil returns or stated they had no comments:

- **NatureScot, operating name of Scottish Natural Heritage**
- **Scottish Environment Protection Agency (“SEPA”)**
- **Highland Council**
- **Maritime and Coastguard Agency (“MCA”)**
- **Northern Lighthouse Board**
- **Historic Environment Scotland (“HES”)**
- Scottish Creel Fishermen’s Federation
- Communities inshore Fisheries Alliance
- Invergordon Community Council
- Ainess Community Council
- Kilmuir and Logie Easter Community Council
- Resolis Community Council
- Cromarty Community Council
- Kiltearn Community Council
- Dingwall Community Council
- Ferintosh Community Council
- Conon Bridge Community Council
- Nigg and Shandwick Community Council
- Maryburgh Community Council
- Chamber of Shipping
- Crown Estate Scotland
- **Defence Infrastructure Organisation**
- Cromarty District Salmon Fishery Board
- Fisheries Management Scotland
- Highland Ferries
- Fisheries Office, Ullapool
- Port of Inverness Harbour Authority
- Global Energy’s Nigg Harbour Authority
- *North and East Coast Inshore Fisheries Group*
- Marine Safety Forum
- Moray Firth Partnership
- National Trust for Scotland
- Scottish Government Ports and Harbours
- **Royal Yachting Association**
- **Royal Society for the Protection of Birds Scotland (“RSPB Scotland”)**
- *Scottish Fishermen’s Federation*
- Scottish Fishermen’s Organisation

- **Scottish Water**
- Scottish White Fish Producers Association
- Scottish Wildlife Trust
- Visit Scotland
- Whale and Dolphin Conservation
- Health and Safety Executive
- **NATS**
- Civic Aviation Authority
- Inverness Airport (Highlands and Islands Airports Limited)

4.1.2 Specific advice was sought from Marine Directorate – Science, Evidence, Data and Digital (“MD-SEDD”), the Marine Directorate – Marine Analytical Unit (“MAU”) and Transport Scotland (“TS”).

4.2 Responses received

4.2.1 From the list above a total of 11 responses were received. Advice was also provided by MD-SEDD, 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 sections 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.

5. Interests to be considered within the EIA Report

5.1 Introduction

5.1.1 This section 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, MD-SEDD 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 In-Air Acoustics

5.2.1 In Section 6 of the Scoping Report, the Applicant considers the potential impacts from in-air acoustics. Section 6.5 proposes that in-air noise is scoped in for further assessment in the EIA Report, in relation to both the construction and operational phases, as the Proposed Works will involve new activities at a differing distance from receptors to current port operations.

5.2.2 The Scottish Ministers agree that in-air acoustics is scoped in to the EIA Report for the construction and operational phases of the Proposed Works.

5.3 Underwater Noise

5.3.1 Section 7 of the Scoping Report relates to underwater noise. The Applicant refers to impacts identified in the Phase 3 and 4 EIA Reports, concluding that the effects from the Proposed Works are suitably similar and as such proposes to scope out underwater noise from further assessment. The Applicant proposes that topic-specific underwater noise will be addressed separately in relation to fish ecology and marine mammals in the associated chapters.

5.3.2 The Scottish Ministers agree that underwater noise is scoped out as a standalone chapter. However, the Scottish Ministers advise that underwater noise is scoped in for further assessment in the EIA Report and considered within the fish ecology, marine mammals and ornithology chapters for both the construction and operational phases. This should include but not be limited to the impacts from the in-water construction of floating wind turbines. The Applicant is directed to the NatureScot representations dated 01 March 2024 and 18 March 2024 in this regard.

5.4 Air Quality

5.4.1 The Applicant considers air quality in Section 8 of the Scoping Report, relating specifically to dust associated with the construction and operational

phases. The Scottish Ministers note that greenhouse gas emissions are addressed within the climate change section of the Scoping Report and direct the Applicant to Section 5.15 of this Scoping Opinion for advice on this. The Applicant concluded that air quality be scoped out of the EIA Report due to similarities with the previous phase, where risks were deemed to be non-significant. The Scottish Ministers acknowledge and are satisfied with the Applicants proposal to mitigate against air quality impacts through development of a Dust Management Plan and securing a Pollution Prevention and Control Permit where required.

- 5.4.2 The Scottish Ministers agree that air quality can be scoped out of the EIA Report for construction and operational phases of the Proposed Works.

5.5 Water Quality

- 5.5.1 In Section 9 of the Scoping Report, the Applicant proposes that water quality be scoped out of the EIA Report. The Applicant considers previously used construction mitigation measures, 'business as usual' scenarios managed by the Ports own environmental management systems and compliance with relevant legislation, including obtaining a Controlled Activities Regulation ("CAR") licence if necessary, as being adequate to address any water quality issues. The Applicant proposes to include the required Water Framework Directive Assessment within the coastal processes and flooding chapter.
- 5.5.2 The Scottish Ministers are content with the approach proposed by the Applicant and agree that an assessment of water quality can be scoped out of the EIA Report.
- 5.5.3 However, the Scottish Ministers direct the Applicant to the NatureScot representation in relation to marine invasive non-native species and advise that site-based biosecurity plans should be included within the EIA Report.

5.6 Coastal Processes and Flooding

- 5.6.1 Coastal processes and flooding is assessed by the Applicant in Section 10 of the Scoping Report. The Applicant proposes that the topic be scoped into the EIA Report, including sediment modelling. As indicated in Section 5.5 above, a Water Framework Directive Assessment will also be included under the coastal processes and flooding assessment.
- 5.6.2 The Scottish Ministers agree with the Applicants proposal to scope in coastal processes and flooding for further assessment in the EIA Report.

5.7 Ground Conditions

- 5.7.1 Section 11 of the Scoping Report considers ground conditions, proposing that the topic be scoped out of the EIA Report on the basis that core sampling and analysis will inform the design of the Proposed Works and contamination results will be included in the Best Practicable Environmental Option (“BPEO”) Report.
- 5.7.2 The Scottish Ministers are content with the Applicants approach. A BPEO Report and suitable sampling will be required to support the marine licence applications for dredging and deposit of dredged material, and ongoing sample analysis will be provided in respect of future maintenance dredging. The Scottish Ministers are satisfied that ground conditions will be adequately assessed as part of the application processes and can be scoped out from further assessment in the EIA Report.

5.8 Biodiversity - Terrestrial

- 5.8.1 The Applicant considers terrestrial biodiversity in Section 12 of the Scoping Report, and, on account of there being minimal land-based works, limits this to impacts on birds and otters. The Applicant proposes to scope in the effects on ornithology however, does not consider that additional bird surveys are required. Additionally, the Applicant proposes to scope otters out from requiring further assessment due to successful mitigation during Phases 3 and 4.
- 5.8.2 The Scottish Ministers acknowledge and are satisfied with the Applicants proposed pre-construction surveys to ensure otters are not present or using any structures onsite for resting/shelter. The Applicant recognising that a European Protected Species (“EPS”) Licence will be necessary where otters are found to be in the area of the Proposed Works.
- 5.8.3 The Scottish Ministers agree with the representation from NatureScot that the Scoping Report is not very clear about which construction and operational activities will be considered for further impact assessment on ornithology receptors. Therefore, for the avoidance of doubt, the Scottish Ministers advise that the potential impacts of piling and dredging on intertidal and terrestrial birds must be scoped in for further assessment in the EIA Report.
- 5.8.4 NatureScot advised that it agrees with the Applicant and considers collision risk with floating turbines to be negligible. The Scottish Ministers however, do not agree with NatureScot and instead direct the Applicant to representation from RSPB Scotland and advice from MD-SEDD on collision risks and advise that collision risk must be scoped in for further assessment in the EIA Report. Breeding season vantage point surveys to inform collision risk must be carried out and these should be in line with NatureScot guidance

- to inform a collision risk model and assessment of impacts. The Scottish Ministers direct the Applicant to the representation from RSPB Scotland on bird surveys and advice from MD-SEDD on collision risk and advise that these are fully considered within the EIA Report.
- 5.8.5 The Scottish Ministers direct the Applicant to the representation from NatureScot on the insufficient extent of the bird survey work carried out to date. The Scottish Ministers agree with the NatureScot representation and advice from MD-SEDD and advise vantage point surveys must be undertaken during the non-breeding season. The Scottish Ministers direct the Applicant to the NatureScot representation in this regard and advise that the surveys should be carried out in line with NatureScot's advice. The Scottish Ministers encourage the Applicant to consult NatureScot to ensure the draft survey protocol is appropriate.
- 5.8.6 Further, the Scottish Ministers agree with the representations from NatureScot and RSPB Scotland and advice from MD-SEDD and advise that the potential for disturbance, displacement and habitat loss on intertidal/terrestrial and subtidal Cromarty Firth Special Protected Area ("SPA") species and on Moray Firth SPA species caused by the construction activities and by the operational effects of floating turbines must be assessed in the EIA Report for both the construction and operational phases. This must consider all relevant ecological processes for SPA species as per the NatureScot representation, and must consider both non-breeding and breeding periods. The Scottish Ministers direct the Applicant to the representations from NatureScot and RSPB Scotland in this regard and advise they are fully addressed within the EIA report.
- 5.8.7 In addition to the SPA species, the Scottish Ministers direct the Applicant to the NatureScot and RSPB Scotland advice regarding other breeding bird species including eiders and Arctic terns and recommend that these are considered in the EIA Report.
- 5.8.8 The Scottish Ministers direct the Applicant to the representation from RSPB Scotland regarding mitigation and advise that it is fully considered within the EIA Report.
- 5.8.9 The Scottish Ministers direct the Applicant to the representations from NatureScot, RSPB Scotland and advice from MD-SEDD in relation to requests for further information and encourage the Applicant to ensure this is provided in the EIA Report. Without more detailed information the Scottish Ministers cannot comment on the impacts proposed to be scoped in or out of the Scoping Report.

5.9 Biodiversity – Marine

- 5.9.1 Section 13 of the Scoping Report considers marine biodiversity, and is broken down into sub-sections for benthic ecology, fish ecology and marine mammals. The overall proposal by the Applicant is that ‘biodiversity – marine’ be scoped out of the EIA Report.
- 5.9.2 The Applicant considers that benthic ecology can be scoped out of any further assessment as there is existing baseline information which deems it highly unlikely that there are any Priority Marine Features or protected benthic species within the Proposed Works area, and mitigation proposed in other sections of the Scoping Report (water quality, coastal processes and ground conditions) will offer additional protection. The Scottish Ministers are content with this approach.
- 5.9.3 The Applicant proposes to scope out fish ecology on the basis of no change to baseline information and relevant mitigation associated with safeguarding water quality and the avoidance of dredge works during the month of May, which will be incorporated into the project Construction Environmental Management Document (“CEMD”). The Scottish Ministers are content with this approach.
- 5.9.4 The Applicant identified that the Moray Firth Special Area of Conservation (“SAC”) is approximately 6 km east of the Proposed Works, and includes bottlenose dolphins and subtidal sandbanks as qualifying interests. However, it proposed that marine mammals be scoped out of further assessment within the EIA Report on the basis of evidence from the Phase 4 development. The Applicant proposes to cover the topic through the EPS licensing process and will provide sufficient detail on the Moray Firth SAC and its qualifying interests to allow the competent authority to carry out an Appropriate Assessment. The Scottish Ministers disagree with the proposal to scope out marine mammals and advise that the impact to marine mammals as a result of changes in the movements, numbers and distribution of vessels be scoped into the EIA Report for both construction and operational phases of the Proposed Works. Additionally, the Scottish Ministers advise that any mitigation in respect of marine mammals be fully presented within the EIA Report. This is a view supported by NatureScot in its representation.
- 5.9.5 For the avoidance of doubt, the Scottish Ministers advise that ‘biodiversity – marine’ be scoped into the EIA Report, specifically in relation to the impact to marine mammals as outlined above. However, benthic ecology and fish ecology are scoped out of the EIA Report.

- 5.9.6 In relation to Habitats Regulations Appraisal (“HRA”), the Scottish Ministers advise that, in addition to the bottlenose dolphin and harbour seal qualifying interests of the Moray Firth SAC and the Dornoch Firth and Morrich More SAC respectively, that the subtidal sandbanks qualifying interest of the Moray Firth SAC also be included within the HRA for completeness in agreement with the representation from NatureScot.

5.10 Landscape and Visual

- 5.10.1 In Section 14 of the Scoping Report, consideration is given to landscape and visual effects, outlining that there will be temporary impacts due to construction and also new operational impacts as a result of the change in location and functions at the ISB, including assembly of wind turbines at the quayside. As a result, the Applicant has scoped in this topic and will include a Landscape and Visual Impact Assessment (“LVIA”) as part of the EIA Report.
- 5.10.2 The Scottish Ministers agree with the Applicants proposal to scope in landscape and visual impacts for further assessment in the EIA Report and to undertake a LVIA.

5.11 Materials and Waste

- 5.11.1 The Applicant proposes in Section 15 of the Scoping Report that materials and waste be scoped out of the EIA Report, indicating that there is some degree of cross over into the air quality, water quality, navigation, traffic and transport, and climate change chapters. In addition, ongoing aspects relating to materials and waste after construction will fall under the Applicant’s operational management systems and will be required to comply with all applicable legislation.
- 5.11.2 The Scottish Ministers are satisfied that materials and waste can be adequately considered elsewhere in the assessment process and agree that it can be scoped out of the EIA Report as a standalone chapter. The Applicant is advised that all SEPA guidance should be followed and relevant legislation fully adhered to.

5.12 Navigation

- 5.12.1 In Section 16 of the Scoping Report, the Applicant considers navigation, and proposes to scope out the topic from further consideration in the EIA Report. The reasoning provided relates to the view that the impacts associated with the Proposed Works are indistinguishable from those identified for the Phase 4 development, the absence of any navigational incidents associated with

previous construction, and the activities being not dissimilar to those already managed by the Applicant.

- 5.12.2 Whilst it is noted that the site falls within the jurisdiction of the Applicant, as Statutory Harbour Authority, and as such, Port of Cromarty Firth is ultimately responsible for maintaining the safety of navigation within its waters, the Scottish Ministers direct the Applicant to the points raised by the MCA in its representation. This includes advice on further assessments and stakeholder engagement which should be undertaken.
- 5.12.3 The MCA advised that it would expect no effects to be scoped out of the EIA Report with regards to shipping and navigation, pending the outcome of a risk assessment and further stakeholder consultation. The Scottish Ministers agree with the representation from the MCA and advise that navigation is scoped in for further assessment within the EIA Report.

5.13 Traffic and Transport

- 5.13.1 Traffic and transport has been considered in Section 17 of the Scoping Report. The Applicant proposes that the topic be scoped out of the EIA Report, based on outcomes from the Phase 3 and Phase 4 assessments, where no significant impacts were identified in respect of traffic and transport with appropriate mitigation. The Proposed Works are not expected by the Applicant to increase maximum rates of traffic flow, therefore an assumption is made that effects would be indistinguishable from those previously assessed.
- 5.13.2 The Scottish Ministers disagree with the Applicants proposal to scope out traffic and transport and advise that it be scoped in for further assessment in the EIA Report. The Applicant is directed to the TS advice in relation to a threshold assessment and abnormal loads assessment and advised that this is fully considered in the EIA Report. Furthermore, the Scottish Ministers advise that due to the age of the data used for the Phase 4 EIA Report, more appropriate data be utilised in the assessment.

5.14 Socioeconomics

- 5.14.1 Consideration has been given to socio-economics in Section 18 of the Scoping Report, with the Applicant proposing that the topic be scoped in to the EIA Report. The Applicant has outlined that the assessment will include impacts associated with direct and indirect job creation, the local economy, and social interaction.
- 5.14.2 The MAU agreed with the proposal to scope in socio-economic impacts. The Scottish Ministers direct the Applicant to the MAU advice and recommend

that its guidance is considered in the production of a socio-economic impact assessment (“SEIA”). In particular, the Scottish Ministers highlight the need for the SEIA to include a detailed description of the methodology used, with specific details about the methodological approach taken and any key assumptions that underpin the findings.

- 5.14.3 The Scottish Ministers agree that socio-economic impacts are scoped in and an SEIA should be undertaken for the construction and operational phases of the Proposed Works.

5.15 Climate Change

- 5.15.1 The Applicant has given consideration to climate change in Section 19 of the Scoping Report, concluding that it should be scoped in to the EIA Report. Whilst Greenhouse Gas (“GHG”) emissions relating to the construction of the Proposed Works will be calculated, the Applicant has indicated that these will be evaluated in qualitative terms in respect of the operational phase.

- 5.15.2 The Scottish Ministers are mindful that 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.

- 5.15.3 For the avoidance of doubt, the Scottish Ministers agree that climate change be scoped in to the EIA Report.

5.16 Archaeology and Cultural Heritage

- 5.16.1 Section 20 of the Scoping Report considers archaeology and cultural heritage. The Applicant proposes that this topic is scoped out of further assessment on the basis that the Thief’s Stone and the Old Rosskeen Parish Church and Burial Ground assets will be included in the LVIA conducted for

the proposed Phase 5 development as described in the landscape and visual chapter.

- 5.16.2 In line with the HES representation the Scottish Ministers advise that the use of an LVIA to evaluate the assets setting impacts is inappropriate. The Scottish Ministers do not agree with the proposal and advise that archaeology and cultural heritage is scoped into the EIA Report for further assessment. In addition to Clach a' Mheirlich, Newhall Point should be included in the assessment relating to setting impacts. The Scottish Ministers advise that Old Rosskeen Parish Church is scoped out, in line with the HES representation. Furthermore, the Scottish Ministers advise that further detail and assessment of marine cultural heritage in respect of submerged paleo-environmental and archaeological deposits is scoped in to the EIA Report and direct the Applicant to the HES representation in this regard.
- 5.16.3 For the avoidance of doubt, the Scottish Ministers advise that archaeology and cultural heritage is scoped in and advise that the HES representation is fully considered in preparing the EIA Report.

5.17 Major Accidents and Natural Disasters

- 5.17.1 In Section 21, the Applicant has proposed that major accidents and natural disasters be scoped out of the EIA Report on the basis that all locational or use risks identified are adequately addressed by existing legislation or other topics within the Scoping Report.
- 5.17.2 The Scottish Ministers consider that 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.
- 5.17.3 It is advised 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.

- 5.17.4 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.
- 5.17.5 Whilst the Applicant has determined that this can be considered under other topics in the EIA Report and is covered by existing legislation, the Scottish Ministers note that the scale and type of structures that could be involved in the operational phase of the Proposed Works could represent unique / new risks. In addition, legislation and good working practice alone will not eliminate residual risk.
- 5.17.6 The Scottish Ministers therefore advise that a standalone section assessing the potential impact from / on major accidents and natural disasters is scoped in to the EIA Report.

5.18 Human Health

- 5.18.1 The Scoping Report proposes, in Section 22, that human health should be scoped out of the EIA Report. The Applicant has based this determination on the view that the potentially significant effects are positive and are being considered as part of the wider 'Green Freeport' development.
- 5.18.2 The Scottish Ministers disagree with the proposal to scope out impacts associated with human health. Whilst there is some degree of crossover with social impacts, the Scottish Ministers advise that human health be scoped in for assessment with regard to the construction and operational phases of the Proposed Works and direct the Applicant to the MAU advice in this regard. Community engagement should be sought to determine and assess potential impacts, as well as reference to the relevant IEMA guidance. It is for the Applicant to decide if this should be assessed as a standalone chapter or within the SEIA.

5.19 Aviation

- 5.19.1 The Applicant's consideration of aviation in Section 23 of the Scoping Report proposes that the topic is scoped out of the EIA Report. On advice from the Civil Aviation Authority, the Applicant has outlined its intention to undertake consultation with civilian and military aviation stakeholders to discuss potential operational scenarios to understand the extent of any aviation issues and how they can be overcome.
- 5.19.2 NATS advised that it has no objection to the Proposed Works from its air traffic control service perspective.

5.19.3 The Scottish Ministers are satisfied with the Applicant's proposed approach to aviation considerations during the construction phase of the works. Impacts are likely to be associated exclusively with the operational phase and will require specific arrangements tailored to as-yet unknown functions and uses at the Proposed Works. On that basis, the Scottish Ministers require that aviation consideration is scoped in for further assessment in the EIA Report and the outcome of the proposed further consultation with aviation stakeholders presented.

5.20 Cumulative Impacts

5.20.1 Consideration of cumulative impacts are outlined in Section 24 of the Scoping Report. The Applicant references IEMA guidance in respect of this, and proposes to review the potential effects of identified relevant projects to evaluate whether they could impact on the same receptors being assessed in the EIA Report. Cumulative assessment will be considered for the relative topic areas, along with any mitigation measures.

5.20.2 The Scottish Ministers agree that cumulative impacts should be included in the EIA Report for all relevant topics, and are content that this can be achieved in the manner set out by the Applicant.

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 principal 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

DAY MONTH YEAR

Authorised by the Scottish Ministers to sign in that behalf.

Appendix I: Consultation Responses & Advice

Appendix II: Gap Analysis

Applicant to complete:

Consultee	No.	Point for Inclusion	EIA Report Section	Justification
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