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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**

Shetland Islands Council (per Stantec UK Ltd)

Fair Isle Harbour Improvement Works

February 2023

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1. Introduction

1.1 Background

1.1.1 On 09 June 2022, the Scottish Ministers received a scoping report (“the Scoping Report”) from Stantec on behalf of Shetland Islands Council (“the Applicant”) as part of its request for a scoping opinion relating to Fair Isle Harbour Improvement Works (“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 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 The purpose of the Proposed Works is to upgrade Fair Isle's North Haven harbour in order to accommodate a new passenger ferry. North Haven harbour is located on the north-east of the island and the Proposed Works will involve both construction and dredging works.

2.2.2 The Proposed Works will be split into two phases and take place over two summer seasons. This approach has been proposed to avoid weather restrictions through the winter.

2.2.3 Construction phase one will run from February to September 2024, a period of approximately eight months, and will focus on the noust, slipway, cradle and pier. This will entail the following activities:

- Repairing and re-fendering of the existing finger pier aligning structure to accommodate the new vessel;
- Replacing the existing cradle and winch to accommodate the increased size of the new vessel. The new cradle dimensions will be designed to accommodate the chosen ferry vessel, which will have a maximum length of 24 metres ("m") and maximum width of 11m. The new cradle will consist of a steel structure atop steel rails, positioned on the slipway; and
- Constructing a replacement slipway. This structure will comprise of reinforced concrete on top the existing ground level. Its length will be decided based on the results of the Applicant's bathymetry survey. The new structure is anticipated to be wider than the old one but the position of the new noust will be unchanged.

2.2.4 Construction phase two will run from March to September 2025, a period of approximately seven months, and will focus on the breakwater and linkspan. This will entail the following activities:

- Constructing a new quay structure formed between the northern end of the existing quay and the existing breakwater;
- Constructing a new “Type A” linkspan to facilitate the new vessel. Typically, such linkspans are 14m long and 5.5m wide at the nose. The linkspan deck will be installed on the new linkspan support structures alongside the breakwater once the new quay extension has been constructed; and
- Increasing the size and height of the existing breakwater to provide greater shelter to the new quay structure and linkspan berth.

2.2.5 Additionally, dredging will be carried out to provide sufficient water depth for the new vessel around the proposed pier extension and linkspan and new lighting will be added along the rear and up to the north of the extended quay. Section 7.5.56 of the Scoping Report indicates that maximum volume of material dredged will be 8,000m³, however, it is not clear which construction phase/phases these works will take place in.

2.2.6 The dredging method will be finalised following results of the Applicant’s ground investigation. An excavator is likely to be used in areas where sand and silt are encountered. In rocky areas, the dredging method will depend on the quality of rock. If an excavator cannot be used in these areas, then an alternative method will be employed.

2.2.7 The subsequent use of dredged material is still to be determined. In section 7.4.17 of the Scoping Report, the Applicant states that the potential to reuse the dredged material as infill is being considered as an alternative to sea deposit. If the latter option is selected, the Applicant commits to deposit of dredged material at a licensed deposit site in section of 7.5.33 of the Scoping Report.

2.3 Onshore/Planning/Harbour Revision Order

2.3.1 The Scottish Ministers are aware the Applicant has sought a separate scoping opinion from Shetland Islands Council for the associated onshore construction 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 explicitly detail the licensable marine activities to be carried out below Mean High Water Springs (“MHWS”) as part of the Proposed Works and identify which activities overlaps with Shetland Islands Council’s remit.

2.4 The Scottish Ministers' Comments

Description of the Proposed Works

- 2.4.1 There is a lack of detail provided in respect of design of the Proposed Works and the methodology. The Applicant has not included any quantities, or estimation of quantities of materials to be used in the construction or dredging activities. The Scottish Minister's advice can only be based on the information provided. In particular the lack of detail provided is reflected in the limited scoping advice the Scottish Ministers have been able to provide in respect of marine mammals.
- 2.4.2 Section 3 of the Scoping Report describes the construction activities, separates them into two phases and details the estimated approximate duration of each phase. The Applicant must assess both phases in the EIA Report. Additionally, more information will be required in the EIA Report about the nature of and quantities of materials and substances being used in the construction works. If any of these are unknown at the time of application, maximum estimates should be provided. A detailed description of procedures in both construction phases must also be provided.
- 2.4.3 The Proposed Works will include dredging and potentially sea deposit of the dredged material. The Applicant has indicated that if found to be suitable, the dredged material could be used as infill in the land reclamation. The Scottish Ministers note that site investigation and material characterisation have not yet been undertaken however this must be done in advance of the preparation of the EIA Report so that the results can be presented and an assessment made of the environmental impacts of the final design decision. The Scottish Ministers advise that if there is any doubt as to the suitability of the dredge material for use in the land reclamation, the worst case scenario must be assessed whereby all of the dredged material requires to be deposited at sea (subject to no contamination issues being found and a suitable deposit site being identified) and all of the infill material requires to be sourced from an alternative location and transported to site. The Applicant must set out the best practicable environmental option for the dredge material which must clearly detail all options that have been considered.

Design Envelope

- 2.4.4 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, as set out in 3.5.1 of the Scoping Report.

- 2.4.5 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.
- 2.4.6 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.
- 2.4.7 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

- 2.4.8 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. However, in section 4.7.5 of the Scoping Report the Applicant commits to considering alternatives in the EIA Report. The Scottish Ministers advise the EIA Report must contain these considerations.
- 2.4.9 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.

3.3.4 Where potential impact 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 30 day consultation process, which commenced on 22 June 2022. 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 – Northern Isles & North Highland**
- **SEPA – North Planning Team**
- **Shetland Islands Council (Local Authority)**
- **Shetland Fisheries Training Centre Trust**
- **Maritime and Coastguard Agency**
- **Northern Lighthouse Board**
- **Historic Environment Scotland (“HES”)**
- **Shetland Marine Planning Partnership**
- Dunrossness Community Council
- *United Kingdom Chamber of Shipping*
- Crown Estate Scotland
- Defence Infrastructure Organisation
- Fisheries Management Scotland
- Good Shepherd IV
- Lerwick Fishery Office
- *Shetland Islands Council (Harbour Authority)*
- Health and Safety Executive
- Shetland Shellfish Management Organisation
- Marine Safety Forum
- Marine Planning and Policy
- Ports and Harbours
- **Royal Yachting Association (“RYA”)**
- **Royal Society for the Protection of Birds Scotland**
- 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”) 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 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 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, 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 Archaeology and Heritage

- 5.2.1 The Scottish Ministers are broadly content with the elements proposed by the Applicant to be scoped in for and out from further assessment in the EIA Report, as detailed within Table 7.4 of the Scoping Report.

The Scottish Ministers however advise that the indirect impact on the setting and direct impact on the fabric of the North Haven, crane, Fair Isle (SM6589) as well as the indirect impact on the setting of the Landberg fort, for both the construction and operation phases of the Proposed Works, must be fully assessed within the EIA Report. In addition, the Scottish Ministers advise that the potential impact from dredging on underwater archaeology must be fully assessed within the EIA Report. The Scottish Ministers direct the Applicant to the HES representation and advise that it is fully addressed within the EIA Report including consideration of potential mitigation measures.

5.3 Climate Change

- 5.3.1 The Scottish Ministers are content with the elements proposed by the Applicant to be scoped in for and out from further assessment in the EIA Report, as detailed within Table 7.6 of the Scoping Report. With reference to section 7.2.21 of the Scoping Report, the Scottish Ministers broadly agree with the Applicant's proposed assessment methodology however advise that the IEMA Environmental Impact Assessment Guide "Assessing Greenhouse Gas Emissions And Evaluating Their Significance" ("IEMA GHG Guidance") was updated and published in February 2022 and the Applicant's approach should be updated accordingly. The Scottish Ministers advise that the GHG Assessment included within the EIA Report should be based on a Life Cycle Assessment ("LCA") approach and notes that the IEMA GHG Guidance provides further insight on this matter. The Scottish Ministers highlight however that this Assessment should consist of the pre-construction, construction, operation and decommissioning phases, as well as benefits beyond the life cycle of the Proposed Works.

5.4 Landscape and Visual

5.4.1 The Scottish Ministers agree with the elements scoped in for and out from further assessment in the EIA Report, as detailed within Table 7.9 of the Scoping Report. This view is supported by the NatureScot representation. Additionally, the Scottish Ministers advise that the Special Qualities of the Shetland National Scenic Area are included in the assessment in line with the NatureScot representation.

5.5 Marine Geomorphology

5.5.1 The Scottish Ministers are broadly content with the study area however advise that if the data and models referred to in the Scoping Report show that impacts may occur outwith the study area then it must be expanded to include all affected areas. Furthermore, the Scottish Ministers advise that, if possible, both hydrodynamic modelling should be conducted, and field data collected. The Scottish Ministers direct the Applicant to the MSS advice in this regard and advise that this should be fully considered within the EIA Report.

5.5.2 In Table 7.11 of the Scoping Report the Applicant proposes to scope in Marine Geomorphology for both the construction and operation phases of the Proposed Works. The Scottish Ministers agree with this proposal. The Scottish Ministers advise that the impacts of dredging and ground preparation during construction and the changes to hydrodynamics and wave regime during operation must be considered further within the EIA Report. This is reflected in the MSS advice.

5.6 Ecology

5.6.1 The Applicant considers the potential impacts from the Proposed Works on marine ecology receptors in Section 7.5 of the Scoping Report. Specifically, this includes consideration of potential effects on benthic habitats and species, fish and shellfish, marine mammals, seabirds and maritime. In Table 7.15 the Applicant provides a summary of elements to be scoped in for each ecology receptor.

5.6.2 The Scottish Ministers will consider these marine ecology receptors individually within this Scoping Opinion in chapters 5.7 through to 5.11.

5.7 Benthic Habitats and Species

5.7.1 The Scottish Ministers agree with the potential significant effects in the Scoping Report and the elements scoped in for and out from further

assessment in the EIA Report as listed in table 7.15 of the Scoping Report. This view is supported by MSS advice.

- 5.7.2 The Scottish Ministers advise however that, where possible, the Applicant consider within the EIA Report, the MSS advice in relation to sea caves.

5.8 Fish and Shellfish

- 5.8.1 The Scottish Ministers are broadly content with the impacts that are proposed to be scoped in and out of the EIA Report in relation to fish species. The Scottish Ministers are also content that consideration of the impact on diadromous fish can be scoped out of the EIA Report.

- 5.8.2 The Scottish Ministers advise however, that information on fish spawning or nursery areas within the vicinity of the Proposed Works must be included and considered within the EIA Report. The Scottish Ministers direct the Applicant to the MSS advice in this regard.

5.9 Marine Mammals

- 5.9.1 With regard to baseline characterisation the Scottish Ministers advise that far more detail is required. The Scottish Ministers direct the Applicant to the MSS advice, in particular with regard to the identification of relevant marine mammal species and advise that this must be fully considered in the EIA Report.

- 5.9.2 In addition, the Scottish Ministers advise that the lack of detail provided within the Scoping Report makes it difficult to clearly assess what impacts should or should not be scoped in for or out from further assessment in the EIA Report. The Scottish Ministers are content that injury and disturbance due to underwater noise is scoped in and direct the Applicant to the MSS advice with regard to including any potential impacts during preconstruction, e.g. geophysical or geotechnical surveys and any noisy activities like piling or dredging. In addition, the Scottish Ministers highlight the potential impact on marine mammals if dredge material is to be deposited at a dredge deposit site and the potential need to consider vessel traffic to and from this area. Beyond this, without more specific information on the methods of construction, the Scottish Ministers cannot comment on the impacts proposed to be scoped in or out of the Scoping Report.

- 5.9.3 The Scottish Ministers note that NatureScot have not provided a representation which expressly considers potential impacts from the Proposed Works on marine mammals and advise the Applicant that they may wish to consider engaging with NatureScot on this receptor further.

5.10 Seabirds

- 5.10.1 The Scottish Ministers are broadly content with the study area identified in table 7.5.4 of the Scoping Report, however, advise that the areas stated as being likely to experience “no significant effects” in paragraph 7.5.45 must be included in the EIA Report for further assessment. The Scoping Report lacks supporting evidence in this regard and therefore in accordance with the MSS advice, surveys must be carried out at these areas.
- 5.10.2 In regard to the baseline data sources, the Scottish Ministers direct the Applicant to concerns raised in the MSS advice regarding the availability of contemporary data from the Fair Isle Bird Observatory and advise the Applicant to seek clarity on this, noting that that dedicated surveys may be required if data gaps are identified.
- 5.10.3 In regard to key species, the Applicant is directed to MSS advice and the representation made by NatureScot in relation to inaccuracies contained within Section 7.5.14 and 7.5.30 of the Scoping Report and advise that this must be addressed in the EIA Report. Further to this, consideration must be given to potential effects on all birds from the Proposed Works including those beyond the North Haven Bay area. Finally, in line with the representation from NatureScot and the MSS advice, impacts to Artic Tern and Fulmar must be assessed beyond the breeding season.
- 5.10.4 The Scottish Ministers broadly agree with the elements identified as being scoped in for ornithology by the Applicant. The Scottish Minister advise however that the risks of predatory mammal Invasive Non-Native Species (INNS) by means of vessel and material movements, and an assessment of impacts on the qualifying interests of the Fair Isle Special Protection Area by disturbance during construction must be fully addressed in the EIA Report. In addition, the EIA Report must detail how these impacts will be mitigated and include a biosecurity management plan. This view is supported by the NatureScot representation and MSS advice. In addition, the Scottish Ministers advise that impacts from underwater noise must be assessed in the EIA Report in respect of ornithology and direct the Applicant to the MSS advice in this regard.
- 5.10.5 The Scottish Ministers disagree with the Applicant’s proposal to scope out changes to bird foraging habitat during the construction phase of the Proposed Works and advise this must be assessed in the EIA Report and direct the Applicant to the MSS advice in this regard.

5.11 Maritime Habitats

- 5.11.1 Subject to the advice provided in relation to bird foraging habitat in paragraph 5.10.5 above, the Scottish Ministers agree with the elements scoped in for and out from further assessment in the EIA Report, as detailed within Table 7.15 in relation to maritime habitats.

5.12 Socioeconomics

- 5.12.1 The Scottish Ministers are broadly content with the potential effects that are proposed be scoped in for and out from assessment in the EIA Report within Table 7.19 of the Scoping Report.
- 5.12.2 The Scottish Ministers advise however that the Applicant should fully consider the MAU advice, including further exploration of social impacts and also potential negative socio-economic impacts as a result of the Proposed Works. In addition, the Scottish Ministers advise the Applicant to fully consider the guidance and principles detailed in the MAU advice.

5.13 Risk of Major Accidents and/or Disaster

- 5.13.1 The Applicant considers risk of major accidents and/or disaster in Section 8.2 of the Scoping Report. The Scottish Ministers acknowledge the Applicant's commitment to include consideration of risks introduced in each topic chapter and the implementation of a Construction Environmental Management Plan. However, the Scottish Ministers do not consider that the Applicant has provided sufficient information to justify scoping out the risk of major accidents and/or disaster. Consequently, it must be scoped in for further assessment in the EIA Report in respect of the construction phase of the project.
- 5.13.2 In doing so, the Applicant should make use of appropriate guidance, including the IEMA 'Major Accidents and Disasters in EIA: A Primer', to better understand the likelihood of an occurrence and the Proposed Works' vulnerability to or ability to cause a potential accident or disaster.
- 5.13.3 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.
- 5.13.4 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.

5.14 Ground Conditions and Contaminated Land

- 5.14.1 In Section 8.3.6 of the Scoping Report, the Applicant considers potential effects on ground conditions and contaminated land during the different phases of the Proposed Works, which it proposes to scope out of assessment in the EIA Report.
- 5.14.2 The Scottish Ministers are content that, to the extent that the effects relate to the marine licensable activities of the Proposed Works, the identified impacts can be scoped out from further assessment within the EIA Report in respect of both the construction and operation phases.

5.15 Noise and Vibration

- 5.15.1 In Sections 8.4.3 to 8.4.19 of the Scoping Report, the Applicant considers the potential effects of noise and vibration, which it proposes to scope out of assessment in the EIA Report.
- 5.15.2 To the extent that the effects relate to the marine licensable activities of the Proposed Works, the Scottish Ministers agree with the Applicant that, noise and vibration can be scoped out of the EIA Report. However, for the avoidance of doubt, advise that the MSS advice in relation to noise impacts on marine mammals and birds must be implemented in full in the relevant receptor chapters of the EIA Report. The Applicant is referred to sections 5.9.2 and 5.10.4 of this Scoping Opinion respectively for further clarity.

5.16 Waste

- 5.16.1 The Applicant considers waste in section 8.5 of the Scoping Report and concludes in Table 5.1 within Section 5.1.3 that waste will be scoped out of the EIA Report. To the extent that the effects relate to the marine licensable activities of the Proposed Works, the Scottish Ministers agree that waste is scoped out of the EIA Report.

5.17 Traffic and Transport

- 5.17.1 The Applicant considers traffic and transport in Section 8.6 of the Scoping Report. The potential environmental effects are discussed from Sections 8.6.7 to 8.6.10 and in Section 8.6.11. The Applicant concludes that traffic and transport can be scoped out of the EIA Report.

- 5.17.2 The Scottish Ministers are content with this to the extent that the effects relate to the marine licensable activities of the Proposed Works, however advise that the potential impacts on fishing, recreational and commercial vessel users is scoped in for assessment within the EIA Report. The Scottish Ministers direct the Applicant to the RYA representation and MCA Representation and advise that these must be fully considered.

5.18 Air Quality

- 5.18.1 In Section 8.7 of the Scoping Report the Applicant considers the potential effects of the Proposed Works on air quality. The Applicant proposes to scope air quality out of the EIA Report for all phases of the Proposed Works. To the extent that the effects relate to the marine licensable activities of the Proposed Works, the Scottish Ministers are content that air quality can be scoped out of the EIA Report.

5.19 Water Quality and Flooding

- 5.19.1 The Applicant considers water quality and flooding within Section 8.8 of the Scoping Report, with the relative potential impacts discussed between Sections 8.8.9 and 8.8.18. In Sections 8.8.16 and 8.8.17, the Applicant concludes that neither the construction nor operational phases of the Proposed Works are likely to cause significant effects on water quality or flood risk. Therefore, the Applicant proposes to scope out water quality and flood risk from the EIA Report.
- 5.19.2 With regards to flooding, the Scottish Ministers anticipate that this matter will be considered as part Shetland Islands Council's assessment of the associated planning permission and it can therefore be scoped out of the EIA Report in relation to the proposed marine licence applications.
- 5.19.3 With regards to water quality the Applicant has not proposed any assessment in relation to water quality or to provide information for any Water Framework Directive consideration. Impacts on water quality are often identified from construction and dredging, the release of contaminated sediments, deposit of dredged material at sea and pollution events occurring from the works themselves (paints/chemicals/lubricants etc.). In the absence of such detail and further the lack of detail provided in respect of the construction elements and dredging volumes of the Proposed Works, the Scottish Ministers advise that impacts on water quality must be assessed in the EIA Report. The Scottish Ministers advise that the Applicant must give proper consideration to all elements likely to interact with the water environment which pose a risk to degradation of water quality.

5.20 Human Health

- 5.20.1 To the extent that the effects relate to the marine licensable activities of the Proposed Works, the Scottish Ministers agree with the Applicant that human health can be scoped out of further assessment in the EIA Report for the construction and operational phases of the Proposed Works.

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 (as amended). 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.

08 February 2023

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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