

[Redacted]
E: ms.marinelicensing@gov.scot

[Redacted]
Suite 18, Merlin House
Mossland Road
Hilington Park
Glasgow G52 4XZ

Date: 25 September 2018

Dear [Redacted]

SCREENING OPINION UNDER PART 2, REGULATION 11 OF THE MARINE WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND) REGULATIONS 2017 (AS AMENDED)

Thank you for your screening opinion request for the proposed expansion of Toft Ferry Terminal, Shetland, received on 06 August 2018. The works comprise of the construction of a new pier and dredging and dredged spoil disposal at sea.

In considering your screening opinion request, the Scottish Ministers have consulted with Scottish Natural Heritage (“SNH”), the Scottish Environment Protection Agency (“SEPA”), Historic Environment Scotland (“HES”) and Shetland Islands Council (“SIC”), as to their view on whether the proposed works are an Environmental Impact Assessment (“EIA”) project. Copies of the consultation responses are attached for your review (Appendix I).

The Scottish Ministers consider the works to fall under paragraph 10(m) of The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) (“the 2017 MW Regulations”). The threshold for sea defence works, as described in column 2 of schedule 2 of the 2017 MW Regulations, is ‘all works’, thus the proposed works exceed this threshold.

The terrestrial elements of the development will be subject to a screening review by the relevant local planning authority (SIC) and do not require a marine licence under the Marine (Scotland) Act 2010 or EIA screening under the 2017 MW Regulations.

When making a determination as to whether schedule 2 works are an EIA project, the Scottish Ministers must take into account such of the selection criteria set out in schedule 3 of the 2017 MW Regulations (Appendix II) as are relevant to the works. In this regard, the Scottish Ministers have considered the following:

1. Characteristics of the works

In regards to the size of the proposed construction and dredging works, the Scottish Ministers are content that the works are relatively limited in their extent, with the new pier spanning approximately 59 m in length, compared to the existing 24.8 m. The expected dredging quantity is below 25,000 m³ with the potential for dredged spoil deposit under Mean High Water Springs.

Please refer to SEPA's advice (Appendix I) should you decide to deposit the dredged spoil on land.

The construction of the new pier includes the incorporation of the old pier into the new structure, therefore avoiding its demolition and the production of further waste.

The sheet piling work might require percussive piling activities, depending on the methodologies of the contractor to be appointed.

Based on the information provided and advice received, the Scottish Ministers are of the opinion that the characteristics of the works are unlikely to have significant effects on the environment.

2. Location of the works

The location of the works is approximately 2.5 km away from the Yell Sound Coast Special Area of Conservation ("SAC") and Site of Special Scientific Interest ("SSSI") for harbour seals and otters, and adjacent to the East Mainland Coast of Shetland proposed Special Protection Area ("pSPA") for great northern divers, grebes, sea ducks and breeding red-throated divers. Cetaceans are a European protected species, and although there are no designations in the vicinity of the proposal, the Shetland Fisheries Training Centre Trust has advised cetaceans have been recorded in the area.

The construction works encompass sheet piling and potential percussive piling activities, which can cause an increase in underwater noise. However, no such concerns have been reported by SNH at this stage.

HES and SIC have not advised of any likely significant impacts on historic environment interests.

Based on the information provided and advised received, the Scottish Ministers do not have any significant concerns regarding the environmental sensitivity of the geographical areas likely to be affected by the proposed works.

3. Characteristics of the potential impact

In view of the findings in sections 1 and 2 above, the Scottish Ministers are content that the ferry expansion works are unlikely to significantly affect the environment and that any potential impacts can be effectively addressed and mitigated by the marine licence application and determination process.

The Scottish Ministers are therefore of the opinion that the proposed works are not an EIA project under the 2017 MW Regulations and EIA is not required to be carried out in respect of the proposed works.

If you increase, alter or extend the proposed works, you are advised to contact Marine Scotland – Licensing Operations Team to confirm if the screening opinion is still valid.

A copy of the screening opinion has been forwarded to SIC planning department for their information. The screening opinion has been made publicly available through the Marine Scotland Information webpage: <http://marine.gov.scot/marine-projects> .

Yours sincerely,

[Redacted]
Licensing Operations Team
Marine Scotland

Appendix I Consultation Responses

[Redacted]

From: [Redacted]
Sent: 28 August 2018 14:52
To: MS Major Projects
Subject: Re: Shetland Islands Council (per NIRAS) - Toft Pier Re-development, Shetland - Consultation of request for screening - responses by 04 September 2018

Dear [Redacted]

Thank you for consulting us over this.

On the presumption that the development does not fall under section 8 (2) of Schedule 1 , i.e. the extended pier will not be capable of taking vessels over 1,350 tonnes, we do not consider the proposed works to be an EIA project as defined by the regulations.

Yours sincerely

[Redacted] | **Operations Officer**
Scottish Natural Heritage | Dualchas Nàdair na h-Alba | Ground Floor | Stewart Building | Alexandra Wharf | Lerwick | Shetland | ZE1 0LL | t: [Redacted]
nature.scot – *Connecting People and Nature in Scotland* – [@nature_scot](https://twitter.com/nature_scot)

[Redacted]

From: [Redacted]
Sent: 29 August 2018 14:22
To: MS Major Projects
Subject: RE: Shetland Islands Council (per NIRAS) - Toft Pier Re-development, Shetland - Consultation of request for screening - responses by 05 September 2018

Dear [Redacted] while it is the view of the partnership that an EIA will **not** be required under the MW regulations we would like to provide the following comments.

The proposed development area is adjacent to the Yell Sound SAC and East mainland proposed SPA. The existing Toft pier is used by otters which are a European protected species, and there are cetacean records from the wider area, which are also European protected species.

With regard to otters I believe that the applicant has already received the following advice from SNH.
'Otters are EPS so have special protection under European and domestic legislation which makes it an offence to, amongst other things, damage, destroy or obstruct access to an otter holt, or disturb an otter whilst it is occupying a holt, unless a licence has been granted by SNH. A development can't be given planning consent unless the planning authority is satisfied that either otters are not likely to be present or, if they are, that we would grant the necessary licence.'

There are likely to be otter holts around the shores of Toft Voe and possibly in the rock armouring of the pier itself. Before submitting a planning application you should therefore commission an otter survey extending at least 200 metres around the coast on each side of the pier so that we can advise the Council on licencing requirements'

In addition it should be noted that the proposed development and existing dredge disposal locations are adjacent to the Yell Sound Coast Special Area of Conservation (SAC) and the now additionally the East mainland proposed SPA, on which this development may impact.

Shetland Islands Marine Spatial Plan policy MSP DD1 contains the specific policy caveat relating to the use of these dredge disposal sites:

MSP DD1: Dredging and Disposal of Dredged Material

Proposals for dredging and the disposal of the dredged material will be considered favourably where they have:

a) complied with all policies included in Policy Framework Section 5(a) and 5(b) and Policy MSP DEV1;

b) used, where possible, recognised marine disposal sites;

c) demonstrated that any development proposal at the existing Ulsta or Samphrey disposal sites will have no adverse effects on the integrity of the Yell Sound Coast SAC;

d) detailed the level of impact from suspension of materials and disturbance to the seabed; and

e) demonstrated where a beneficial use for the disposal has been identified, such as beach nourishment.

In addition there are public observations of horse mussels and kelp (Priority marine features) within the proposed Toft Pier construction and dredge area.

There are also records of cetaceans in the area (European protected species) which could be disturbed by piling and blasting, and potentially dredge disposal operations.

Kind regards

[Redacted]

Marine Spatial Planning Manager

██████████

NAFC Marine Centre, Port Arthur, SCALLOWAY, Shetland, ZE1 0UN, UK

Tel: [Redacted]

WWW: <http://www.nafc.ac.uk>

NAFC Marine Centre is the trading name of the Shetland Fisheries Centre Trust.

Scottish Charity Number SC003715

The Trust is a Management Agent for the Shetland Islands Council, Town Hall, Lerwick This message is intended for the use of only the person(s) ("intended recipient") to whom it is addressed. It may contain information that is privileged and confidential. Accordingly any dissemination, distribution, copying or other use of this message or any of its content by any person other than the intended recipient may constitute a breach of civil or criminal law and is strictly prohibited. If you are not the intended recipient, please contact the sender as soon as possible.



HISTORIC
ENVIRONMENT
SCOTLAND

ÀRAINNEACHD
EACHDRAIDHEIL
ALBA

By email: MS.majorprojects@gov.scot

[Redacted]
Marine Scotland (Aberdeen Office)
Marine Laboratory
375 Victoria Road
Aberdeen
AB11 9DB

Longmore House
Salisbury Place
Edinburgh
EH9 1SH

Enquiry Line: [Redacted]
[Redacted]

Our ref: AMN/16/Z
Our case ID: 300030785

29 August 2018

Dear [Redacted]

[The Marine Works \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017
Toft \(Shetland\) Ferry Terminal Expansion – Screening Opinion Request](#)

Thank you for your consultation which we received on 14 August 2018 seeking our comments on an Environmental Impact Assessment (EIA) screening opinion for the above proposed development. This letter contains our comments for our historic environment interests. That is world heritage sites, scheduled monuments and their setting, category A-listed buildings and their setting, gardens and designed landscapes and battlefields on their respective Inventories.

The relevant local authority archaeological and conservation advisors will also be able to offer advice for their interests. This may include unscheduled archaeology, category B- and C-listed buildings and conservation areas.

Our Screening opinion

We have no comments to make on the requirement or otherwise for an EIA for this proposed development. However, you may find the information provided below helpful in reaching your decision on the matter.

Our advice

On the basis of the information provided, we are content that significant impacts on our interests are not likely.

We hope this is helpful. Please contact us if you have any questions about this response. The officer managing this case is [Redacted] who can be contacted by phone on [Redacted] or by email on [Redacted]

Yours sincerely

Historic Environment Scotland

[Redacted]

From: [Redacted]
Sent: 30 August 2018 09:25
To: MS Major Projects
Cc: [Redacted]
Subject: RE: Shetland Islands Council (per NIRAS) - Toft Pier Re-development, Shetland - Consultation of request for screening - responses by 04 September 2018
Attachments: SecureZIP Attachments.ZIP

[Redacted]
Dea

Toft Pier Re-development, Shetland - Consultation of request for screening

Thank you for the consultation which we received on 14th August 2018 seeking our comments on an Environmental Impact Assessment (EIA) screening option for the above proposed development.

The new proposed pier at Toft, Shetland will replace an existing pier beside the busy Toft ferry terminal in Shetland. The proposed development is not in an designated areas, but is close to the Yell Sound Coast Special Area of Conservation (SAC) and East Mainland Coast, Shetland proposed Special Protection Area (pSPA). The pier will not be capable of taking vessels of over 1350 tonnes, so it would come under section 8 (2) of Schedule 1 of the regulations, so it is out with the scope of the regulations. It is also not reclamation of land and not coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works, so does not fall under Schedule 2 of the regulations.

Due to these factors Shetland Islands Councils advice is that an Environmental Impact Assessment is not needed, but It is the decision of your organization if an Environmental Impact Assessment is needed.

Kind regards

[Redacted]
Marine Planning Officer
Shetland islands Council

4 September 2018

[Redacted]
Marine Scotland
Marine Laboratory
PO Box101
375 Victoria Road
Aberdeen
AB11 9DB

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

Dear [Redacted]

**The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017
Marine (Scotland) Act 2010**

**Toft Pier extension required to expand the berthing area for the current Toft ferry terminal and expand the berthing area for the local fishing community. The current pier (24.8m) will be extended by approximately 34 m.
Toft Pier, Shetland**

Thank you for consulting SEPA on the screening opinion for the above development proposal by way of your letter of email, which we received on 14 August 2018. We would welcome engagement with the applicant at an early stage to discuss any of the issues raised in this letter.

We consider that, with respect to our interests, Environmental Impact Assessment is not required for the above proposal. Whether or not Environmental Impact Assessment is required, for this type of development, please refer to Table 1 of [LUPS-GU13](#) - standing advice regarding the modifications to existing pier, creation of extension and the capital dredge element.

We advise that with regards to any nature conservation concerns the applicant should contact SNH for advice.

With regards to waste disposal, it is noted that the disposal routes of the dredged material are not confirmed in the submitted material. Should it be decided that any will be disposed of on land, then at least a waste management exemption would be required and we advise the applicant to talk to our local team via the contact details below for further information and advice.

With regards to the backfill behind the proposed sheet-piling, if crushed rock is to be used, then the construction must be sourced from a SEPA licensed quarry or site with SEPA licensed mobile



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

crushing and screening plant, and if other materials are to be used then, again, it would be advisable for the applicant to talk to our local team via the contact details below.

The contact details of the local SEPA office - Regulatory Services team are: The Esplanade, Lerwick, Shetland, ZE1 0LL, Tel: [Redacted]

If you have any queries relating to this letter, please contact me by telephone on [Redacted] or e-mail at [Redacted]

Yours sincerely

[Redacted]
Senior Planning Officer
Planning Service

ECopy to: [Redacted]

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](#).

Appendix II The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017
Schedule 3 - Selection Criteria for Screening Schedule 2 Works

Characteristics of works

1. The characteristics of works must be considered having regard, in particular, to—

- (a) the size and design of the works;
- (b) cumulation with other existing works and/or approved works;
- (c) the use of natural resources, in particular land, soil, water and biodiversity;
- (d) the production of waste;
- (e) pollution and nuisances;
- (f) the risk of major accidents and/or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge;
- (g) the risks to human health (for example due to water contamination or air pollution).

Location of works

2. The environmental sensitivity of geographical areas likely to be affected by works must be considered having regard, in particular, to—

- (a) the existing and approved land use;
- (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;
- (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
 - (i) wetlands, riparian areas, river mouths;
 - (ii) coastal zones and the marine environment;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) European sites and other areas classified or protected under national legislation;
 - (vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in Union legislation and relevant to the project, or in which it is considered that there is such a failure;
 - (vii) densely populated areas;
 - (viii) landscapes and sites of historical, cultural or archaeological significance.

Characteristics of the potential impact

3. The likely significant effects of the works on the environment must be considered in relation to criteria set out in paragraphs 1 and 2 above, with regard to the impact of the works on the factors specified in regulation 5(3), taking into account—

- (a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);
- (b) the nature of the impact;
- (c) the transboundary nature of the impact;
- (d) the intensity and complexity of the impact;
- (e) the probability of the impact;
- (f) the expected onset, duration, frequency and reversibility of the impact;
- (g) the cumulation of the impact with the impact of other existing and/or approved works;
- (h) the possibility of effectively reducing the impact.