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Marine Scotland - Licensing Operations Team Scoping Opinion

**Ardersier (per CWC Group and Envirocentre)
Ardersier Port Redevelopment
Ardersier, Nairn**

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

**SCOPING OPINION FOR THE PROPOSED MARINE LICENCE APPLICATION(S)
TO CONSTRUCT WORKS, CARRY OUT DREDGING AND DEPOSIT THE
ASSOCIATED DREDGE SPOIL WITHIN THE SCOTTISH MARINE AREA**

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1. Executive Summary

This is the scoping opinion adopted by the Scottish Ministers, under regulation 14 of The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) (“the 2017 MW Regulations”), as to the scope and level of detail of information to be provided in the Environmental Impact Assessment report (“EIA report”) for the proposed dredging and extension to the former fabrication yard, Ardersier, Nairn, located on the Moray Firth coast. The scoping opinion has been requested by Envirocentre on behalf of the applicant, CWC Group (“the applicant”).

This scoping opinion is based on the information provided in the applicant’s request, dated 25 April 2018, for the Scottish Ministers to adopt a scoping opinion. The request included the submission of a [scoping report](#). The Scottish Ministers have consulted on the scoping report and the responses received have been taken into account in adopting this scoping opinion. The matters addressed by the applicant in the scoping report have been carefully considered and use has been made of professional judgment (based on expert advice from stakeholders and Marine Scotland in-house expertise) and experience in order to adopt this opinion.

The main potential issues identified are:

- The fate of the dredged material, in particular the potential contaminants within the proposed area for dredge and the question of whether this material will be disposed of at sea; and
- Impacts to marine ecology, in particular the loss of benthic sediment and its direct and indirect impact to non-breeding and breeding birds and diadromous fish.

Detailed information is provided in the specialist topic sections. Matters are not scoped out unless specifically addressed and justified by the applicant and confirmed as being scoped out by the Scottish Ministers. Table 1 summarises the Scottish Minister’s advice on whether topics are to be scoped in or out.

Table 1: Scottish Minister’s opinion as to whether topics are to be scoped in or out.

Topic	Reason for scoping in / out
Landscape and visuals	Scoped OUT. Includes important features of cultural heritage. Insufficient concerns regarding this receptor to warrant further assessment.
Terrestrial Ecology and Ornithology	Scoped IN. Two years of data for the non-breeding interests and one year for breeding interests is required to address HRA concerns.
Marine Ecology	Scoped IN. A revised Marine Mammal Protection Plan and an update to vessel movement is

	required. Review of baseline data on diadromous fish and seal features should be sufficient to address HRA.
Air Borne Noise and Ground Borne Vibration	Scoped IN. Baseline monitoring will need to be re-done.
Underwater Noise	Scoped IN. The Underwater Noise Assessment should be updated.
Water Environment & Coastal Processes – Sediment Transport	Scoped IN. Scottish Ministers welcome the inclusion of a revised hydrodynamic modelling analysis and a new bathymetric survey to inform a Sediment Transport Monitoring Plan and Coastal Processes Assessment.
Water Environment & Coastal Processes – Water Quality	Scoped IN. Pre-dredge sampling will need to be completed. Insufficient clarity provided in scoping report on areas, locations and volumes to be dredged. Maintenance dredging and sea disposal.
Water Environment & Coastal Processes – Flood Risk	Scoped OUT. SEPA confirmed that the conditions agreed for the previous planning permission are still valid and sufficient to address flood risk issues.
Socio-Economics	Scoped OUT. Insufficient concerns regarding this receptor to warrant further assessment.
Climate Change	Scoped OUT. Pollution and emission control measures to be included in CEMP.
Natural Disasters	Scoped IN. No evidence has been provided in the scoping report to conclude no risk.
Major Accidents	Scoped IN. No evidence has been provided in the scoping report to conclude no risk.
Cumulative Assessment	Scoped IN. Insufficient information provided in scoping report.
Shipping & Navigation	Scoped IN. Not addressed by applicant. Concerns raised by consultees about potential impact the works may have on vessels operating in the area.

For the avoidance of doubt, the adoption of this scoping opinion by the Scottish Ministers does not preclude the Scottish Ministers from requiring the applicant to submit additional information in connection with any EIA report submitted with their application for a marine licence relative to the proposed works.

In the event that an application is not submitted by the applicant for the proposed works within 12 months of the date of this scoping opinion, the Scottish Ministers recommend that the applicant seeks further advice from them regarding the potential to update the scoping opinion.

2. Introduction

2.1 Background to scoping opinion

2.1.1 We refer to your email of 25 April 2018 requesting a scoping opinion from the Scottish Ministers, under Regulation 14 of the 2017 MW Regulations. Your request included a [scoping report](#) which contained a description of the location of the works, including a plan sufficient to identify the area in which the works are proposed to be sited, and a description of the nature and purpose of the proposed works and their likely impact on the environment. The Scottish Ministers consider that they have been provided with sufficient information to adopt a scoping opinion.

2.1.2 The Scottish Ministers recognise a former EIA was submitted in 2013 and references will be made to information and consultation responses where they are relevant to the current scoping consultation.

2.2 The requirement for Environmental Impact Assessment

2.2.1 Under the 2017 MW Regulations, the Scottish Ministers, as the consenting authority, must not grant a regulatory approval for an EIA project unless an environmental impact assessment has been carried out in respect of that project and in carrying out such assessment the Scottish Ministers must take the environmental information into account. The works described in your scoping report fall under Schedule 1, paragraph 8(1) of the 2017 MW Regulations and therefore the works are automatically subjected to an EIA because their environmental effects are presumed to be significant.

2.3 The content of the Scoping Opinion

2.3.1 In regards to your request for a scoping opinion on the proposed content of the required EIA report, the Scottish Ministers have, in accordance with the 2017 MW Regulations, considered the documentation provided to date and consulted with the appropriate consultation bodies (see Appendix I) and scientific advisors (Appendix II) in reaching their scoping opinion.

2.3.2 The EIA process is vital in generating an understanding of the biological, chemical and physical processes operating in and around the proposed works location and those that may be impacted by the proposed activities. We would however state that references made within the scoping opinion with regard to the significance of impacts should not prejudice the outcome of the EIA process. It is therefore expected that these processes will be fully assessed in the EIA report unless scoped out.

3. Description of works

3.1 Background to the works

3.1.1 The proposal by the applicant is to re-establish the port and port related services for energy related uses at the former fabrication yard, Ardersier, Nairn, located on the Moray Firth coast. The proposed development includes the rebuild of the harbour wall, dredging and disposal. As well as requiring a marine licence, the works will also require planning permission and a harbour revision order and it is the applicants intention to complete a single EIA Report to cover all these requirements.

3.1.2 The proposed works comprise of the following main components:

- A large volume of dredging, including the removal of part of Whiteness Sands spit, with some re-use for reclamation and potentially some for sea disposal; and
- Construction of a quay wall including vibropiling.

4. Aim of this Scoping Opinion

4.1 The scoping process

4.1.1 Scoping provides the first identification, and likely significance, of the environmental impacts of the proposal and the information needed to enable their assessment. The scoping process is designed to identify which impacts will or will not need to be addressed in the EIA report. This includes the scope of impacts to be addressed and the method of assessment to be used. The scoping process also allows consultees to have early input into the EIA process, to specify their concerns and to supply information that could be pertinent to the EIA process. In association with any comments herein, full regard has been given to the information contained within the documentation submitted with the scoping opinion request.

4.1.2 The Scottish Ministers have also used this opportunity to provide advice in relation to the licensing requirements, in addition to the EIA requirements (see Appendix III).

5. Consultation

5.1.1 On receipt of the scoping opinion request documentation, the Scottish Ministers, in accordance with the 2017 MW Regulations, initiated a 30 day consultation process, which commenced on 02 May 2018. The following bodies were consulted, those marked in **bold** provided a response, those marked in *italics* sent nil returns or stated they had no comments:

- *British Shipping*
- *Caledonian Maritime Assets Limited*
- *Highland Council*
- *The Crown Estate Scotland*
- **Defence Infrastructure Organisation**
- **Historic Environment Scotland (“HES”)**
- *Marine Scotland Fishery Office – Buckie*
- *Marine Scotland Planning and Policy*
- **Maritime Coastguard Agency (“MCA”)**
- *Marine Safety Forum*
- *Nairn River Community Council*
- **The Northern Lighthouse Board (“NLB”)**
- **Royal Society for the Protection of Birds (“RSPB”)**
- **The Royal Yachting Association (“RYA”)**
- **Scottish Environment Protection Agency (“SEPA”)**
- *Scottish Fishermen’s Federation*
- **Scottish Natural Heritage (“SNH”)**
- *Scottish Wildlife Trust*
- *Transport Scotland*
- *UK Chamber of Shipping*
- *Whale and Dolphin Conservation*

5.1.2 From the list above, a total of 8 responses were received. Advice was also sought from Marine Scotland Science (“MSS”). The purpose of the consultation was to obtain advice and guidance from each consultee or advisor as to which potential effects should be scoped in or out of the EIA.

5.1.3 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 application(s). Full consultation responses are attached in Appendix I and each should be read in full for detailed requirements from individual consultees. MSS advice is attached in Appendix II. The Scottish Ministers expect all consultee concerns to be addressed in the EIA report unless otherwise stated.

6. Contents of the EIA report

6.1 Requirements of the 2017 MW Regulations

6.1.1 An EIA report must be prepared in accordance with regulation 6 of the 2017 MW Regulations.

6.1.2 The 2017 MW Regulations require that the EIA report is prepared by competent experts and must be accompanied by a statement from the applicant outlining the relevant expertise or qualifications of those experts.

6.1.3 The EIA report must be based on this scoping opinion and include the information that may be reasonably required for reaching a reasoned conclusion, which is up to date, on the significant effects of the works on the environment, taking into account current knowledge and methods of assessment.

6.1.4 A gap analysis template is attached at Appendix IV 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.

6.2 Non-Technical Summary ('NTS')

6.2.1 The EIA report must contain a Non-Technical Summary ("NTS") which should be concise and written in a manner that is appealing to read and easily understood. The NTS should highlight key points set out in the EIA report and must include (at least) the following:

- a description of the works comprising information on the site, design, size and other relevant features of the works;
- a description of the likely significant effects of the works on the environment;
- a description of the features of the works and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- a description of the reasonable alternatives studied by the applicant, which are relevant to the works and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the works on the environment; and
- a summary of the information provided under paragraphs 1 to 9 of Schedule 4 of the 2017 MW Regulations.

6.3 EU Guidance

6.3.1 [EU guidance on the preparation of a EIA report](#) identifies the following qualities of a good EIA report:

- A clear structure with a logical sequence that describes, for example existing baseline conditions, predicted impacts (nature, extent and magnitude), scope for mitigation, proposed mitigation measures, significance of unavoidable/residual impacts for each environmental factor.
- A table of contents at the beginning of the document.
- A description of the consent procedure for the works and how EIA fits within it.
- Reads as a single document with appropriate cross-referencing.
- Is concise, comprehensive and objective.
- Is written in an impartial manner without bias.
- Includes a full description and comparison of the alternatives studied.
- Makes effective use of diagrams, illustrations, photographs and other graphics to support the text.
- Uses consistent terminology with a glossary.
- References all information sources used.
- Has a clear explanation of complex issues.
- Contains a good description of the methods used for the studies of each environmental topic.
- Covers each environmental topic in a way which is proportionate to its importance.
- Provides evidence of effective consultations (if some consultations have already taken place).
- Provides basis for effective consultations to come.
- Makes a commitment to mitigation (with a programme) and to monitoring.
- Has a NTS which does not contain technical jargon.
- Contains, where relevant, a reference list detailing the sources used for the description and assessments included in the report.

6.4 Mitigation

6.4.1 Within the EIA report it is important that all mitigating measures are:

- clearly stated;
- accurate;
- assessed for their environmental effects;
- assessed for their effectiveness;

- fully described with regards to their implementation and monitoring, and;
- described in relation to any consents or conditions

6.4.2 The EIA report should contain a mitigation table providing details of all proposed mitigation discussed in the various chapters. Refer to Appendix I for consultee comments on specific baseline assessment and mitigation.

6.4.3 Where potential environmental impacts 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 has been undertaken;
- what this has shown i.e. what impact if any has been identified; and
- why it is not significant.

6.5 Design Envelope

6.5.1 The exact nature of the work that is needed to inform the EIA may vary depending on the design choices. 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. 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, along with the potential impacts arising from these must also be described. The Scottish Ministers will determine the application based on the worst case scenario. The EIA will reduce the degree of design flexibility required and that the detail will 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 9 below regarding multi-stage regulatory consent. 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.

7. Interests to be considered within the EIA report

7.1 Introduction

7.1.1 The scoping report considered the likely impacts of the works on the environment under the headings and topics addressed below. This section also contains a summary of the main points raised by consultees and the Scottish Ministers' opinion on whether EIA topics should be scoped in or out. The consultation responses are contained in Appendix I and the advice from MSS is in Appendix II and the applicant is advised to carefully consider these responses and use the advice and guidance contained within them to inform the EIAR.

7.2 Landscape and Visuals

7.2.1 The applicant conducted a Landscape and Visual Assessment which was consulted on for planning consent in 2013. The applicant concluded that because no additional new significant developments have been proposed since this date, the methodology and findings remain valid, and therefore suggested to scope out landscape and visuals from the EIA Report.

7.2.2 Historic Environment Scotland confirmed in their consultation response that they were satisfied that there is no need for an updated cultural heritage assessment.

7.2.3 On this basis, the Scottish Ministers agree that Landscape and Visuals should be scoped out of the EIAR.

7.3 Terrestrial Ecology and Ornithology

7.3.1 The applicant proposed a desk-based Breeding Bird Assessment using data on WeBS.

7.3.2 In their consultation response, SNH identify that the scoping report makes no mention of the Moray Firth proposed Special Protected Area (pSPA). SNH further identified that WeBS does not provide reliable data for offshore concentrations of sea duck and divers (the pSPA interest) and is somewhat outdated. Both SNH and RSPB recommend the applicant undertake their own counts to include seasonal, diurnal, and tidal variations: two years of data for the non-breeding birds and one year for breeding birds.

7.3.3 RSPB recommend a full description of the works and the measures to be put

in place to mitigate impacts to the SPA, pSPA and SSSI to be detailed. These should include the measures to protect the long-term feeding and roosting functions for SPA and pSPA wintering shorebirds at Whiteness Sands and Whiteness Head and avoid displacement / disturbance to the birds, during the construction and operational phases.

7.3.4 In their consultation response, SEPA welcomed the commitment to carry out a Phase 1 Habitat Survey.

7.3.5 The Scottish Ministers agree:

- with RSPB and SNH that two years of wintering bird counts, and one year of breeding bird data be collected in order to determine potential impacts of the proposed works;
- that particular detail of the proposed works should be provided in an HRA report in order to properly assess the impact on the features of the SPA, pSPA and SSSI.
- that a detailed description of all the measures to be put in place to mitigate impacts to the SPA, pSPA and SSSI.

7.4 Marine Ecology

7.4.1 The applicant acknowledges that marine mammals are present in the area around the proposed works and that they have the potential to be affected by the piling and dredging activity. The applicant proposes to conduct a review of existing baseline data for marine ecology, including diadromous and marine fish fauna, marine mammals, and an intertidal ecology assessment. A Habitats Regulation Assessment (“HRA”) will be undertaken on completion of these assessments, in addition to a revised Marine Mammal Protection Plan (“MMPP”).

7.4.2 In their consultation response, SNH seek clarity on whether anticipated increased vessel movements are broadly in line with the assumptions made in the previous model and, if not, then additional modelling may be required.

7.4.3 SNH further recommend that Harbour seals be included within the MMPP. SNH note that since the 2013 EIA, the haul out site at Whiteness Sands has been formally designated and the Dornoch Firth and Morrich More Special Area of Conservation (SAC) is not specifically mentioned in the EIAR and this site should be scoped in. Since 2013 there have been further studies showing connectivity between the Dornoch Firth and Morrich More SAC harbour seals and sites in the inner Moray Firth.

7.4.4 In their consultation response, MSS note the applicants commitment to

review existing information on diadromous fish. The River Moriston SAC, which has salmon as a species interest, should be included in the EIAR, with sufficient information to inform a HRA.

7.4.5 MS LOT advise the applicant to submit a proposed strategy for review to the Scottish Ministers as soon as possible in order to engage with MSS and provide detail on what they considered should be provided in the EIAR.

7.4.6 MSS identify incorrect reference to legislation, which should be the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (as amended).

7.4.7 In their consultation response, RSPB recommend a benthic survey of seabed habitats in order to identify potential indirect effects to birds and other marine species.

7.4.8 The Scottish Ministers agree:

- with SNH on the requirement to test the assumptions made previously on vessel movements to see if these are still applicable and, if not, then additional modelling may be required.
- that particular detail of the proposed works should be provided in an HRA report in order to properly assess the impact on the diadromous fish and seal features of the SACs.
- with RSPB that an intertidal ecology assessment should be carried out.

7.5 Air Borne Noise and Ground Borne Vibration

7.5.1 The applicant assessed the likely significant noise and vibration impacts of the proposed development in 2013 which they state remains valid for the proposed EIAR.

7.5.2 In their consultation response, SEPA recommend Environmental Health be consulted on local air pollution, noise and nuisance issues, and to update the 2013 findings to consider cumulative impacts from surrounding developments.

7.5.3 The Scottish Ministers agree with SEPA on the requirement to re-run the Air Borne Noise and Ground Borne Vibration assessment, although baseline monitoring need not be redone. It is expected that the EIAR will consider both construction and operational noise.

7.6 Underwater Noise

7.6.1 The applicant proposes that the 2013 Underwater Noise Assessment and associated mitigation remain valid and consider an updated assessment is not required.

7.6.2 In their consultation response, SNH highlight other studies since 2013 should be taken into account. These include impact studies of piling on marine mammals as referenced within [NOAA Guidelines](#) and monitoring studies from similar developments which have included impacts from piling, vessel numbers, and dredge and disposal operations.

7.6.3 SNH also highlight in their consultation response the need for clarity on the proposed piling regime (type and duration of piling).

7.6.4 The Scottish Ministers agree with SNH that the Underwater Noise Assessment should be updated taking account of recent scientific understanding in the propagation of underwater noise and cumulative impacts. Based on these conclusions, the MMPP should include details of mitigation and the use of Marine Mammal Observers (“MMO”) and Passive Acoustic Monitoring (“PAM”). If mitigation is not possible or appropriate and an impact on European Protected Species (“EPS”) is envisaged then an EPS licence will be required. Guidance on EPS licensing is provided in Appendix III.

7.7 Water Environment & Coastal Processes – Water Quality and Sediment Transport

7.7.1 The applicant proposes this EIAR chapter to contain an assessment of the water environment, encompassing hydrology, hydrogeology and water quality and a Coastal Processes Assessment, encompassing tides, waves and sediment transport. This included the proposal for a new bathymetric survey.

7.7.2 In their consultation response, SEPA identified the proposed fate of dredged material was missing within the scoping report, which needs to be covered in the EIAR. Mitigations to pollution prevention and environmental management should be included within a schedule of mitigation.

7.7.3 The applicant proposes to take new grab samples and submit chemical information from vibrocores (boreholes) sampled 5 years ago in 2013. In these samples, 5 borehole samples and 1 grab sample failed the AL1 test for PAHs.

7.7.4 In their consultation response, SNH note that the spit head and tidal channel have accumulated significant sediment since 2013. As a consequence, the dredge volume and depth will have changed, which could affect the designated interests and

therefore SNH advise these need to be properly assessed. A new bathymetric survey with hydrodynamic modelling will be essential to fill gaps and inconsistencies identified in the 2013 model.

7.7.5 RSPB recommended in their consultation response that a detailed dredging plan, setting out in particular how direct impacts on the SPA by removing the end of the spit can be mitigated, and how disposal of dredging will be managed so as not to affect the availability of food for SPA/pSPA birds on Whiteness Sands.

7.7.6 The OSPAR guidelines for the Management of Dredged Material at Sea state that *“sufficient information for chemical characterisation may be available from existing sources. In such cases new measurements may not be required of the potential impact of similar material in the vicinity, provided that this information is still reliable and has been obtained within the last 5 years”*.

7.7.7 In their consultation response, SNH welcome an updated Construction Environmental Management Plan (“CEMP”) which should specify the applicants latest commitment to mitigating impacts across the range of activities. Further detail on what the Operational Environmental Management Document (“OEMD”) might include would also be helpful, in particular in relation to the applicants plans for future maintenance dredge and disposal operations.

7.7.8 The proposed re-use of dredged material above Mean High Water Springs has the potential to alter wave direction and local geomorphological characteristics. A Transitional and Coastal Morphological Impact Assessment System will be undertaken by the Scottish Ministers to screen the proposed works for their likely impact to coastal morphology. Only when more details on reclamation are available can an assessment be undertaken.

7.7.9 The Scottish Ministers agree:

- with SNH that baseline conditions to sediments have changed, and together with the fact the chemistry for the dredge material is 5 years old, the Scottish Ministers conclude a full re-testing of the sediment is required. Seabed sampling (boreholes and grab samples) should be undertaken in line with the Pre-Disposal Sampling Guidelines as referenced in Appendix V with the sampling plan agreed with Scottish Ministers prior to any sampling. The results of this will be used to assess any potential impacts of mobilising historic contamination in the seabed.
- that consideration should be given to the impact of the works and from increased sedimentation effects on features of the SPA, pSPA, SAC SSSI or Ramsar site;
- with SEPA that the applicant include the schedule of mitigation in the

CEMP; and

- to undertake a robust coastal morphology assessment when more details on volumes of disposal are available.
- That maintenance dredging and disposal operations should be considered and this should form part of the EIA report.

7.8 Water Environment & Coastal Processes – Flood Risk

7.8.1 The applicant proposes that the 2013 Flood Risk Assessment conclusions of no flood risk remain valid and do not propose to update this assessment.

7.8.2 SEPA have confirmed in their consultation response that their previous advice still stands, i.e. that they have no concerns regarding increased flood risk.

7.8.3 The Scottish Ministers concur with the applicant and the consultees that the proposed works are unlikely to alter the flood risk and thus flooding can be scoped out of the EIA report.

7.9 Socio-Economics

7.9.1 The applicant proposes that the 2013 Socio-Economic Assessment conclusions of no negative risk remain valid and do not propose to update this assessment.

7.9.2 The Scottish Ministers note that the scoping report does not consider the potential for effect on 'population and human health', which is now a requirement under Regulation 5(3)(a) of the 2017 MW Regulations.

7.9.3 On the basis that socioeconomics have been considered, and the baseline data has not altered, the Scottish Ministers agree with the applicant that Socio-Economics (i.e. Population and Human Health) to be scoped out of the EIAR.

7.10 Shipping & Navigation

7.10.1 The applicant has not considered shipping and navigation in their scoping report. However it has been raised by the RYA and the MCA in their consultation responses.

7.10.2 The MCA have requested a chapter within the EIAR, with consideration to the potential impact the works may have on vessels operating in the area, as well as maintaining the safety of navigation with appropriate risk mitigating measures. MS

LOT advise the applicant to implement the recommendations provided within the MCA response (Appendix I).

7.10.3 The Royal Yachting Association Scotland (“RYA Scotland”) recommended recreational boating to be scoped out of the EIAR.

7.10.4 On the basis of the consultation responses and the lack of information provided by the applicant, the Scottish Ministers have scoped shipping and navigation in to the EIA report.

7.11 Climate Change

7.11.1 The vulnerability of the project to climate change is primarily through flood risk which has been separately scoped out of the EIA report.

7.11.2 The applicant did not review Greenhouse Gas (“GHG”) emissions associated with construction which would be another factor that could contribute to climate change.

7.11.3 On the basis that the Scottish Ministers have no evidence on which to scope GHG emissions out of the EIA report, they have concluded that it should be scoped in.

7.12 Natural Disasters

7.12.1 Section 4 of the 2017 MW Regulations requires an assessment of natural disasters. The scoping report submitted by the applicant does not consider this risk.

7.12.2 On the basis that the Scottish Ministers have no evidence on which to scope major accidents out of the EIA report, they have concluded that it should be scoped in.

7.13 Major Accidents

7.13.1 Section 4 of the 2017 MW Regulations requires an assessment of the risks from major accidents. The scoping report submitted by the applicant does not consider this risk.

7.13.2 On the basis that the Scottish Ministers have no evidence on which to scope major accidents out of the EIA report, they have concluded that it should be scoped in.

7.14 Cumulative Assessment

7.14.1 The applicant proposes that cumulative assessment will be considered between this project and other marine developments where concurrent environmental effects are apparent. However, they propose to address this under each of the relevant receptors and have determined that cumulative assessment should be scoped out of the EIA report.

7.14.2 In the absence of any consideration of other projects which could have a cumulative impact on any of the sensitive receptors, the Scottish Ministers have determined that cumulative assessment should be scoped in to the EIA report.

8. Marine Planning

8.1 Background

8.1.1 The development of projects subject to EIA should be in accordance with the UK Marine Policy Statement and the National Marine Plan (“NMP”).

8.2 The UK Marine Policy Statement 2011

8.2.1 The UK Administrations share a common vision of having clean, healthy, safe, productive and biologically diverse oceans and seas. Joint adoption of a UK-wide Marine Policy Statement provides a consistent high-level policy context for the development of marine plans across the UK to achieve this vision. It also sets out the interrelationship between marine and terrestrial planning regimes. It requires that when the Scottish Ministers make decisions that affect, or might affect, the marine area they must do so in accordance with the Statement.

8.3 Scotland’s NMP 2015

8.3.1 Developed in accordance with the Marine (Scotland) Act 2010 and the Marine and Coastal Access Act 2009 (as amended), the NMP provides a comprehensive statutory planning framework for all activities out to 200 nautical miles. This includes policies for the sustainable management of a wide range of marine industries. The Scottish Ministers must make authorisation and enforcement decisions, or any other decision that affects the marine environment, in accordance with the NMP. The NMP sets out a presumption in favour of sustainable works and use of the marine environment when consistent with the policies and objectives of the Plan.

8.4 Application and EIA Report

8.4.1 It should be noted that any changes produced after the EIA report is submitted may require further environmental assessment and public consultation.

9. Multi-Stage Regulatory Approval

9.1 Background

9.1.1 The 2017 MW Regulations contains 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 an 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.

9.1.2 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”.

9.1.3 A marine licence, if granted, by the Scottish Ministers for your works at Ardersier former fabrication yard may have several conditions attached requiring approvals etc. which fall under this definition, for example the approval of a CMS.

9.1.4 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. In doing so, the applicant must account for current (meaning at the time of the multi-stage application) knowledge and methods of assessment which address the likely significant effects of the works on the environment so to enable the Scottish Ministers to reach a reasoned conclusion which is up to date.

9.1.5 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.

10. Judicial review

All decisions may be subject to judicial review. A judicial review statement should be made available to the public.

11. Gaelic Language

If the proposed works are located in an area where Gaelic is spoken, the applicant is encouraged to adopt best practice by publicising details of the proposed works in both English and Gaelic.

[Redacted] /

16 July 2018

Authorised by the Scottish Ministers to sign in that behalf

Appendix I: Consultee Responses

Fishery Office – Buckie

From: [Redacted] Sent: Fri 11/05/2018 11:07
To: ☐ MS Major Projects
Cc:
Subject: Scoping Report Consultation - Ardersier Port Redevelopment, Nairn - Request for Opinion by 01 June 2018

Good Morning

In regard to the Scoping Report above, Marine Scotland Compliance Buckie, do not have any comment to make on the proposal

Regards

[Redacted]

Marine Scotland - Compliance

Suites 3-5, Douglas Centre, March Road, Buckie, AB56 4BT

[Redacted]

[Redacted]

w: <http://www.scotland.gov.uk/marinescotland>



Historic Environment Scotland



By email to: ms.majorprojects@gov.scot
[Redacted]

Scottish Government
Marine Scotland (Aberdeen Office)
Marine Laboratory
375 Victoria Road
Aberdeen
AB11 9DB

Longmore House
Salisbury Place
Edinburgh
EH9 1SH

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

Our ref: AMN/16/H
Our case ID: 300019620

22 May 2018

Dear [Redacted]

Marine (Scotland) Act 2010 and the Marine Works (Environmental Impact Assessment)
(Scotland) Regulations 2017 ("The 2017 MW Regulations")
Ardersier Port Redevelopment
Scoping Report

Thank you for your consultation which we received on 02 May 2018 about the above scoping report. We have reviewed the details in terms of our historic environment interests. This covers world heritage sites, scheduled monuments and their settings, category A-listed buildings and their settings, inventory gardens and designed landscapes, inventory battlefields and historic marine protected areas (HMPAs).

The relevant local authority archaeological and cultural heritage advisors will also be able to offer advice on the scope of the cultural heritage assessment. This may include heritage assets not covered by our interests, such as unscheduled archaeology, and category B- and C-listed buildings.

Proposed Development

I understand that the proposed development comprises the redevelopment of the former fabrication yard, Ardersier Nairn.

Scope of assessment

I understand that the scoping report submitted with this consultation relates to the proposal to renew the existing in principle planning consent and proposed marine licence applications in association with the establishment of a port and port related services for energy related uses at the former Fabrication Yard, Ardersier, Nairn.

While there is no specific Cultural Heritage chapter within the scoping report, I note that the nearby heritage assets have been listed in the Landscape and Visual chapter. I also note that it is not intended to update the latter chapter under the renewal scheme. Given that Historic Environment Scotland did not object to the consented proposal and the development parameters have not changed, we are satisfied that there is no need for an updated cultural heritage assessment.



HISTORIC
ENVIRONMENT
SCOTLAND

ÀRAINNEACHD
EACHDRAIDHEIL
ALBA

Further information

Guidance about national policy can be found in our 'Managing Change in the Historic Environment' series available online at www.historicenvironment.scot/advice-and-support/planning-and-guidance/legislation-and-guidance/managing-change-in-the-historic-environment-guidance-notes. Technical advice is available on our Technical Conservation website at <http://conservation.historic-scotland.gov.uk/>.

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

Yours sincerely

Historic Environment Scotland

Maritime and Coastguard Agency

Dear Marine Scotland,

Thank you for the opportunity to comment on this Scoping Request for the proposed redevelopment plan for the Port of Ardersier.

Noting that the site will aim to facilitate the construction of offshore wind farm components, we would anticipate a potential increase to industrial marine traffic in this area, both during construction and operation of the facility.

We would therefore expect to see a shipping and navigation chapter in the EIA, with consideration to the potential impact the works may have on vessels operating in the area, as well as maintaining the safety of navigation with appropriate risk mitigation measures.

The MCA is a statutory consultee to Marine Scotland and will also look at risks to navigation safety at the formal marine licencing stage. We would expect the developers to notify other stakeholders including the UKHO, Her Majesty's Coastguard and the MCA Marine Office of the proposed works, so that existing operations can be informed.

We would also like to point the developers in the direction of the Port Marine Safety Code (and it's Guide to Good Practice) which will require local consultation to develop a robust Safety Management System (SMS) for the Harbour development.

These publications can be found on the MCA section of GOV.uk here:
<https://www.gov.uk/government/publications/port-marine-safety-code>

In addition we would like to highlight the following sections, which we feel cover navigation safety:

From the Guide to Good Practice, section 7 Conservancy, a Harbour Authority has a duty to conserve the harbour so that it is fit for use as a port, and a duty of reasonable care to see that the harbour is in a fit condition for a vessel to be able to use it safely. Section 7.7 Regulating harbour works covers this in more detail and have copied the extract below from the Guide to Good Practice.

7.7 Regulating harbour works

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

7.7.2 Some harbour authorities are statutory consultees for planning applications, as a function of owning the seabed, and thus being the adjacent landowner. Where this is not the case, harbour authorities should be alert to developments on shore that could adversely affect the safety of navigation. Where necessary, consideration should be given to requiring the planning applicants to conduct a risk assessment in order to

establish that the safety of navigation is not about to be put at risk. Examples of where navigation could be so affected include:

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

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

We would also like to remind developers of any legal obligations, under part 9 of the Merchant Shipping Act 1995, to report all recoveries of wreck material to the Receiver of Wreck. Further guidance can be found at www.gov.uk/guidance/wreck-and-salvage-law.

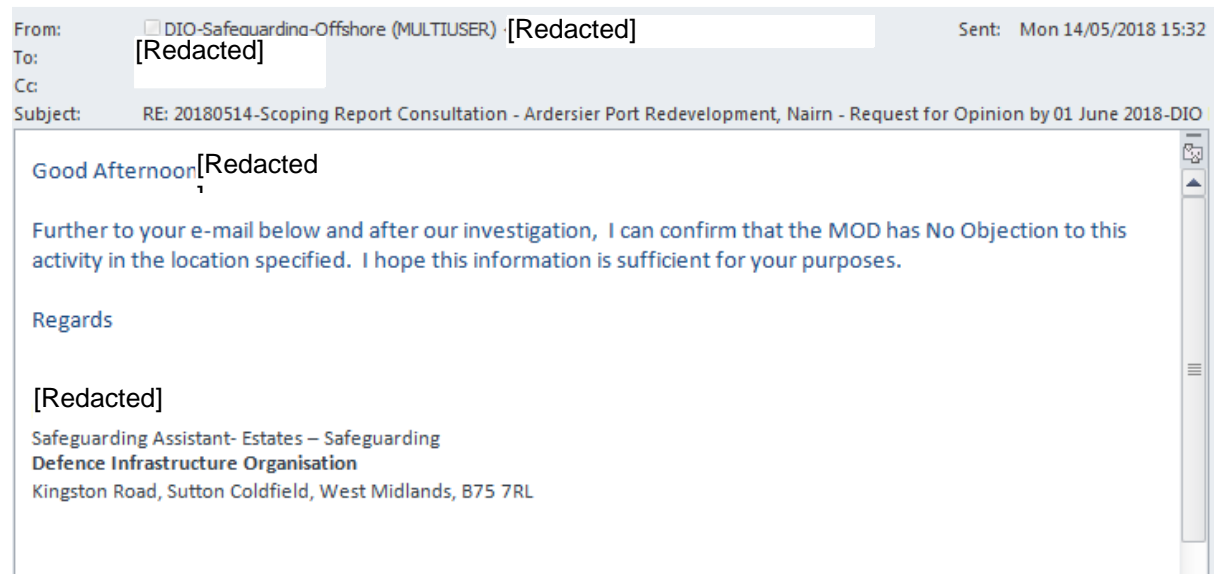
We note the original Harbour Revision Order, acknowledging the subsequent change of site ownership and transfer of relevant consent, which will likely require further updates.

Best Regards,

[Redacted]

Marine Licensing Lead
MCA Navigation Safety Branch

MOD



Northern Lighthouse Board

Northern Lighthouse Board

Your Ref: e-mail dated 2 May 2018
Our Ref: PD/OPS/ML/W7_02_020

84 George Street
Edinburgh EH2 3DA
Switchboard: 0131 473 3100
Fax: 0131 220 2093
Website: www.nlb.org.uk
Email: enquiries@nlb.org.uk



[Redacted]

Marine Licensing Casework Manager
Marine Scotland – Marine Planning & Policy
Scottish Government
Marine Laboratory
PO Box 101
375 Victoria Road
Aberdeen
AB11 9DB

11 May 2018

Dear [Redacted]

MARINE (SCOTLAND) ACT 2010 THE MARINE WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2017

We are in receipt of correspondence dated 2 May 2018 requesting comments regarding the scoping opinion documentation submitted by Graham + Sibbald on behalf of **Ardersier Port Limited** in regards to their proposals for redevelopment of the former fabrication yard, Ardersier, Nairn.

Northern Lighthouse Board have no objections to the proposed development. We have been in communication with **Ardersier Port Limited** and approved the establishment of a buoyed channel to mark the access from seaward. We will advise any further requirements in response to the anticipated Marine Licence application.

Please advise if we can be of any further assistance, or you require clarification of any of the above.

[Redacted]

[Redacted]
Navigation Manager

Royal Society Protection Birds



RSPB Scotland

Marine Planning & Policy

Marine Scotland

By email: ms.majorprojects@gov.scot

Date: 25/05/2018

Dear Sir or Madam,

Ardersier Port Redevelopment – Scoping Report

Marine (Scotland) Act 2010 and The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“The 2017 MW Regulations”).

I write on behalf of RSPB Scotland with regard to the above request for an EIA scoping opinion in relation to proposals at the former fabrication yard at Ardersier.

We welcome the intention to prepare a single EIA report to accompany both the planning application and the marine licence application for this development. A copy of this letter is being sent to The Highland Council, Transport Scotland and Scottish Natural Heritage for their information.

We consider that much of the advice in the previous scoping opinion dated 1 February 2013 (from Val Ferguson of Transport Scotland) for the project remains relevant.

The scoping report states where it has been identified that there has been no change to site characteristics, data, impact assessment methods or legislation, it is proposed that these topics (air borne noise and ground borne vibration, for example) will be ‘scoped out’ of the EIA report. However, in accordance with Schedule 4 of the EIA Regulations for the marine licensing systems, the submitted EIA report should describe *all* of the likely significant effects of the development on the environment.

The proposal lies within or could affect the Inner Moray Firth Special Protection Area (SPA) and Ramsar site, the Whiteness Head Site of Special Scientific Interest (SSSI), the Moray Firth Special Area of Conservation (SAC), the Dornoch Firth and Morrich More SAC.

The key natural heritage issues arising from this development are likely to be its impacts on designated features of European importance including breeding and wintering birds, bottlenose dolphins, common seals, and intertidal habitats and land forms.



RSPB Scotland

The EIA should consider the possible impacts on the special interests of these sites, including:

Inner Moray Firth SPA and Ramsar site – birds

- *Direct loss of SPA roosting habitat at the end of the spit*
- *Disturbance to and potential abandonment of breeding common tern colonies.*
- *Possible disturbance to osprey foraging in the SPA and subsequent dis-use of area.*
- *Possible indirect loss of SPA foraging habitat due to sedimentation on Whiteness Sands*
- *Disturbance to SPA birds in both construction and operational phases*
- *Indirect effects on SPA birds more widely in the Moray Firth due to displacement of birds from the development site => interference competition}*

Moray Firth Ramsar site

- Effect of dredging works on coastal processes in the vicinity
- Smothering of existing habitats

Moray Firth SAC (dolphins)

- Effect of underwater noise and disturbance associated with construction and operation of the port potentially restricting the resident population from foraging in the area.

Moray Firth SAC (subtidal sandbanks)

- Impacts on marine habitats and species relating to dredging and disposal operations and coastal construction works. These sandbanks are also utilised by harbour seals for haul-outs.

Whiteness Head SSSI

- Smothering and disruption of coastal habitats (shingle, sand dune, sandflats and saltmarsh) caused by dredging, disposal and beach feeding.

The proposed project is also likely to affect the Moray Firth Proposed Special Protection Area (pSPA)⁴ an important area for wintering wildfowl, divers, grebes, and breeding shags. In accordance with Scottish Planning Policy (paragraph 210), authorities should afford the same level of protection to proposed SACs and SPAs as they do to sites which have been designated.

The advice in the 'Advice to Support Management' document produced in relation to the Moray Firth pSPA² should be followed. The sections relating to navigational dredging and disposal and ports and harbours activities (pages 26 - 32) are of particular relevance to this project. As noted in the advice, all new development or expansion proposals at ports and harbours, and capital dredge projects, should be considered as a new plan or project and undergo a HRA. Port development or expansion has the potential to impact upon the pSPA (as well as existing SPAs). To inform a HRA it is likely that a benthic survey of the seabed habitats and bird surveys will be required in the area proposed for development.



RSPB Scotland

A marine licence should not be granted unless the competent authority has ascertained by means of an appropriate assessment that there would be no adverse effect on the integrity of the SPA, pSPA, SAC or Ramsar site.

In order to constitute a full assessment of the proposal's effects, particularly on the Inner Moray Firth SPA, the Moray Firth pSPA and Whiteness Head SSSI, the EIA should include (but will not be limited to) the following:

- Detailed bird survey work to show the use of the site and surrounding area (including seasonal, diurnal and tidal variation) by birds contributing to the qualifying interest of the SPA; we would normally expect to see at least two years' worth of recent and detailed information in support of an application of this scale and environmental sensitivity.
- A detailed description of the project and its effects, in particular on the SPA, pSPA and SSSI;
- A detailed description of all of the measures to be put in place to mitigate impacts on the SPA, pSPA and SSSI, but in particular:
- A detailed dredging plan, setting out in particular how direct impacts on the SPA by removing the end of the spit can be mitigated, and how disposal of dredging will be managed so as not to affect the availability of food for SPA/pSPA birds on Whiteness Sands;
- Details of measures to protect the long-term feeding and roosting functions for SPA and pSPA wintering shorebirds at Whiteness Sands and Whiteness Head and avoid displacement/disturbance to the birds, during the construction and operational phases;
- A complete and impartial report to inform the appropriate assessments that will require to be carried out by the consenting bodies, taking into account up-to-date European and domestic caselaw and guidance.

This work should be agreed with SNH in advance and RSPB Scotland is happy to provide further advice to the applicant and/or the consenting authorities.

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

Yours Faithfully,

[Redacted]

Assistant Conservation Officer, North Scotland.

Royal Yachting Association Scotland

From: [Redacted] Sent: Tue 15/05/2018 :
To: [Redacted]
Cc: [Redacted]
Subject: RE: Scoping Report Consultation - Ardersier Port Redevelopment, Nairn - Request for Opinion by 01 June 2018

Dear [Redacted]

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

Kind Regards

[Redacted]

[Redacted]

Senior Administrator
Tel: 0131 317 4611

Royal Yachting Association Scotland

[Redacted]



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

Scottish Environment Protection Agency



Our ref: PCS/158343
Your ref: 18/01411/SCOP

[Redacted]

The Highland Council
Glenurquhart Road
Inverness
IV3 5NX

If telephoning ask for:
[Redacted]

17 April 2018

By email only to: [Redacted]

Dear [Redacted]

The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017
The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017
Proposed port and port related services for energy related uses (renewable of 13/01689/PIP)
Former Fabrication Yard, Ardersier, Nairn

Thank you for consulting SEPA on the scoping opinion for the above development proposal by way of your email which SEPA received on 4 April 2018. We note that the covering email from the developer and scoping report indicates that it has been agreed that Highland Council will coordinate the scoping response to all aspects of the development so our response also covers the marine aspects.

Our scoping advice below is very much based on the currently consented proposals and the information previously submitted to support them. We previously provided detailed pre-application and application advice for this development between 2012 and 2014; copies of our formal response can be provided to the new applicants, if they do not have them.

To avoid delay and potential objection, the information outlined below must be submitted in support of the applications. Our comments are very much based on the information submitted with the previous application and our understanding that the proposed development and design parameters have not changed since then.

1. Works below Mean High Water Springs

- 1.1 For works below Mean High Water Springs, we generally do not now provide site specific advice on works that will be regulated under The Marine (Scotland) Act 2010 or Harbours Acts. Instead, please refer to our standing advice on marine consultations within guidance document [SEPA standing advice for The Department of Energy and Climate Change and Marine Scotland on marine consultations](#).
- 1.2 We note the proposals to re-use dredging spoil. We would specifically highlight our advice in Section 3.3 and 3.4 within the guidance document [SEPA standing advice for The Department of Energy and Climate Change and Marine Scotland on marine consultations](#) with regards the re-use of dredged material and remind the applicant to consider the

potential risk of contaminants being present in the spoil.

- 1.3 We could not find any information within the scoping report on the proposed fate of any dredged material; this needs to be covered in the EIAR. We will be specifically interested in any options which propose to store or make use of dredged material on land. For the material not be considered as waste there will need to be a clear legitimate and certain use for it without any need for treatment. We will defer to Marine Scotland on any disposal or reuse proposals which occur below Mean High Water Springs as they will be directly regulated by Marine Scotland rather than SEPA.

2. Pollution prevention and environmental management

- 2.1 We are content with the proposal to supply a copy of the updated CEMD covering the quay wall reinstatement and capital dredging as a technical appendix to the EIAR.
- 2.2 In addition the developer should provide a succinct schedule of mitigation which pulls together all the mitigation identified within the EIAR. In our experience, this includes having a clear set of maps and plans cross referenced with a succinct schedule of mitigation which will assist site operatives to implement the required mitigation measures. We encourage the use of plans, maps and photographs rather than text wherever possible, as this ensures the document is fit for purpose and easy for site operatives to utilise in practice.
- 2.3 In our experience, the schedule of mitigation should also include a requirement for daily inspections during construction works and a log of all inspections and maintenance should be kept on site at all times, ready for inspection by regulatory authorities. These checks are best carried out by a nominated site operative to ensure that remedial works can be carried out where required and without delay. In order to ensure mitigation is implemented on site, our preference would be for all the mitigation to be included in a single schedule of mitigation supported by clear site plans which can then be secured by one condition.

3. Site drainage and discharges

Surface water drainage:

- 3.1 As surface water runoff must be treated by sustainable drainage systems (SUDS) and/or other means it is important to ensure that adequate space to accommodate drainage treatment is incorporated within the site layout.
- 3.2 Proposals must be shown meet the treatment requirements of [CIRIA C753](#). A site plan showing the proposed SUDS treatment train must be submitted. The Simple Index Approach calculation (Section 26.7.1 of the guidance) must be submitted in support of the site plan, and the online [tool](#) may be used to assist in this. Where the development has a high pollution hazard level, a detailed risk assessment (Section 26.7.3 of CIRIA C753) must be submitted. Oil interceptors may will be required in combination with SUDS. Drainage treatment can have a significant land take so it is important for details to be provided at the applicant stage to have any confidence that an indicative layout proposed is achievable.
- 3.3 High risk areas should be identified (fuel delivery / refuelling areas, vehicle loading or unloading bays where potentially polluting matter is handled; and oil and chemical storage, handling and delivery areas) and drainage from these areas minimised and connected to public foul sewer.
- 3.4 Comments on the acceptability of post-development runoff rates for flood control should be

sought from the local authority flood prevention unit, and not from SEPA.

- 3.5 To ensure adequate space has been allocated for SUDS within the site layout, we encourage a draft proposal to be submitted to us prior to the final submission of the EIAR.

Waste water drainage:

- 3.6 Foul drainage from the site should be connected to the public sewage system.

Other discharges:

- 3.7 The ES from the previous application confirmed that there were to be no process discharges from the site and we presume this is still the case. If not details should be provided.

4. Flood risk

- 4.1 We have reviewed the EIA Scoping report with regard to flood risk. We confirm we have no additional information on coastal flood levels or observed flooding since the last Flood Risk Assessment (FRA) was undertaken in 2013 (PCS/126541) and so the design flood levels derived therein will still be valid. A revision to the Coastal Flood Boundary (CFB) dataset is due for release this year, but we have recently seen some draft levels for the update and confirm that no major changes are expected in the vicinity of the site. The 1 in 200 year coastal still water level (0.5% annual probability) is 3.25mAOD as previously advised.
- 4.2 The FRA previously undertaken included an assessment of the small watercourse near the site. As the watercourse is ungauged, no new data is available and no improved methods are available by which an improved assessment could be undertaken. The 2013 FRA is therefore still valid for the assessment of fluvial flooding as well as coastal.
- 4.3 We note that no new climate change predictions have been published since the last report. Updated predictions are expected later in 2018 but the timescales are unclear and probably not in line with the timescale of the application. Given that a conservative design flood level has been used, there is already an additional allowance built into design levels which will allow for some additional climate change to be absorbed should the predictions prove to be higher.
- 4.4 Since the 2013 application, the National Coastal Change Assessment (NCCA) has been released for Scotland which provides additional information on the effects of coastal erosion. The assessment indicates for the vicinity of the site that if recent rates of erosion were to continue, the protection that the spit currently offers the site could be reduced. This makes little difference to the still water flood levels for the site but it could alter the susceptibility of the site to wave impacts and flooding from wave overtopping. This issue has been picked up in the scoping report and we note some monitoring of sediment transport is planned as well as an updated chapter on coastal processes in the EIA given the changing nature of the spit. Coastal erosion and coastal processes are not strictly within our flood risk remit but we welcome that the issue is being addressed.
- 4.5 We agree that flood risk can be scoped out of the EIAR and the conditions agreed for the previous application (PCS/126541) are still valid and sufficient to address flood risk issues based on the best information currently available for the area.

5. Terrestrial ecology

- 5.1 We welcome that section 5 of the Scoping Report states that further ecological surveys will be carried out on site due to the length of time since the last survey was undertaken (2013). We especially welcome the section titled *Assessment Methodology*, outlining the technical appendices that will accompany the Report.
- 5.2 In line with current best practice, if there are wetlands or peatland systems present, the EIAR should demonstrate how the layout and design of the proposal avoid impact on such areas.
- 5.3 As already proposed by the applicant, a Phase 1 habitat survey should be carried out for the whole site and the guidance *A Functional Wetland Typology for Scotland* should be used to help identify all wetland areas. National Vegetation Classification should be completed for any wetlands identified. Results of these findings should be submitted, including a map with all the proposed infrastructure overlain on the vegetation maps to clearly show which areas will be impacted and avoided.
- 5.4 Groundwater dependent terrestrial ecosystems (GWDTE), which are types of wetland, are specifically protected under the Water Framework Directive. The following information must be included in the submission:
- a) A map demonstrating that all GWDTE are outwith a 100m radius of all excavations shallower than 1m and outwith 250m of all excavations deeper than 1m and proposed groundwater abstractions.
 - b) If the minimum buffers above cannot be achieved, a detailed site specific qualitative and/or quantitative risk assessment will be required. We are likely to seek conditions securing appropriate mitigation for all GWDTE affected.
- 5.5 Please refer to Guidance on Assessing the Impacts of Development Proposals on Groundwater Abstractions and Groundwater Dependent Terrestrial Ecosystems for further advice and the minimum information we require to be submitted.
- 5.6 In line with the previous development we would welcome a commitment to design and implement a natural heritage management scheme for the site. From our perspective we will be interested in (1) The removal of the invasive non native species *Crassula Helmsii* which is present on the site and (2) protection of existing wetlands and proposals for creation of new wetland habitats.
- 6. Impacts on the fresh water environment**
- 6.1 As far as we are aware the development will not result in any direct engineering works on any watercourses, however if this is not the case then please re-consult us and we can provide detailed scoping advice on this aspect of the proposals.
- 6.2 Excavations and other construction works can disrupt groundwater flow and impact on existing groundwater abstractions. Based on the previous application we understand that there are no groundwater abstractions within 250 m of any areas where there may be deep excavations, however, confirmation of this should be provided in the EIAR. If there are existing groundwater abstractions within 250 m we can provide detailed scoping advice on this aspect of the proposals.
- 6.3 If groundwater or fresh water abstractions or dewatering are proposed, a table of volumes and timings of groundwater abstractions and related mitigation measures must be provided.

7. Land contamination and air quality

- 7.1 This site has been subject to a previous use which has resulted in land contamination issues. The site is not defined as a contaminated land special site and as far as we are aware is not radioactive contaminated land. As a result, the Council's contaminated land specialists will take the lead on providing the developer with advice on contamination issues. In line with our Planning Guidance on land subject to contamination issues they can, if required, request advice directly from our contaminated land officers in relation to impacts upon the water environment.
- 7.2 The local authority is the responsible authority for local air quality management and therefore we recommend that Environmental Health within the local authority be consulted. They can advise on the need for this development proposal to be assessed alongside other developments that could contribute to an increase in road traffic (with the council's roads department will also comment on). They can also advise on potential impacts such as exacerbation of local air pollution, noise and nuisance issues and cumulative impacts of all development in the local area.

8. Regulatory advice for the applicant

- 8.1 Any proposed engineering works within the freshwater water environment will require authorisation under The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended) (CAR). Management of surplus peat or soils may require an exemption under The Waste Management Licensing (Scotland) Regulations 2011. Proposed crushing or screening will require a permit under The Pollution Prevention and Control (Scotland) Regulations 2012.
- 8.2 The new General Binding Rule 10 came into effect on 1 January 2018. You may therefore need to apply for a construction site licence under CAR for water management across the whole construction site. These will apply to sites of 4ha or more in area, sites 5 km or more in length or sites which contain more than 1ha of ground on a slope of 25 degrees or more or which cross over 500m of ground on a slope of 25 degrees or more. It is therefore recommended that you contact a member of the regulatory team in your local SEPA office at an early stage to discuss these regulatory requirements.
- 8.3 Details of regulatory requirements and good practice advice for the applicant can be found on the [Regulations section](#) of our website. If you are unable to find the advice you need for a specific regulatory matter, please contact a member of the operations team in your local SEPA office at: Graesser House, Fodderty Way, Dingwall Business Park, Dingwall IV15 9XB Tel: 01349 862021.

If you have any queries relating to this letter, please contact me by telephone on [Redacted] or e-mail at planning.dingwall@sepa.org.uk.

Yours sincerely

[Redacted]

Planning Officer
Planning Service

Scottish Natural Heritage



Scottish Natural Heritage Dualchas Nàdair na h-Alba

All of nature for all of Scotland
Nàdar air fad airson Alba air fad

By email: epc@highland.gov.uk

1st May 2018

Your ref: 18/01411/SCOP
Our ref: A2606652

Dear [Redacted]

Scoping Report to agree the scope of the Environmental Impact Assessment Report to accompany application submissions (13/01689/PIP): Former Fabrication Yard Ardersier Nairn

Thank you for consulting us on the above scoping application. We note that the scoping request has been submitted to Highland Council to co-ordinate a scoping opinion under both The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 and The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017. We have therefore copied this response to Marine Scotland.

GENERAL COMMENTS

As you know, we have been in consultation with the current and former applicants regarding development at this site for over 10 years. During this time we have provided detailed comments on the various development plans that have been proposed. This letter provides our advice on the scope of the Environmental Impact Assessment Report (EIAR); however our correspondence and meetings over the years provide further context and detail. This letter should therefore be read in conjunction with these earlier submissions which are available from us on request. Our response to the former Environmental Impact Assessment (EIA) scoping request (dated 25th January 2013) is particularly pertinent. This response provided useful background information as well as detailed advice regarding the designated sites that may be affected, what the impacts on these sites were likely to be, what the Environmental Statement/Habitats Regulation Appraisal at that time should address and what possible mitigation/enhancement might be applicable. This information is relevant to the current scoping consultation.

As with the former proposal, the key natural heritage issues arising from this development are likely to be its impacts on designated features of European and national importance including bottlenose dolphins, common seals, breeding and wintering birds and intertidal habitats and land forms. This is based on the understanding that *"The description of the proposed development and the design parameters of the scheme have not changed since in principle consent was granted in January 2014"* (see EIA Scoping Report, P4/28). We note that whilst this may be the case as far as the development is concerned; there have been a number of other changes in the intervening period that the EIAR should recognise and address. In particular, the spit head and tidal channel have accumulated significant sediment since 2013 and the consequences of this for a future, functioning port of the scale envisaged will need to be reflected in the EIAR in terms of possible changed dredge volumes, depths or areas. Any

changes in relation to these aspects could affect the designated interests and as such these would need to be properly assessed in the relevant sections of the EIAR. The EIAR should also clearly state that all other aspects of the current proposal are the same as in 2013, including the proposed piling regime (type and duration of piling) and the proposed sites for disposal of the dredged material (i.e. same locations and volumes as well as no disposal immediately to east of the spit).

We note that a draft Construction Environmental Management Plan (CEMP) was included in the 2013 Environmental Statement and that this was updated in November 2017. We are pleased to note that this latest version of the CEMP will be submitted as a technical appendix to the EIAR (see EIA Scoping Report, P4/28). This should specify the applicants' latest commitment to mitigating impacts across the range of activities. We also note from the Planning Permission in Principle (Reference No: 13/01689/PIP, Condition 15) that no part of the development shall be occupied until an Operational Environmental Management Document (OEMD) has been submitted and agreed. This requirement is also a requirement of the Harbour Revision Order and the construction marine licence. Whilst we recognise that the applicant will be taking a staged approach to this development, we consider that further detail on what the OEMD might include would be helpful as part of the EIAR. This is particularly true in relation to the applicants' plans for future maintenance dredge and disposal operations.

Finally, by way of general comments, the EIAR will need to consider current cumulative effects and how the impacts of the proposed development will be assessed in combination with other existing or proposed developments. In particular, the cumulative assessment of underwater noise and vessel movements needs to be considered in the context of the various planned developments close by as well as with the Moray Firth offshore wind farms.

SPECIFIC COMMENTS

We have provided advice on the following sections of the EIA Scoping Report.

Terrestrial Ecology and Ornithology (p12-13/28)

- We are pleased to see that a Terrestrial Ecology and Ornithology Assessment will be undertaken as part of the EIAR.
- Please note that the [Moray Firth proposed Special Protection Area](#) (pSPA) is not specifically mentioned in the EIAR - this site should be scoped in and the implications of the development on its qualifying interests should be fully assessed. On request, we can provide bird data collected for the identification of this pSPA and this will help to focus any targeted field work that may be required for the species that have a high usage in the immediate area of the harbour.
- The proposed breeding bird survey work is described in the EIA Scoping Report and the Breeding Bird Survey methodology described is adequate. However, the applicant states that Wetland Bird Survey (WeBS) data will be used for the non-breeding season. Please note that WeBS does not provide reliable data for offshore concentrations of sea duck and divers (as part of the pSPA interest) and furthermore the last low tide count undertaken by the British Trust for Ornithology as part of WeBS was in 2010/11. This data was acceptable for the 2013 EIA but it is too old for the current assessment. We therefore advise that the applicant undertake their own counts through the tidal cycle. Two years of data for the non-breeding interests is required. One year would be sufficient for the breeding birds.

Marine Ecology (P14-15/28)

- We welcome the applicants' commitment to prepare a Marine Ecology Assessment as part of the EIAR and also that a revised Marine Mammal Protection Plan will be provided as a technical appendix to the Marine Ecology chapter.
- We note that the 2013 EIA included modelling of vessel movements in relation to the dolphin population in the Moray Firth. The EIAR should clarify whether anticipated increased vessel movements are broadly in line with the assumptions made in the previous model (i.e. 680 additional vessel movements) and, if not, then additional modelling may be required.
- We note on p15/28 of the EIA Scoping Report that the applicant states "... *that no further assessment work on the use of ducted propellers and potential effect on seals is required.*" We agree that the EIAR does not need to consider ducted propellers. However, other potential impacts on the common seals (e.g. ship movements, lighting and terrestrial and underwater noise) should be included in the EIAR and the proposed Marine Mammal Protection Plan.
- Please note that since the 2013 EIA the haul out site at Whiteness Sands has been formally designated (September 2014 MF-00 Ardersier West of Nairn: Intertidal sandbanks west of Whiteness Head and north of Kirkton within the MoD Danger Area). Also, the Dornoch Firth and Morrich More Special Area of Conservation (SAC) is not specifically mentioned in the EIAR and this site should be scoped in. Since 2013 there have been further studies showing connectivity between the Dornoch Firth and Morrich More SAC common seals and sites in the inner Moray Firth.

Underwater noise (P18-19/28)

- The applicant states in the EIA Scoping Report (page 18/28) that following the publication of the impacts of piling at Nigg Bay by Graham *et al* in 2017 that "... *Marine Scotland asked Ardersier Port Ltd to consider this study in relation to the proposals at the former Fabrication Yard, Ardersier. On the 18th July 2017, EnviroCentre provided a response to Marine Scotland Licensing Operations Team to clarify the position in relation to noise and vibration impact at Ardersier.*" We advise that the EnviroCentre response should be included in the EIAR. There have also been other studies on the impacts of piling on marine mammals since the 2013 EIA. We therefore recommend that the applicant reviews relevant work (e.g. [NOAA guidelines](#)) and monitoring studies from similar developments in order to demonstrate whether or not the 2013 EIA underwater noise assessment remains up to date and fit for purpose as far as the current proposal is concerned. This should be based on the current proposal in relation to piling, vessel numbers and dredge and disposal operations.

Water Environment (p20-22/28)

- This section covers the water environment and coastal processes.
- We welcome the applicants' commitment to prepare a Coastal Processes Assessment and that this will be included in the EIAR.
- We note that the scoping report acknowledges the National Coastal Change Assessment (NCCA) which was published after the 2013 EIA. The Coastal Processes Assessment and the Sediment Transport Monitoring Plan (to be included in a technical annex to the EIAR) should be informed by the findings of the NCCA.
- We advise that the EIAR should detail the depth for disposal of dredgings at the Whiteness Sands disposal site. Specifically the EIAR should set out a strategy based on the various potential impacts on designated interests in relation to disposal above and below the -5m chart datum threshold. This should include proposals for future monitoring to inform potential changes to the disposal strategy.

- We welcome the proposal for a new bathymetric survey (p21/28) – this is essential with respect to the potential impacts related to dredging and disposal, not least the impact on the coastal geomorphology interest.
- We recommend that the EIAR should revise the current hydrodynamic modelling analysis undertaken for the 2013 ES. This is because that ES did not consider water depths and this hindered a realistic understanding of sediment transport pathways (including likely 'leaks' out of the Whiteness system), which in turn hindered a proper assessment of physical-process effects. This was discussed at a meeting between the Port of Ardersier and SNH on 24th May 2013. We can provide a note of that meeting on request.

CONCLUDING REMARKS

We appreciate and welcome continuing communication with the developers and their agents, The Highland Council, Marine Scotland and Transport Scotland (Ports and Harbours) on this important development proposal and we support ongoing dialogue between all the key partners throughout the application process.

Please contact me if you have any questions or require further clarification on this letter.

Yours sincerely,

[Redacted]

Operations Officer
South Highland

[Redacted]

Cc: [Redacted]

Appendix II - Advice from Marine Scotland Science

Dear [Redacted]

Although is MSS is just copied in for information in relation to diadromous fish, MSS would note that

- the developer has committed to review the existing information on diadromous fish. MSS looks forward to commenting on this in due course.
- the Salmon and Freshwater Fisheries Act 1975 (as amended) which is mentioned in the report is not the relevant legislation for Scotland, the main relevant legislation in Scotland is the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (as amended)
- there is no mention of the River Moriston SAC, which has salmon as a species interest. The River Moriston discharges via the River Ness into the inner Moray Firth which is still quite narrow adjacent to the site and all salmon smolts leaving the Moriston or adults returning to the Moriston will therefore pass close to the site or could enter the site. There will therefore need to be information provided to inform a HRA.

Please let me know if any more detail would be useful at this stage

Best wishes,

[Redacted]
dl

Appendix III: Licensing Process

Application

The application letter must detail how many licences are being sought, what marine licensable activities are proposed and what legislation the application is being made under.

Applicants are required to submit two hard copies of EIA report together with an electronic copy in a user-friendly PDF format which will be placed on the Scottish Government website. If requested to do so by the Scottish Ministers the applicant must send to the Scottish Ministers such further hard copies of the EIA report as requested. Applicants may be asked to issue the EIA report directly to consultees and in which case consultee address lists should be obtained from the Scottish Ministers.

Requirement for Public Pre-Application Consultation ('PAC')

From 6th April 2014, applications received for certain activities are subject to a public pre-application consultation requirement. Activities affected will be large projects with the potential for significant impacts on the environment, local communities and other legitimate uses of the sea. This requirement allows local communities, environmental groups and other interested parties to comment on proposed works in their early stages and before an application for a marine licence is submitted.

The Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013 can be accessed via

<http://www.legislation.gov.uk/ssi/2013/286/made>

Guidance on marine licensable activities subject to Pre-application Consultation can be obtained at:

<http://www.gov.scot/Topics/marine/Licensing/marine/guidance/preappconsult>

The licensing authority reserves the right not to accept an application in the absence of an acceptable PAC report.

Pre-Dredge Sampling

Please note that if it is intended to dispose of any dredged material at sea, adequate pre-dredge sample analysis must be submitted in support of the EIA report and marine licence dredging application. The licensing authority reserves the right not to accept an application in the absence of acceptable sediment analysis data.

Please refer to the pre-dredge sampling guidance provided in Appendix V.

Ordinance Survey ("OS") Mapping Records

Applicants are requested at application stage to submit a detailed OS plan showing

the site boundary and location of all deposits and onshore supporting infrastructure in a format compatible with The Scottish Government's Spatial Data Management Environment ("SDME"), along with appropriate metadata. The SDME is based around Oracle RDBMS and ESRI ArcSDE and all incoming data should be supplied in ESRI shape file format. The SDME also contains a metadata recording system based on the ISO template within ESRI ArcCatalog (agreed standard used by The Scottish Government); all metadata should be provided in this format.

Advertisement

Where the applicant has provided the Scottish Ministers with an EIA report, the applicant must publish their proposals in accordance with Regulation 16 of the 2017 MW Regulations and ensure that a reasonable number of copies of the EIA report are available for inspection at any place named in the publication. Licensing information and guidance, including the specific details of the adverts to be placed in the press, can be obtained from the Scottish Ministers. If additional information is submitted further public notices will be required

EPS licence

European Protected Species ("EPS") are animals and plants (species listed in Annex IV of the [Habitats Directive](#)) that are afforded protection under [The Conservation \(Natural Habitats, &c.\) Regulations 1994](#) (as amended) and [The Conservation of Offshore Marine Habitats and Species Regulations 2017](#). All cetacean species (whales, dolphins and porpoise) are European Protected Species. If any activity is likely to cause disturbance or injury to a European Protected Species a licence is required to undertake the activity legally.

A licence may be granted to undertake such activities if certain strict criteria are met:

- there is a licensable purpose;
- there are no satisfactory alternatives, and;
- the actions authorised will not be detrimental to the maintenance of the population of the species concerned at favourable conservation status in their natural range.

Applicants must give consideration to the three fundamental tests and should refer to the [guidance on the protection of marine European Protected Species](#) for more detailed information in relation to Scottish Inshore Waters. Applicants may choose to apply for an EPS licence following the determination of the EIA application and once construction methods have been finalised, however it is useful to include a shadow EPS assessment within the EIA report.

Basking sharks are also afforded protection under the Wildlife & Countryside Act 1981 (as Amended by the Nature Conservation (Scotland) Act 2004).

Appendix IV: Gap Analysis

Applicant to complete:

Consultee	Summary of response (key concern)	Response from applicant	Action required	Evidence sent to MS LOT

Appendix V: Pre-Dredge Sampling Guidance



Marine Scotland

Pre-disposal Sampling Guidance
Version 1 – January 2017



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1. Introduction

Sea disposal operations are controlled by:

- [Marine \(Scotland\) Act 2010](#);
- [OSPAR Convention 1992](#), see also;
 - [OSPAR Guidelines for the Management of Dredged Material at Sea](#);
 - [JAMP Guidelines for Monitoring Contaminants in Sediments](#)
- [The EU Waste Directive](#);
- [The London Convention & Protocol](#);
- [The EU Water Framework Directive](#); and
- [Scotland's National Marine Plan](#).

The requirements set out in this document will ensure applications are in compliance with the above. Deviations from these requirements are liable to result in delays in processing your application as well as the potential requirement for further sampling, analysis and assessment. Please retain **all** samples until determination of your application has been made in case further analysis is required.

2. Pre-disposal sampling stages

The process map ([see Figure 1](#)) shows the stages both applicant and MS-LOT must go through to determine a marine licence application for sea disposal activities.

Figure 1 – Process map of pre-disposal sampling stages



3. Sampling and analysis requirements

There are a minimum number of sample stations required for each dredge volume (see Table 1).

Table 1 – Minimum sample stations required by dredge volume

Proposed dredge volume (m ³)	No. of sample stations required
≤25,000	3
32,500	4
50,000	5
75,000	6
100,000	7
150,000	8
200,000	9
250,000	10
300,000	11
350,000	12
400,000	13
450,000	14
500,000	15
600,000	16
700,000	17
800,000	18
900,000	19
1,000,000	20
1,100,000	21
1,200,000	22
1,300,000	23
1,400,000	24
1,500,000	25
1,600,000	26
1,700,000	27
1,800,000	28
1,900,000	29
2,000,000	30
>2,000,000	Seek guidance from ms.marinelicensing@gov.scot

If you are dredging more than 1 metre in depth or in an area with known or suspected contamination you will be required to take core samples, cores should extend to the maximum dredge depth. Individual cores count as 1 station, so a 100,000m³ dredge of over 1 metre would require 7 cores to be collected. When a core is collected you should sub-sample the surface layer (0-15cm) then every 50cm thereafter. Initially you should select sub-samples from the surface, middle and bottom of the core for analysis, with **all** sub-samples retained for further analysis.

Table 2 – Action Levels

Contaminant	Revised AL1 mg/kg dry weight (ppm)	Revised AL2 mg/kg dry weight (ppm)
Arsenic (As)	20	70
Cadmium (Cd)	0.4	4
Chromium (Cr)	50	370
Copper (Cu)	30	300
Mercury (Hg)	0.25	1.5
Nickel (Ni)	30	150
Lead (Pb)	50	400
Zinc (Zn)	130	600
Tributyltin	0.1	0.5
Polychlorinated Biphenyls	0.02	0.18
Polyaromatic Hydrocarbons		
Acenaphthene	0.1	
Acenaphthylene	0.1	
Anthracene	0.1	
Fluorene	0.1	
Naphthalene	0.1	
Phenanthrene	0.1	
Benzo[a]anthracene	0.1	
Benzo[b]fluoranthene	0.1	
Benzo[k]fluoranthene	0.1	
Benzo[a]pyrene	0.1	
Benzo[g,h,i]perylene	0.1	
Dibenzo[a,h]anthracene	0.01	
Chrysene	0.1	
Fluoranthene	0.1	
Pyrene	0.1	
Indeno(1,2,3cd)pyrene	0.1	
Total hydrocarbons	100	
Booster Biocide and Brominated Flame Retardants *		

*Provisional Action Levels for these compounds are subject to further investigation.

4. Submitting results

Results should be submitted to MS-LOT using the Pre-disposal Sampling Results form.