

SCHEDULE

Article 36

MITIGATION MEASURES

Permitted development rights

1.—(1) In their application to the works, article 3 of, and Class 29 in Part II of Schedule 1 to, the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (which permits development authorised by a harbour revision order designating specifically both the nature of the development authorised and the land on which it may be carried out) have effect as if the planning permission granted by that Order—

- (a) were subject to the restrictions contained in this Schedule; and
- (b) did not apply to any permanent alteration, enlargement, replacement, relaying, extension or reconstruction authorised by article 4(3) that may in the opinion of the planning authority have significant adverse effects on the environment.

(2) In their application to other development carried out on land which falls to be treated as operational land of a dock or harbour undertaker by virtue of this Order, article 3 of, and Class 35 in Part II of Schedule 1 to the 1992 Order, have effect as if planning permission granted by that Order were subject to the restrictions contained in this Schedule.

(3) Except to the extent specified, the restrictions contained in this Schedule do not apply to temporary construction activity.

(4) For the purpose of the Town and Country Planning (Scotland) Act 1997, the restrictions contained in paragraphs 2 and 3 of this Schedule are deemed to be conditions imposed on the grant of planning permission.

Implementation of mitigation measures

2.—(1) Prior to the commencement of development, the Company shall establish, implement and organise an Ecological Management Group co-ordinated by an Ecological Clerk of Works.

(2) The Group will advise the harbour authority in delivering the implementation of mitigation measures set out in the CEMD and OEMD (as approved or amended subject to the provisions of article 35) during the construction and operation of the harbour.

(3) The Group is to comprise representation as appropriate from regulatory and statutory bodies, including—

- (a) Scottish Natural Heritage;
- (b) the Scottish Environment Protection Agency;
- (c) the Ardersier and Petty Community Council;
- (d) the Sea Mammal Research Unit;
- (e) the Royal Society for the Protection of Birds;
- (f) Whale and Dolphin Conservation;
- (g) the Ministry of Defence; and
- (h) any other parties or successor organisations as may be deemed to require consultation by the Scottish Ministers in agreeing the final CEMD/OEMD.

(4) The Ecological Management Group will support the harbour authority in its requirement to establish, implement and organise the delivery of the CEMD and OEMD.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Construction and Environmental Management Document

3. The CEMD referred to in article 35 shall include—
- (a) an updated schedule of mitigation, including all mitigation proposed in support of the Order and associated consents, other relevant agreed mitigation (e.g. as required by agencies) and mitigation set out in the relevant planning conditions;
 - (b) processes to control and action changes from the agreed schedule of mitigation;
 - (c) the following specific Construction and Environmental Management Plans, including zoning plans where appropriate—
 - (i) habitat management plan that will—
 - (aa) protect water bodies from marine non-native species;
 - (bb) minimise the risk of spreading freshwater invasive species;
 - (ii) spit habitat protection and enhancement plan that will be designed to avoid disturbance to key breeding, roosting and feeding sites on the spit and the bay to the west of the site and provide opportunity to create and enhance new breeding habitat and roost sites;
 - (iii) marine mammal protection plan, including a seal injury avoidance scheme, a comprehensive scheme for understanding the potential fragmentation impact on the bottlenose dolphin resulting from underwater noise associated with construction activities and proposals for monitoring of marine mammals during construction (the seal injury avoidance scheme should include no use of ducted propellers for maintenance and capital dredging operations during the harbour seal breeding season (June – August inclusive));
 - (iv) pollution prevention plan;
 - (v) dust management plan;
 - (vi) noise and vibration mitigation plan (including hours of operation);
 - (vii) site waste management plan; and
 - (viii) sediment transport monitoring plan, including monitoring the dispersal of sediments disposed of at the spoil ground (the findings of the sediment transport monitoring plan should inform on-going dredging operations);
 - (d) details of the appointment of an appropriately qualified Environmental Clerk of Works with roles and responsibilities;
 - (e) methods of monitoring, auditing, reporting and communication of environmental management on site and with the client, Scottish Ministers and other relevant parties; and
 - (f) statement of responsibility to ‘stop the job or activity’ if a potential breach of a mitigation measure or legislation occurs.

Operational and Environmental Management Document

4. The OEMD referred to in article 35 shall include—
- (a) an updated schedule of mitigation relevant to the operational phases, including all mitigation proposed in support of the planning application, other relevant agreed mitigation (e.g. as required by agencies) and mitigation set out in the relevant planning conditions;
 - (b) processes to control and action changes from the agreed schedule of mitigation;
 - (c) the following specific Operational and Environmental Management Plans, including zoning plans where appropriate—

- (i) habitat protection and enhancement plan, including measures to—
 - (aa) protect and safeguard SPA bird habitat at the end of the spit, the roost sites in particular, from on-going disturbance, in general accordance with the spit habitat protection and enhancement plan (this shall include zonation and/or timing of activities within the harbour coupled with screening and directional lighting);
 - (bb) create additional suitable bird roost and nest sites, including the provision of nesting rafts for terns and measures to reduce fox predation;
 - (cc) remove invasive non-native species *Crassula Helmsii*;
 - (dd) protect and enhance existing wetlands;
 - (ee) manage the stockpiled dredged material to protect the wader roost from human disturbance and wind-blow and increase shelter from certain wind directions; and
 - (ff) monitor use of habitat by SPA birds, and adapt management as required;
- (ii) marine mammal protection plan, including a seal injury avoidance scheme;
- (iii) access management plan;
- (iv) noise mitigation plan, including measures to deal with night-time noise;
- (v) sediment transport monitoring plan; and
- (vi) vessel movement plan;
- (d) details of the appointment of an appropriately qualified Environmental Clerk of Works with roles and responsibilities;
- (e) methods of monitoring, auditing, reporting and communication of environmental management on site and with the client, Scottish Ministers and other relevant parties; and
- (f) statement of responsibility to ‘stop the job/activity’ if a potential breach of a mitigation measure or legislation occurs.

Restrictions on construction

5.—(1) The works specified in article 4 are to be carried out in accordance with the descriptions given in that article and as shown on the deposited plans, subject to the limits of deviation specified in article 5.

(2) In constructing and operating the works, the Company shall implement the measures on its part set out in and from time to time agreed pursuant to the CEMD.

(3) No dredging shall take place from November to March (inclusive) with dredging operations only taking place in October with the prior approval of the Scottish Ministers.

(4) A protocol between the Company and the Ministry of Defence shall be established and implemented as required in article 20(2).

(5) Impact piling shall not be used as a method for any element of the marine works.

(6) The construction and operational phase lighting must be designed, deployed, constructed and maintained in accordance with the aviation lighting scheme approved by The Highland Council.

(7) The ‘pipe spool quay’ shall be located at least 250m from the roost site at the end of the spit as re-formed by this application.

(8) Decommissioning shall be undertaken in accordance with the Decommissioning and Restoration Plan approved by The Highland Council.