

Agenda Item	6.9
Report No	PLS 011/19

HIGHLAND COUNCIL

Committee: South Planning Applications Committee
Date: 29 January 2019
Report Title: 18/04552/PIP: Ardersier Port Ltd
Former Fabrication Yard, Ardersier, Nairn
Report By: Area Planning Manager – South

Purpose/Executive Summary

Description: Establish a port and port related services for energy related uses, including marine channel dredging, quay realignment, repair and maintenance, erection of offices, industrial and storage buildings, delivery and export of port related cargo and associated new road access, parking, infrastructure, services, temporary stockpiling of dredged material, re-grading and upfilling of landward areas and landscaping (Renewal of planning permission 13/01689/PIP)

Ward: 17 - Culloden and Ardersier

Development category: Major

Reason referred to Committee: Major Development

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

Recommendation

Members are asked to agree the recommendation to **Grant** planning permission as set out in section 11 of the report.

1. PROPOSED DEVELOPMENT

- 1.1 This is an application to renew planning permission in principle to establish a port facility at Ardersier. The key development components are:
- The access channel
 - The inner channel/berthing
 - Area of main port activity
 - Port support/admin buildings
 - Port related light industrial uses
 - Pipe spooling area
 - Temporary on-site storage of dredged material
- 1.2 The development proposes to rebuild, and indent, the current harbour wall to modern specification, improve the channel by dredging and removing the tip of the sand spit known as Whiteness Head back to the extent it was when last dredged. The harbour wall will be constructed using a construction method known as vibro-piling. It is anticipated that the port will operate for a period of 25 years.
- 1.3 Concurrently with this submission, applications have been made to Scottish Ministers for a Marine Licences for the construction works and capital dredge as required for the dredging requirements of the channel. While this planning application considers the development as a whole, the detail of the effect(s) on the marine environment is a matter more appropriately addressed by Scottish Ministers.
- 1.4 A Harbour Revision Order (HRO) in the name of the new owner is in place. The Habitat Regulation Appraisal (HRA) in respect of the impacts on the marine environment was considered at that time and will need to be taken into account in the assessment of the Marine Licence application also. Since the port related activities do not require express consent under the planning legislation, being permitted by the HRO, only the on-shore non-quay side related activity comes under planning control. Other than as a result of particular land construction techniques being employed or over ground discharge is it likely that these aspects of the development would directly impact on the marine environment.
- 1.5 The applicant has undertaken pre-application consultation with the public, with a public event held on 21 June 2018. The applicant has provided further information within a Pre-Application Consultation Report.
- 1.6 **Supporting Information:** The application is accompanied by an Environmental Impact Assessment Report (EIA Report), that identifies the environmental aspects where there have been new baselines, methodologies, legislative or other changes since the previous application (and Environmental Impact Assessment) in 2013, an indicative Master Plan, planning statement and design and access statement.
- 1.7 Variations: None

2. SITE DESCRIPTION

- 2.1 The site is the former McDermott Fabrication Yard located approximately 7.5km to the west of Nairn, 18km northeast of Inverness and 3km northeast of Ardersier. Access to the site is gained via a dedicated 2.5km long access road, which links to the B9092 to the south. The B9092 subsequently links with the A96, which is the main transport link between Inverness and Aberdeen.
- 2.2 The site extends to some 3.07km² of land that was reclaimed from the foreshore in the 1970's for the fabrication and construction of off-shore platforms for use in the North Sea gas and oil industry. The spit, known as Whiteness Head, shelters a harbour that lies between the spit and the main part of the fabrication area of the site. The majority of the site was reclaimed using dredged sand that was levelled behind a steel pile retaining wall, at approximately 4.5m above ordnance datum.
- 2.3 The site is bounded by the Moray Firth to the north, an area of sand dunes and tidal mudflats to the west, Carse Wood to the south, and an undeveloped area of sand and mudflats, known as Carse of Delnies, to the east. To the southwest of the site is the Fort George live firing range owned by the Ministry of Defence.
- 2.4 Whiteness Head is designated a Site of Special Scientific Interest (SSSI) and forms part of the Inner Moray Firth Special Protection Area (SPA). It is also a Ramsar site. The Moray Firth proposed Special Protection Area (pSPA) bounds the site. The Moray Firth is designated as a Special Area of Conservation (SAC). The site also lies within the Sutors of Cromarty, Rosemarkie and Fort George Special Landscape Area (SLA).
- 2.5 The Moray Firth SAC is designated for its population of bottlenose dolphins with an additional qualifying interest of sub-tidal sand banks. The qualifying interests of the Inner Moray Firth SPA are principally common tern and ospreys breeding in summer and bar-tailed godwits in winter. It is also of international importance for waterfowl as well as being a wetland of international importance, which is the reason for its designation as a Ramsar site. The qualifying features of the Moray Firth pSPA are the overwintering birds. Notable features of the Whiteness Head SSSI are its geomorphology, particularly the sand and shingle spit, inter-tidal systems of saltings, sand and mudflats.
- 2.6 The key feature of the Inner Moray Firth SLA is the visual interplay of land and sea particularly between the headlands at Chanonry Point/Fort George and the Sutor narrows at the head of the Cromarty Firth; the openings to the Inner Moray Firth and Cromarty Firth respectively.
- 2.7 Fort George is a Scheduled Ancient Monument and Category A listed building.

3. PLANNING HISTORY

- 3.1 25.08.2005 Use of a former industrial building for storage Permission granted
(05/00185/FULIN)

3.2	02.11.2007	Outline application for residential and leisure development including, housing, marina, boat yard, yacht club, visitors centre, nature conservation zones and hotel with supporting community facilities and sewage treatment plant (05/01294/OUTIN)	Permission granted
3.3	21.07.2008	Sewage pumping station and ancillary works (07/01186/FULIN)	Permission granted
3.4	25.02.2013	12/04225/S42 Vary condition 1 of planning permission 05/01294/OUTIN to extend the time limit of the consent	Permission granted
3.5	25.01.2013	Scoping Opinion for a port and port related services for energy related uses, including manufacture, construction, assembly, repair, maintenance, marine storage and decommissioning of renewables including turbines and their constituent parts; including marine channel dredging, quay realignment, repair and maintenance, offices, industrial and storage buildings and associated new road access, infrastructure, services, re-grading and upfilling of landward areas and landscaping (12/04893/SCOP).	Scoping application Decision issued
3.6	09.04.2013	Vary condition 1 of planning permission (05/01294/OUTIN) to extend time limit (13/00682/S75M).	Grant section 75 (modify obligations)
3.7	30.01 2014	Establish a port and port related services for energy related uses, including marine channel dredging, quay realignment, repair and maintenance, erection of offices, industrial and storage buildings and associated infrastructure, delivery and export of port related cargo, marine channel dredging, quay realignment, repair and maintenance, erection of offices, industrial and storage buildings and associated new road access, parking, infrastructure, services, temporary stockpiling of dredged material, re-grading and upfilling of landward areas and landscaping (13/01689/PIP).	Permission granted
3.8	08.06.2018	Scoping Report to agree the scope of the Environmental Impact Assessment Report to accompany the application submission for a renewal to planning permission in principle 13/01689/PIP (18/01411/SCOP).	Scoping application Decision issued

4. PUBLIC PARTICIPATION

- 4.1 Advertised: Edinburgh Gazette and Inverness Courier as Environmental Impact Assessment Development.

Date Advertised: 19.10.2018

Representation deadline: 18.11.2018

Timeous representations: 0

Late representations: 0

5. CONSULTATIONS

- 5.1 **Ardersier and Petty Community Council:** No response received.
- 5.2 **Cawdor and West Nairnshire Community Council:** No response received.
- 5.3 **Environmental Health:** No objection subject to conditions regarding audible construction noise outwith core hours of operation and with regard to noise resulting from plant and/or equipment during operation.
- 5.4 **Contaminated Land:** No comment (previous contaminated land has been appropriately remediated).
- 5.5 **Transport Scotland:** No objection subject to conditions relating to the need for Traffic Management Plans to be in place for both construction and operation and that the junction of the site access road and the A96 is upgraded to a roundabout.
- 5.6 **SEPA:** No objection subject to conditions in respect of: Construction Environmental Management Plans; requirement for SUDS within each development phase; foul drainage to connect to public sewage network; further details on the extent and maintenance of the dredged material storage area; buffers to avoid impacts on GWDTE from excavation; design and implementation of a natural heritage management scheme; and a Decommissioning and Restoration Plan.
- 5.7 **SNH** is of the view that while there are natural heritage interests of international importance on the site, that these will not be adversely affected by the proposal.

This advice is given on the basis that SNH understands that the relevant, extant conditions from planning permission 13/01689/PIP will be carried over to any new consent granted. Condition 15 is particularly important; this states that no part of the development shall be occupied until an Operational Environmental Management Document (OEMD) has been submitted and agreed. This is also a requirement of the Harbour Revision Order and the construction marine licence (which is currently subject to consultation). SNH consider that there is a need to restate this requirement to address the ongoing requirement for maintenance dredging and the implications that this will have for the natural heritage.

The current proposal could affect the Moray Firth Special Area of Conservation (SAC) dolphin interest, the Dornoch Firth and Morrich More SAC common seal interest, the Inner Moray Firth Special Protection Area (SPA) and the Moray Firth proposed SPA (pSPA).

In SNH's view, this proposal is likely to have a significant effect on the bottlenose dolphin interest of the site. This is due to disturbance from piling, dredging and vessel movements from both the construction and operational phases of the development. In-combination impacts with other developments within the dolphins' range, especially the development at Nigg Bay, Aberdeen must also be considered. The Nigg Bay Aberdeen proposal was not in existence at the time of the former planning application in 2013.

In its view the mitigation measures described in the Marine Mammal Protection Plan (MMPP), the Marine Mammal Observation Protocol (MMOP), the Environmental Impact Assessment Report (EIAR) (Chapter 6, Shipping and Navigation) and the Construction Environment Management Document (CEMD) will avoid adverse effects on the integrity of the site.

As a consequence seals are likely to be disturbed from the construction and operational phases of work including piling, dredging and vessel and onshore vehicle movements. We therefore agree with the conclusions of the HRA that this proposal will have likely significant effects on the Dornoch Firth and Morrich More SAC common seal population.

In its view, based on the mitigation measures described in the MMPP, the MMOP and the CEMD, the proposal will not adversely affect the integrity of the site. This is because the SAC is circa 50km from the development and therefore only a small proportion of the SAC population is likely to be using the Ardersier haulout at any one time and the proposed mitigation will reduce impacts on those animals that are in the vicinity.

The importance of this haulout, and the fact that the population of common seals in the Moray Firth is classed as 'unfavourable', means that serious consideration is needed to minimise disturbance at the haulout during the most sensitive times of the year (i.e. June to August). This could be done by restricting dredging and piling activities closest to the haulout during late June/early July (pupping time) and early August (moulting time). This could be informed through observations on site such that if no seal pups are seen or they are using areas of the sands further away from the channel, then it would be safe to undertake works.

SNH recommends that the MMMP is reviewed in the light of the new Ardersier haulout prior to work commencing so that the disturbance is kept to a minimum.

With regard to the Moray Firth pSPA, SNH considers that this proposal is likely to have a significant effect on the great northern and red throated diver, long tailed duck and eider duck qualifying interests of the site. This is because the dredging operations will take place within the pSPA and this may cause disturbance and affect the foraging areas for these birds through changes in sediment movement

and/or deposition.

Based on the information provided, SNH considers that the proposal will not adversely affect the integrity of the site given that the capital dredge works will take place outwith the wintering period. Furthermore, these bird species favour marine waters and do not use roost sites or intertidal feeding areas close to the proposed development, therefore changes in intertidal sediment movement and operational disturbance from non-dredge related works will not result in a level of disturbance that will lead to adverse effects on site integrity.

Turning to impacts on the Inner Moray Firth SPA, SNH is of the opinion that the proposal is likely to have a significant effect on bar-tailed godwit, curlew, oystercatcher and redshank that roost and feed within and close to the site. This is because a) the capital dredge will remove supporting habitats and affect foraging areas through changes in sediment movement and deposition and b) there will be disturbance arising from the onshore stockpiling and subsequent management of dredged material.

Based on the information in the Coastal Processes Report and the mitigation measures described in the CEMD, the Ecological Impact Assessment - Terrestrial Ecology & Ornithology report and the Natural Heritage Management Plan, SNH is content that the proposal will not adversely affect the integrity of the site.

As far as changes in sediment movement and deposition are concerned the Coastal Processes Report (Technical Appendix 11.2, Figures 4.12 and 5.8) compares the predictions with and without capital dredging. This predicts that much of Whiteness Sands is likely to be generally stable in extent and elevation, with any net change after capital dredging likely to be minor. We do not dispute these predictions. Most importantly, the changes theoretically attributable to capital dredging are likely to be within natural variability. For the same reasons, coastal-process effects of capital dredging would not amount to significant adverse impacts on the Whiteness Sands component of the SPA.

As far as disturbance arising from the onshore stockpiling of material is concerned, the commitment to construct permanent and temporary bunds to screen the Whiteness Sands roost site from the development area will be fundamental to avoid adverse impacts on the SPA. Further details about the design and location of the bunds, as well as the timing of their construction/removal, is required to ensure that they achieve the desired mitigation outcomes. SNH recommend that the applicant discuss these details with them prior to the works commencing.

Projections of future coastal change from Dynamic Coast, which are new since the 2013 planning consent was granted, suggest that ongoing erosion could have implications for the sustainability of the port development during its lifetime. This information was made available to the applicant at the scoping stage. It is important because virtually the whole spit has seen significant erosional retreat in recent decades, and ongoing Dynamic Coast analysis strongly indicates this will continue.

The erosion rate is likely to accelerate due to sea-level rise, with increasing risk of storm waves breaching distal parts of the spit. This could, within the lifetime of the

proposed port, significantly reduce the natural protection against the sea that it gains from the spit. In that scenario, the effects on operations and viability could well create demand for engineered coastal defences along the spit. Alongside serious challenges in terms of cost, performance and ongoing maintenance, such defences could have a major impact on the designated coastal geomorphology interests present.

In its response to the original port proposal (dated 15th November 2013) SNH explained that the area of the spit that will be lost due to dredging would result in damage to the national interest of the Whiteness Head SSSI. This proposal will also result in damage to the national interest of the SSSI. However, in its letter of 15th November 2013, SNH recognised the social and economic benefits of the proposal and it applied its balancing duties and as a consequence of this decided not to object to the proposal on the basis of damage to the SSSI features.

5.8 **Scottish Water** identify that there is sufficient water capacity within the Inverness Water Treatment Works to service the development but no public waste water infrastructure in the vicinity of the site and it therefore recommends that the applicant investigate private treatment options.

5.9 **Marine Scotland Science:** No specific comment to make.

5.10 **HIAL:** No response received.

5.11 **MOD:** No response received.

6. **DEVELOPMENT PLAN POLICY**

The following policies are relevant to the assessment of the application

6.1 **Highland Wide Local Development Plan 2012**

- 14 - Whiteness
- 28 - Sustainable Design
- 29 - Design Quality & Place-making
- 42 - Previously Used Land
- 55 - Peat and Soils
- 56 - Travel
- 57 - Natural, Built & Cultural Heritage
- 58 - Protected Species
- 59 - Other important Species
- 60 - Other Importance Habitats
- 61 - Landscape
- 62 - Geodiversity
- 63 - Water Environment
- 64 - Flood Risk
- 65 - Waste Water Treatment
- 66 - Surface Water Drainage
- 70 - Waste Management Facilities
- 72 - Pollution

73 - Air Quality
74 - Green Networks
77 - Public Access
78 - Long Distance Routes

6.2 Inverness Local Plan 2006 (as continued in force)

No specific policies apply.

6.3 Inner Moray Firth Local Development Plan 2015

WH1 Whiteness

6.4 Highland Council Supplementary Planning Policy Guidance

Construction Environmental Management Process for Large Scale Projects (August 2010)
Developer Contributions (March 2013)
Flood Risk & Drainage Impact Assessment (Jan 2013)
Green Networks (Jan 2013)
Highland Historic Environment Strategy (Jan 2013)
Highland's Statutorily Protected Species (March 2013)
Highland Renewable Energy Strategy & Planning Guidelines (May 2006)
Managing Waste in New Developments (March 2013)
Physical Constraints (March 2013)
Sustainable Design Guide (Jan 2013)

7. OTHER MATERIAL POLICY CONSIDERATIONS

7.1 Scottish Government Planning Policy and Guidance

National Planning Framework 2014
Scottish Planning Policy 2014
National Marine Plan 2015

8. PLANNING APPRAISAL

8.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

Determining Issues

8.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

Planning Considerations

- 8.3 The key considerations in this case are:
- a) compliance with the development plan and other planning policy
 - b) landscape resource and visual amenity, taking into account cultural and landscape assets
 - c) terrestrial natural heritage
 - d) marine natural heritage
 - e) transport infrastructure,
 - f) other infrastructure
 - g) amenity of neighbouring occupiers during construction and operation,
 - h) any other material considerations.

Development plan/other planning policy

- 8.4 The proposal relates to the renewal of the planning permission in principle granted in January 2014 for the creation of a port. The principle of the development has therefore been accepted. The key matter for consideration is changes to policy since the initial grant of permission and therefore whether current policy continues to provide support for the development.
- 8.5 There has been no change to the Highland wide Local Development Plan since the grant of planning permission in early 2014. The site is allocated for a mixed use development. In particular this policy acknowledges the importance of the site for strategic development and outlines that:
- 'The Council will support the development at Whiteness as part of the strategy to provide a long term housing land supply in the area. Detailed master plans will accompany each phase of development in line with the current planning permission, including provision in line with the already agreed upgrades to the A96. The Council will also support the reuse of the site for renewables related development, should the housing element not come forward. Renewables-related development will be subject to the production of a master plan which should ensure that there are no adverse effects on the integrity of the Moray Firth SAC and Inner Moray Firth SPA/Ramsar site.'*
- 8.6 The Inner Moray Firth Local Development Plan was adopted post decision. However, the allocation remains the same as presented within the Proposed Plan that was relevant at that time. The site is allocated for industrial use - for renewables innovation, manufacturing and maintenance. As with the Highland wide Local Development Plan subject to there being no adverse impact on the integrity of the Moray Firth SAC and Inner Moray Firth SPA and Ramsar, through appropriate mitigation, the principle of the development would be supported.
- 8.7 The reason for the site being identified for renewables related uses arose from the identification of the site within the National Renewables Infrastructure Plan and the contribution that it could usefully make to the economy of the Inner Moray Firth as identified with the second National Planning Framework. Since then NPF3 has

been published. This continues to identify Ardersier as a site of importance to the renewables sector.

- 8.8 The principle of this development has been accepted. Subject to the proposal continuing to ensure that it will have no significant adverse impact upon individual and community residential amenity and/or the natural and built environment the proposal would accord with the Development Plan.

Landscape and Visual Impact (including on Cultural/Historic Environment)

- 8.9 The development site lies within two main landscape character types (LCT's); the Intensive Farming LCT and Coastal Farmlands LCT identified within the Inner Moray Firth and Moray and Nairn Landscape Character Assessments (SNH) respectively. The spit at Whiteness Head lies within the Soft Coastal Shore LCT in the Moray and Nairn Landscape Character Assessment (SNH). The site also lies within the Sutors of Cromarty, Rosemarkie and Fort George Special Landscape Area (SLA). It is approximately 4km to the east of Fort George which is a Scheduled Ancient Monument. No new landscape designations have been brought forward through any recent changes to the Development Plan.
- 8.10 As a consequence, the landscape and visual effects of the development were not required to be reassessed by the applicant. The impacts identified in the original submission were accepted.
- 8.11 While no detail of the built structures and/or activities proposed on the site have been specified, given this is a planning permission in principle, it is likely that some buildings and structures will be of considerable scale. The introduction of development into this low lying, open landscape will inevitably result in considerable landscape change. The proposal will introduce prominent new features, re-introducing heavy industry to what is currently a relatively quiet area.
- 8.12 Turning to visual impacts, the impact on visual amenity in particular, significant effects will generally be experienced within 10km with the most significant visual receptors being Fort George/Chanonry Point, the South Sutor, Ardersier and Nairn West Beach. The development will however be read in the context of other industrial/built development along this stretch of the coastline; Dalcross and Norbord in particular. Evidence of the historical use of the site still exists in many of these views. In its response to the original application Historic Scotland did not object, accepting that the effect on setting of Fort George would be significant. The effects from other listed buildings and sites of cultural interest were not considered significant. Renewal of permission does not alter this assessment and previously held opinion on the acceptability of the proposal.
- 8.13 While views out from the SLA are likely to be adversely affected by the development, again when seen within the context of historic and current industrial activity on this side of the Firth that impact was considered acceptable. The appreciation of the most important features of the SLA, the Sutors, Eathie Cliffs and Chanonry/Fort George promontories will be largely unaffected. There have been no changes to the SLA, or introduction of further landscape designations, that would alter this previously held opinion.

Natural Heritage - Terrestrial

- 8.14 The proposal, which includes creation of an improved harbour will involve removal of part of Whiteness Head (c. 3ha) which is designated as a Site of Special Scientific Interest (SSSI). This spit feature has evolved due to the occurrence of long shore drift in an east to west manner; sand stirred up by wave action within the intertidal area of Nairn beach being carried and gradually deposited at Whiteness. A significant portion of this feature will however be retained in recognition of its geomorphological importance and the natural protection it provides for the harbour. As a result of this continuous coastal process and regardless of significant capital dredging, considerable maintenance dredging will be required.
- 8.15 In its response to the original proposal SNH considered that the area of the spit that will be lost due to dredging would result in damage to the national interest of the Whiteness Head SSSI. SNH remains of this opinion. However, it does not object in recognition of the social and economic benefits of the proposal.
- 8.16 SNH highlights that more recent information from Dynamic Coast on future coastal change suggests that ongoing erosion could have implications for the sustainability of the port development during its lifetime. Sea level rise may accelerate the rate of erosion leaving the port vulnerable to breach from storm events resulting in a need for engineered coastal defences.
- 8.17 The spit and foreshore of the site forms part of the Inner Moray Firth SPA. SNH considers that the proposal may have a likely significant effect on bar-tailed godwit, curlew, oystercatcher and redshank through removal of part of the spit at the time of the capital dredge and also disturbance from the onshore stockpiling and management of dredged material. Subject to the mitigation measures described in the Construction Environmental Management Document, the Ecological Impact Assessment - Terrestrial Ecology & Ornithology Report and the Natural Heritage Management Plan submitted with the application, SNH is content that the proposal will not adversely affect the integrity of the site.
- 8.18 In 2016 details on the classification of a further proposed Special Protection Area (pSPA) affecting the site emerged - the Moray Firth pSPA - the qualifying features of which are its overwintering bird populations. SNH considers that this proposal is likely to have a significant effect on the great northern and red throated diver, long tailed duck and eider duck qualifying interests of the site, again as a result of the dredging operations. However, it is of the view that the proposals will not adversely affect the integrity of the site given that the capital dredge works will take place outwith the wintering period. There will be no impact from non-dredge activity on the qualifying interests of the pSPA, since these species favour marine waters. No significant disturbance is likely from operations.
- 8.19 The majority of the site is manmade having been created using dredged material when constructing the fabrication yard in the mid 1970's. However, around the periphery woodland, dune and salt marsh habitat are present. Notwithstanding this, the site is of limited suitability to mammals. No evidence of protected mammal species has been recorded. The construction and operation of the site is therefore unlikely to affect any protected mammal species.

Natural Heritage - Marine

- 8.20 One of the most sensitive issues when considering development proposals on this site has been the effects on bottlenose dolphin, a key qualifying feature of the Moray Firth SAC, due to potential disturbance arising from piling, dredging and vessel movements from both the construction and operational phases of the development. In SNH's view, this proposal is likely to have a significant effect on the bottlenose dolphin interest of the Moray Firth SAC. In addition, SNH advises that the proposal will have likely significant effects on Dornoch Firth and Morrich More SAC.
- 8.21 Since consideration of previous schemes on the site, Aberdeen Harbour Authority's Nigg Bay development has commenced. This has resulted in the need to consider in-combination impacts with this and other developments within the dolphins' range. The applicant has concluded that the development does not add to the associated impacts from these sites.
- 8.22 SNH is of the opinion that the mitigation measures described in the Marine Mammal Protection Plan (MMPP), the Marine Mammal Observation Protocol (MMOP), the Environmental Impact Assessment Report (EIAR) (Chapter 6, Shipping and Navigation) and the Construction Environment Management Document (CEMD) will avoid adverse effects on the integrity of the site. It would however wish to see a commitment to the 'Works Dialogue Protocol' with the developers at Nigg Bay as a condition in order to minimise potential in-combination effects.
- 8.23 In respect of the impact on the Dornoch Firth and Morrich More SAC, it is likely that seals will be disturbed by the construction and operational phases of work including piling, dredging and vessel and onshore vehicle movements.
- 8.24 Ardersier was designated as a haulout site under The Protection of Seals (Designation of Haul-Out Sites) (Scotland) Order 2014. Given the importance of this haulout, and the fact that the population of common seals in the Moray Firth is classed as 'unfavourable', SNH considers that it is necessary to minimise disturbance at the haulout during the most sensitive times of the year (i.e. June to August). It is suggested that this could be achieved by restricting dredging and piling activities closest to the haulout during late June/early July and early August. SNH recommends that the MMPP is reviewed in the light of this.
- 8.25 Overall SNH considers that, based on the mitigation measures described in the MMPP, the MMOP and the CEMD, the proposal will not adversely affect the integrity of the site. In its opinion this is because the SAC is circa 50km from the development and therefore only a small proportion of the SAC population is likely to be using the Ardersier haulout at any one time and the proposed mitigation will reduce impacts on those animals that are in the vicinity.

Transport infrastructure

- 8.26 Since the grant of permission for this development in 2014, Transport Scotland has completed the development and assessment of the preferred option for dualling the section of the A96(T) between Inverness and Nairn (including a Nairn Bypass). It

published Draft Orders for the scheme on 29 November 2016. The scheme is currently at Public Local Inquiry.

- 8.27 The scheme identifies a significant new junction at Nairn West that, in addition to providing access to Nairn, will also provide direct access to service the Whiteness/Ardersier Port site. This utilises the existing route from the A96(T), that crosses the B9092. On the basis that the scheme is allowed to progress there is commitment from Transport Scotland to deliver this section of route as an early phase of the overall A96 Inverness - Aberdeen dualling project that is scheduled to be completed by 2030. It may however be some years until this part of the scheme is constructed.
- 8.28 In recognition of this, Transport Scotland maintains its position that the junction of the site access road and the A96(T) as it currently stands requires to be upgraded to a roundabout junction. While it would not seem sensible to undertake significant re-engineering works that could then become redundant in only a short period of time, Transport Scotland is simply preserving its options should the dualling scheme not progress.
- 8.29 Transport Scotland identifies the need to re-impose the condition relating to the need for a Traffic Management Plan to be in place for both construction and operation.
- 8.30 Mitigation secured within the original permission included the need to secure and implement a Travel Plan to reduce effects on Nairn junctions and undertake works to improve the site access through construction of roundabouts at the junction of the site access road/B9092 and the access road/A96(T). Transport Planning sought further mitigation in the form of a scheme for monitoring of traffic flows on the local road network, including review periods, and any requirements for implementation of further mitigation that may be required. It is suggested that the condition relating to this is re-imposed.

Other infrastructure

- 8.31 The site is fully serviced with mains water and established electricity infrastructure. A proposal to put in place a sewer pumping station with connection to the existing waste water treatment plant at Ardersier was granted permission in July 2008 (07/01186/FULIN). This work has been implemented and the pumping station constructed. This assists with addressing SEPA's requirement for all buildings to connect to the public sewer. The details regarding capacity of the waste water treatment infrastructure was considered previously but would be a matter for the applicant and Scottish Water to agree.

Amenity - construction and operation

- 8.32 In addition to the effects on habitat, there is some potential for construction related noise and activity impacts that could affect neighbours. The residential properties at Carse of Ardersier are the nearest neighbours at 440m from the site boundary. While the applicant had previously assessed the construction noise and vibration effects on these neighbours to be negligible it nonetheless offered mitigation to reduce the potential impact. This included:

- The submission of a Traffic Management Plan to set out agreed prescribed access routes, hours of operation, maximum vehicle movements and monitoring arrangements;
- Adherence to British Standard 5228 best practice, including proper maintenance of equipment and the use of noise attenuation apparatus;
- Liaison with neighbours on work schedule.

8.33 Powers for regulating construction noise exist within the Control of Pollution Act 1974; which enable Environmental Health to specify working hours where problems exist. Having said that, working hours, along with delivery hours can be controlled through a condition requiring approval of a Construction Environmental Management Document (CEMD) and Plans (CEMPs) on the basis that this mitigation has been offered. This can include a Construction Traffic Management Plan assist in regulating activity on the public road network in the interests of amenity.

8.34 With the current limited activity on site it is inevitable that neighbouring occupiers will experience an increase in noise and activity not only during construction but also operation of this proposed development. With the site potentially operating on a 24 hour day seven days a week basis, Environmental Health had previously expressed concern about night time noise levels believing that this may result in complaints. It previously requested that the applicant detail the specific noise mitigation measures that will be implemented to reduce night time operational noise levels. This mitigation was achieved as part of an Operational Environmental Management Plan and would continue to form part of the planning permission if granted. Measures to ensure that any plant and machinery were maintained within acceptable limits were also requested and again can continue to be controlled through condition.

8.35 Any contaminated land present on the site as a result of its historical use has been removed. There is no risk from contamination to adjacent watercourses or to human health.

Other material considerations

8.36 There has been no consultation response received from the MOD. It did however raise a particular issue on the original proposal with regard to the management of the port and the need to respect the existing MOD bye-laws that are designed to protect the operation of its live firing range. While it is unlikely that port traffic would require to enter the live firing range, a protocol between the Harbour Authority and MOD would need to be established nonetheless. A planning condition to protect the MOD interest was developed. It is considered that this should remain in place on any new permission granted.

8.37 In a similar vein, HIAL has not responded to the consultation request albeit that the development may impact on the safe operation of Inverness Airport as a result of the height of structures, including buildings, and the use of cranes on the site. Liaison between the site and the airport will continue to be necessary. Both HIAL

and MOD suggested the need for aviation lighting on structures.

Matters to be secured by Section 75 Agreement

8.38 None.

9. CONCLUSION

9.1 The proposal is to renew the planning permission in principle for the use of this site as a port that could have a significant role to play in implementing the national renewable infrastructure plan. There is clear support for this scheme both in national and local policy. If successful, the proposal would bring substantial economic benefit to the immediate area, to Highland and potentially Scotland.

9.2 A number of changes in both local planning and government policy have occurred since the original grant of planning permission in principle. In addition, the position in respect of marine conservation within the Moray Firth has evolved, with further marine developments changing the cumulative landscape for the firths bottlenose dolphin population. New designations have emerged in respect of seal haulout sites and a proposed Special Protection Area.

9.3 These matters have all been considered by the applicant in the Environmental Impact Assessment (EIA) Report submitted in support of the application. Consultees, SNH and SEPA in particular, highlight that subject to the re-imposition of the conditions on planning permission in principle 13/01689/PIP and the mitigation contained within the EIA Report, and its predecessor Environmental Statement, that their interests can be safeguarded with slight modification only. This remains the case with all other aspects.

9.4 On this basis, the proposal will not have a significantly detrimental impact upon individual and/or community residential amenity and/or the natural and built environment.

9.5 All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

10. IMPLICATIONS

10.1 Resource: Not applicable

10.2 Legal: Not applicable

10.3 Community (Equality, Poverty and Rural): Not applicable

10.4 Climate Change/Carbon Clever: Not applicable

10.5 Risk: Not applicable

10.6 Gaelic: Not applicable

11. RECOMMENDATION

Action required before decision issued N

Notification to Scottish Ministers N

Conclusion of Section 75 Obligation N

Revocation of previous permission N

Subject to the above, it is recommended that planning permission be **GRANTED**, subject to the following:

Conditions and Reasons

1. Planning Permission in Principle is hereby granted for a development to establish a port and undertake port related services for energy related uses developed in general accordance with the Indicative Master Plan (Drawing No. 16711/28 A).

Reason: In order to clarify the terms of permission.

2. No development, other than the works permitted by the Harbour Revision Order, shall commence until a Phasing Plan, which details the proposed sequence of development, has been submitted to, and approved by, the Planning Authority. The development shall be undertaken in accordance with the agreed Phasing Plan, or in Sub-Phases as may be approved by the Planning Authority. A Sub-Phase means any part of any Phase of Development the subject of an Approval of Matters Specified in Conditions issued by the Council following an application in that behalf, or otherwise subject of any equivalent planning approval following an application in that behalf.

Reason: To ensure that the development proceeds in an appropriate manner and that the necessary elements of the development are provided at the appropriate stages.

3. No development, other than the works permitted by the Harbour Revision Order, shall commence until a draft Decommissioning and Restoration Plan (DRP) for the site has been submitted to, and approved by, the Planning Authority in consultation with SNH and SEPA. Thereafter:
 - i. No later than 3 years prior to the decommissioning of the development, the draft DRP shall be reviewed by the operator and a copy submitted to the Planning Authority for their written approval, in consultation with SNH and SEPA; and
 - ii. No later than 12 months prior to the decommissioning of the development, a detailed DRP, based upon the principles of the approved draft plan, shall be submitted to, and approved in writing by, the Planning Authority, in consultation with SNH and SEPA.

For the avoidance of doubt, the DRP shall include the removal of all aboveground

elements of the development, all new access tracks, the treatment of disturbed and/or contaminated ground surfaces, management and timing of the works, environmental management provisions and a traffic management plan to address any traffic impact issues during the decommissioning period. The detailed Decommissioning and Restoration Plan shall be implemented as approved.

Reason: To secure the decommissioning and removal of the development in an appropriate and environmentally acceptable manner and restoration of the site, in the interests of safety, amenity and environmental protection.

4. No development, other than the works permitted by the Harbour Revision Order, shall commence within each Phase, or sub-Phase, until an application, or applications, for the approval of matters specified in conditions as they relate to or are relied upon by that Phase or sub-Phase has been submitted to, and approved by, the Planning Authority in respect of the following matters, insofar as they relate to the details of the proposed development taking full account of the Indicative Master Plan referred to in Condition 1 above:-
- a) a detailed Master Plan using the principles set out in the Indicative Master Plan and Environmental Impact Assessment Report;
 - b) the siting, design and external appearance of all buildings and other structures;
 - c) details of finished site and floor levels;
 - d) details of sustainable design considerations including possible use of solar gain design, solar energy use, grey water recycling and rain water harvesting, external lighting to minimise sky glow, and energy conservation generally;
 - e) the layout of the site;
 - f) road layout including the road hierarchy, junction layouts and design;
 - g) the provision of car parking;
 - h) means of dealing with commercial waste in accordance with the Highland Council's 'Managing Waste in New Developments' Supplementary Planning Guidance' (or any superseding guidance prevailing at the time of submission) including provision of communal composting and recycling facilities.
 - i) details of proposed water and waste water connections.

Reason: To enable the planning authority to consider these aspects of the

development in detail.

5. No development shall commence on a particular Phase, or sub-Phase, until full details of surface water drainage provision within the relevant Phase or sub-Phase (which should accord with the principles of the SUDS Manual (CIRIA C753)) have been submitted to, and approved by, the Planning Authority. Thereafter, only the approved details shall be implemented and all surface water drainage provision for the relevant phase or sub-phase shall be completed prior to the final occupation of the relevant phase or sub-phase.

Reason: To ensure that surface water drainage is provided timeously and complies with the principles of SUDS; in order to protect the water environment and reduce the risk of flooding.

6. No development shall commence until a Construction Environmental Management Document has been submitted to, and approved by, the Planning Authority in consultation with SNH and SEPA. The Document shall include:

- An updated Schedule of Mitigation (SM) including all mitigation proposed in support of the planning application, other relevant agreed mitigation (e.g. as required by agencies) and set out in the relevant planning conditions
- Processes to control / action changes from the agreed Schedule of Mitigation
- The following specific Construction and Environmental Management Plans (CEMP):
 - (i) Habitat management plan that will:
 - protect water bodies from marine non-native species
 - minimise the risk of spreading freshwater invasive species
 - (ii) Spit habitat protection and enhancement plan that will be designed to avoid disturbance to key roost sites on the spit and the bay to the west of the site and provide opportunity to create new roost sites
 - (ii) Marine mammal protection plan, including measures to protect marine mammals from on-shore activity
 - (iii) Pollution prevention plan
 - (iv) Dust management plan
 - (v) Noise and vibration mitigation plan to include a construction noise assessment where works are:

- undertaken outwith 8am - 7pm Monday to Friday and 8am to 1pm Saturday or;
- where noise levels during or above these periods

The noise assessment having been undertaken in accordance with BS5228-1:2009 Code of practice for noise and vibration control on construction and open sites - Part 1:Noise

(vi) Site waste management plan

(vii) Sediment transport monitoring plan

- Details of the appointment of an appropriately qualified Environmental Clerk of Works with roles and responsibilities.
- Methods of monitoring, auditing, reporting and communication of environmental management on site and with the client, Planning Authority and other relevant parties.
- Statement of responsibility to 'stop the job / activity' if in potential breach of a mitigation or legislation occurs.

The development shall proceed in accordance with the approved Construction Environmental Management Document which shall be updated, as necessary, for each Phase and/or Sub-Phase and approved by the Planning Authority in consultation with SNH and SEPA. Any further mitigation measures approved by the Planning Authority shall thereafter be implemented for the duration of construction works within the Phase/Phases, or sub-Phases, to which they relate.

Reason: To protect the environment and amenity from the construction of the development.

7. No development shall commence on site until a community liaison group has been established by the developer, in collaboration with The Highland Council and local Community Council(s). The group shall act as a vehicle for the community to be kept informed of project progress and, in particular, should allow advanced dialogue on the provision of all mitigation measures and to keep these under review. The liaison group shall be maintained for the duration of construction activity on each Phase.

Reason: To assist with the provision of mitigation measures to minimise the effects on road users, including pedestrians, and neighbouring occupiers.

8. No development shall commence on site until a comprehensive scheme for understanding the potential fragmentation impact on the bottlenose dolphin resulting from underwater noise associated with construction operations has been submitted to, and approved by, the Planning Authority in consultation with Scottish Natural Heritage. The scheme shall include proposals for monitoring and reporting of underwater noise and dolphin activity at the entrance to Ardersier Port and at Chanonry Point prior to and during

construction activities. The approved scheme shall be implemented.

Reason: In order to understand the fragmentation impact on the bottlenose dolphin qualifying feature of the Moray Firth SAC.

9. No development, other than the works permitted by the Harbour Revision Order, shall commence within any Phase, or sub-Phase, until a Traffic Management Plan (in respect of both construction and operation) for that Phase, or sub-Phase, has been submitted to, and approved by, the Planning Authority.

The Plan shall include, inter alia, prescribed access routes, hours of operation, maximum vehicle movements and monitoring arrangements. The Traffic Management Plan shall be implemented in accordance with any timescales contained therein.

Reason: To minimise interference with the safety and free flow of the traffic on the trunk road. To mitigate detrimental effects on the A96(T) following an increase in traffic volumes during the period of construction and the period of operation.

10. No development, other than the works permitted by the Harbour Revision Order, shall commence on site until full details of the following (including scale plans as necessary) have been submitted to, and approved by, the Planning Authority, in consultation with Transport Scotland:
- i. the proposed upgrading of the junction of the site access road with the A96(T) as generally described in SKM Colin Buchanan Drawing Number Figure 8.1 titled Indicative A96(T)/Site Access Roundabout and dated April 2013;
 - ii. the proposed upgrading of the junction of the site access road with the B9092 as generally described in SKM Colin Buchanan Drawing Number Figure 8.2 titled Indicative A96(T)/Site Access Roundabout and dated April 2013;

The approved junction improvements shall thereafter be implemented to the satisfaction of the Planning Authority, in consultation with Transport Scotland, before the commencement of development.

Reason: To ensure that the standard of access layout complies with the current standards and that the safety of the traffic on the trunk road is not diminished.

11. No development shall commence on site until detailed proposals for regular liaison between the site and Highlands and Islands Airports Limited, or its successors, on construction and operation activity at the site has been submitted to, and approved by, the Planning Authority. The agreed proposals shall be implemented.

Reason: To ensure that Highlands and Islands Airports Limited is aware of construction and operational activity that may affect the safe working of Inverness Airport.

12. No development, other than the works permitted by the Harbour Revision Order, shall commence on site until a Travel Plan, which sets out proposals for reducing dependency on the private car, has been submitted to, and approved in writing by, the Planning Authority. The Travel Plan shall include:
- i. Measures for extending and/or increasing the frequency of the existing local bus services(s) and associated financial contributions;
 - ii. Details for the management, monitoring, review and reporting of these measures; and
 - iii. Details of the duration of the Travel Plan.

The approved Travel Plan shall be implemented from the date of first occupation of any part of the development and updated for each Phase and/or Sub-Phase as may be the case. Any mitigation measures and improvements approved by the Planning Authority must be enacted prior to the first occupation of any development within the Phase, or sub-Phase, to which they relate.

Reason: In order to reduce dependency on the private car and to encourage greater use of public transport.

13. No development shall commence until a detailed Access Management Plan of public access across the site (as existing, during construction and following completion) has been submitted to, and approved by, the Planning Authority. The plan shall include details showing:
- i. All existing access points, paths, core paths, tracks, rights of way and other routes (whether on land or inland water), and any areas currently outwith or excluded from statutory access rights under Part One of the Land Reform (Scotland) Act 2003, within and adjacent to the application site;
 - ii. Any areas proposed for exclusion from statutory access rights, for reasons of privacy, disturbance or effect on curtilage related to proposed buildings or structures;
 - iii. All proposed paths, tracks and other routes for use by walkers, riders, cyclists and any other relevant outdoor access enhancement i.e. car park (including construction specifications, signage, information leaflets, proposals for on-going maintenance etc.);
 - iv. Any diversion of paths, tracks or other routes (whether on land or inland water), temporary or permanent, proposed as part of the development (including details of mitigation measures, diversion

works, duration and signage).

The approved Access Management Plan, and any associated works, shall be implemented in full prior to the first occupation of the development or as otherwise may be agreed within the approved plan.

Reason: To safeguard and maximise the opportunities for continued public access to the countryside during the construction and operation of this development.

14. No development shall commence on site until a scheme or protocol for managing potential marine interactions within the MOD bye-law area to the west of the site has been submitted to, and agreed by, the Planning Authority in consultation with Scottish Natural Heritage, Marine Scotland and Transport Scotland – Ports and Harbours Branch and Ministry of Defence. The agreed scheme or protocol shall be implemented before first occupation of the development.

Reason: In the interest of maritime safety and preservation of the Fort George live firing range.

15. No part of the development shall be occupied until an Operational Environmental Management Document has been submitted to, and approved by, the Planning Authority in consultation with SNH and SEPA. The Document shall include:

- An updated Schedule of Mitigation (SM) 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 set out in the relevant planning conditions
- Processes to control / action changes from the agreed Schedule of Mitigation
- The following specific Operational Environmental Management Plans (OEMPs):
 - (i) Habitat protection and enhancement plan, including measures to:
 - protect and safeguard SPA bird habitat at the end of the spit, the roost sites in particular, from ongoing disturbance, in general accordance with the spit habitat protection and enhancement plan
 - create additional suitable bird roost and nest sites
 - remove invasive non-native species *Crassula Helmsii*
 - protect and enhance existing wetlands
 - manage the stockpiled dredged material
 - (ii) Marine mammal protection plan; to include measures to protect marine mammals from on-shore activity and to minimise in-combination noise impacts on dolphin through devising and implementing a 'Works Dialogue Protocol' with the developer of Nigg Bay, Aberdeen
 - (iii) Access management plan

- (iv) Noise mitigation plan, including measures to deal with nighttime noise
 - (v) Sediment transport monitoring plan
- Details of the appointment of an appropriately qualified Environmental Clerk of Works with roles and responsibilities.
 - Methods of monitoring, auditing, reporting and communication of environmental management on site and with the client, Planning Authority and other relevant parties.
 - Statement of responsibility to 'stop the job / activity' if in potential breach of a mitigation or legislation occurs.

The development shall proceed in accordance with the approved Operational Environmental Management Document and Plans which shall be updated, as necessary, for each Phase and/or Sub-Phase and approved by the Planning Authority in consultation with SNH and SEPA. Any mitigation measures and improvements approved by the Planning Authority must be enacted prior to the first occupation of any development within the Phase/Phases, or sub-Phases, to which they relate.

Reason: To protect the environment and amenity from the operation of the development.

16. No development shall commence on site until a scheme for provision of aviation lighting on any tall structures and/or equipment required during construction and operation of the development has been submitted to, and approved by, the Planning Authority, in consultation with Highlands and Islands Airports Limited and the Ministry of Defence. The development shall proceed in accordance with the approved scheme which shall be updated, as necessary, for each Phase and/or Sub-Phase, and approved by, the Planning Authority in consultation with Highlands and Islands Airports Limited and the Ministry of Defence.

Reason: In the interest of air safety.

17. All traffic, associated with both construction and operation, shall be routed via the A96(T) only.

Reason: In order to minimise the effect on the local road network in the interest of road safety.

18. Prior to the occupation of any part of the proposed development, other than works permitted by the Harbour Revision Order, a Noise Assessment shall be submitted to, and agreed in writing by, the Planning Authority to demonstrate that the noise arising from plant or equipment will not exceed Noise Rating Curve 20 within any neighbouring noise sensitive property or that the rating level of noise will not exceed the background level by more than 5dB(A) as determined in accordance with BS4142:2014.

Reason: In order to safeguard the amenity of neighbouring noise sensitive

properties and occupants.

19. Any land raising works are to be carried out in accordance with approved drawings 167112 - 22A (extent of capital dredge), 167112-24E (proposed stockpile for dredged material) and 167112-25 (dredged material deposit area).

No work relating to land raising shall take place until a risk assessment of the use of materials for the land raising has been submitted to, and agreed in writing by, the Planning Authority in consultation with SEPA in order to demonstrate that the dredged material does not contain dangerous substances, as defined by The Special Waste Regulations 1996.

Reason: In order to ensure that the dredged material is suitable for re-use.

20. Impact piling shall not be used as a method for quay wall construction.

Reason: In the interests of protecting the bottlenose dolphin qualifying interests of the Moray Firth SAC and other cetacean species that occur in the Firth.

21. No development shall commence on site until a scheme for dealing with bird disturbance issues resulting from the removal of the end of the Whiteness Head spit has been submitted to, and approved by, the Planning Authority in consultation with SNH. This scheme shall include, amongst other matters, commitment to not undertake dredging operation from November through to March inclusive and to put in place restriction during the month of October. Plans showing a) the exact area of spit to be removed and b) the restoration of the scalloped area on the channel side of the spit shall be provided prior to work commencing.

Reason: In the interests of protecting the qualifying interests of the Moray Firth SPA and the Whiteness Head SSSI.

22. The 'pipe spool quay' shall be located at least 250m from the roost site at the end of spit as re-formed by this permission.

Reason: In the interests of protecting the qualifying bird interests of the Moray Firth SPA.

23. Any works proposed within 250m of habitats identified as moderately groundwater dependent ecosystems should be subject to a detailed site specific risk assessment to be submitted to, and agreed in writing by, the Planning Authority in consultation with SEPA.

Reason: In order to protect groundwater dependent ecosystems.

24. No development shall commence until a 'Works Dialogue Protocol', setting out proposed communication between the applicant and the developer of Nigg Bay, Aberdeen in relation to mitigating construction impacts on cetaceans, has been submitted to, and agreed in writing by, the Planning

Authority in consultation with SNH. The agreed protocol shall be implemented and remain in place until the cessation of construction at either site.

Reason: In the interest of protecting the qualifying interests of the Moray Firth SAC from cumulative impacts arising from construction.

REASON FOR DECISION

It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

TIME LIMIT FOR THE IMPLEMENTATION OF THIS PLANNING PERMISSION IN PRINCIPLE

The Highland Council hereby makes the following Direction under Section 59(5) & (7) of the Town and Country Planning (Scotland) Act 1997 (as amended).

An application or applications for the approval of matters specified in conditions attached to this planning permission in principle must be made no later than whichever is the latest of the following—

For Phase 1:

- i. FIVE YEARS from the date on this decision notice;
- ii. SIX MONTHS from the date on which an earlier application for the requisite approval was refused; or
- iii. SIX MONTHS from the date on which an appeal against such refusal was dismissed.

For each subsequent Phase:

- i. FIVE YEARS from the date of approval of matters specified in conditions for each previous Phase;
- ii. SIX MONTHS from the date on which an earlier application for the requisite approval was refused; or
- iii. SIX MONTHS from the date on which an appeal against such refusal was dismissed.

In respect of each Phase, this permission will lapse on the expiration of the period from the date of the requisite approval of any matters specified in conditions applicable to that phase (or, in the case of approval of different matters on different dates, from the date of the requisite approval for the last such matter being obtained), whichever is the later, unless that phase of the development to which the permission relates is begun before that expiration.

FOOTNOTE TO APPLICANT

Initiation and Completion Notices

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit notices to the Planning Authority prior to, and upon completion of, development. These are in addition to any other similar requirements (such as Building Warrant completion notices) and failure to comply represents a breach of planning control and may result in formal enforcement action.

1. The developer must submit a Notice of Initiation of Development in accordance with Section 27A of the Act to the Planning Authority prior to work commencing on site.
2. On completion of the development, the developer must submit a Notice of Completion in accordance with Section 27B of the Act to the Planning Authority.

Copies of the notices referred to are attached to this decision notice for your convenience.

Accordance with Approved Plans & Conditions

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action

Flood Risk

It is important to note that the granting of planning permission does not imply there is an unconditional absence of flood risk relating to (or emanating from) the application site. As per Scottish Planning Policy (paragraph 259), planning permission does not remove the liability position of developers or owners in relation to flood risk.

Scottish Water

You are advised that a supply and connection to Scottish Water infrastructure is dependent on sufficient spare capacity at the time of the application for connection to Scottish Water. The granting of planning permission does not guarantee a connection. Any enquiries with regards to sewerage connection and/or water supply should be directed to Scottish Water on 0845 601 8855.

Local Roads Authority Consent

In addition to planning permission, you may require one or more separate consents

(such as road construction consent, dropped kerb consent, a road openings permit, occupation of the road permit etc.) from the Area Roads Team prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local Area Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at: <http://www.highland.gov.uk/yourenvironment/roadsandtransport>

Application forms and guidance notes for access-related consents can be downloaded from:

http://www.highland.gov.uk/info/20005/roads_and_pavements/101/permits_for_working_on_public_roads/2

Mud & Debris on Road

Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

Construction Hours and Noise-Generating Activities

You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact env.health@highland.gov.uk for more information.

Protected Species – Halting of Work

You are advised that work on site must stop immediately, and Scottish Natural Heritage must be contacted, if evidence of any protected species or nesting/breeding sites, not previously detected during the course of the application and provided for in this permission, are found on site. For the avoidance of doubt,

it is an offence to deliberately or recklessly kill, injure or disturb protected species or to damage or destroy the breeding site of a protected species. These sites are protected even if the animal is not there at the time of discovery. Further information regarding protected species and developer responsibilities is available from SNH: www.snh.gov.uk/protecting-scotlands-nature/protected-species

Signature: David Mudie
Designation: Area Planning Manager – South
Author: David Mudie
Background Papers: Documents referred to in report and in case file.
Relevant Plans: Plan 1 - 167112/21 B - Red Line Boundary/HRO Limits
Plan 2 - 167112/24 E - Stockpile of Dredged Material
Plan 3 - 167112/25 F - Dredged Material Deposit Areas
Plan 4 - 167112/28 A - Indicative Masterplan

Appendix – Appropriate Assessment

1.0 CONSIDERATION OF PROPOSALS AFFECTING EUROPEAN SITES

- 1.1 The Moray Firth's status as a classified SPA and pSPA under the EC Directive 79/409/EEC, the 'Birds Directive,' and SAC under the EC Directive 92/43/EEC, the 'Habitats Directive,' means that the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended), the 'Habitats Regulations,' apply. The development is in reasonable proximity to the Dornoch Firth and Morrich More SAC.
- 1.2 This means that where the conclusion reached by the Council on a development proposal unconnected with the nature conservation management of a Natura 2000 site is likely to have a significant effect on that site it must undertake an appropriate assessment of the implications for the conservation interests for which the area has been designated. The need for appropriate assessment extends to plans or projects outwith the boundary of the site in order to determine their implications for the interest protected within the site.
- 1.3 This means that the Council, as competent authority, has a duty to:
- determine whether the proposal is directly connected with or necessary to site management for conservation; and, if not,
 - determine whether the proposal is likely to have a significant effect on the site either individually or in combination with other plans or projects; and, if so, then
 - make an appropriate assessment of the implications (of the proposal) for the site in view of that site's conservation objectives.
- 1.4 The competent authority can only agree to the proposal after having ascertained that it will not adversely affect the integrity of the site. If this is not the case, and there are no alternative solutions, the proposal can only be allowed to proceed if there are imperative reasons of overriding public interest, which in this case can include those of a social or economic nature.
- 1.5 The proposal is clearly not connected with or necessary to the management of the site or for its conservation, hence further consideration is required. Because a new port facility, from both an operational and construction perspective, will impact upon roosting sites and potential disturbance to qualifying bird species and disturbance to bottlenose dolphin and sub-tidal sandbanks the proposal could have a significant effect on the qualifying interests of the Moray Firth SPA and SAC.
- 1.6 As one of the competent authorities, the Council must undertake 'appropriate assessment' on the implications of the proposal for the Moray Firth and Dornoch Firth and Morrich More SAC in view of the site's conservation objectives. It is however expected that a similar exercise will be undertaken by Marine Scotland in respect of their consenting responsibilities and that these are likely to be in more depth in respect of the effects on the qualifying features of the SAC. The Council's responsibilities principally extend to the terrestrial effects.

2.0 APPROPRIATE ASSESSMENT

2.1 While the responsibility to carry out the appropriate assessment rests with the Council, the assessment can be based on the information submitted in the Environmental Impact Assessment Report and informed by SNH's appraisal.

Appraisal

2.2 In SNH's opinion there will not be an adverse impact on the integrity of the Moray Firth SAC and pSPA or Inner Moray Firth SPA on the basis that appropriate conditions, carried over from the previous permission, are applied.

2.3 SNH considers that conditions are required to mitigate the effects of:

- removing the end of the spit and the impacts this will have on a bird roost within the Inner Moray Firth SPA;
- disturbance to roost sites within the Inner Moray Firth SPA from onshore stockpiling and management of dredged material;
- dredging and disposal operations on the quality of roosting and feeding habitats of birds using the Moray Firth pSPA and Inner Moray Firth SPA;
- disturbance to dolphins in the Moray Firth SAC from underwater noise arising from piling, vessel movements and dredging works.

2.4 With regard to the conditions relating to the Inner Moray Firth SPA, it is proposed that habitat will be protected as far as possible from construction and operational disturbance and there is an expectation that habitat be improved. The measures sought through the CEMD and identified in the Ecological Impact Assessment - Terrestrial Ecology & Ornithology report and the Natural Heritage Management Plan will ensure that the proposal will not adversely affect the integrity of the site.

2.5 In relation to the Moray Firth pSPA the applicant has committed to ensure that the capital dredge will not take place within the winter months; being restricted to two months between April and September (or October by prior agreement with SNH).

2.6 Conditions that prevent the use of impact piling adjacent to the water environment and requirement to retain the marine mammal protection plan (including measures to protect species within the SAC from on-shore effects of development) will ensure that the effects on dolphin are minimised. These conditions will be in place both during construction and operation and will encompass effects from both land and marine activity.

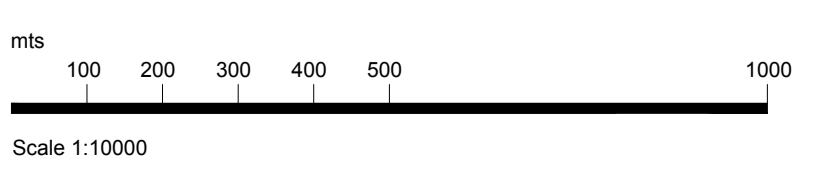
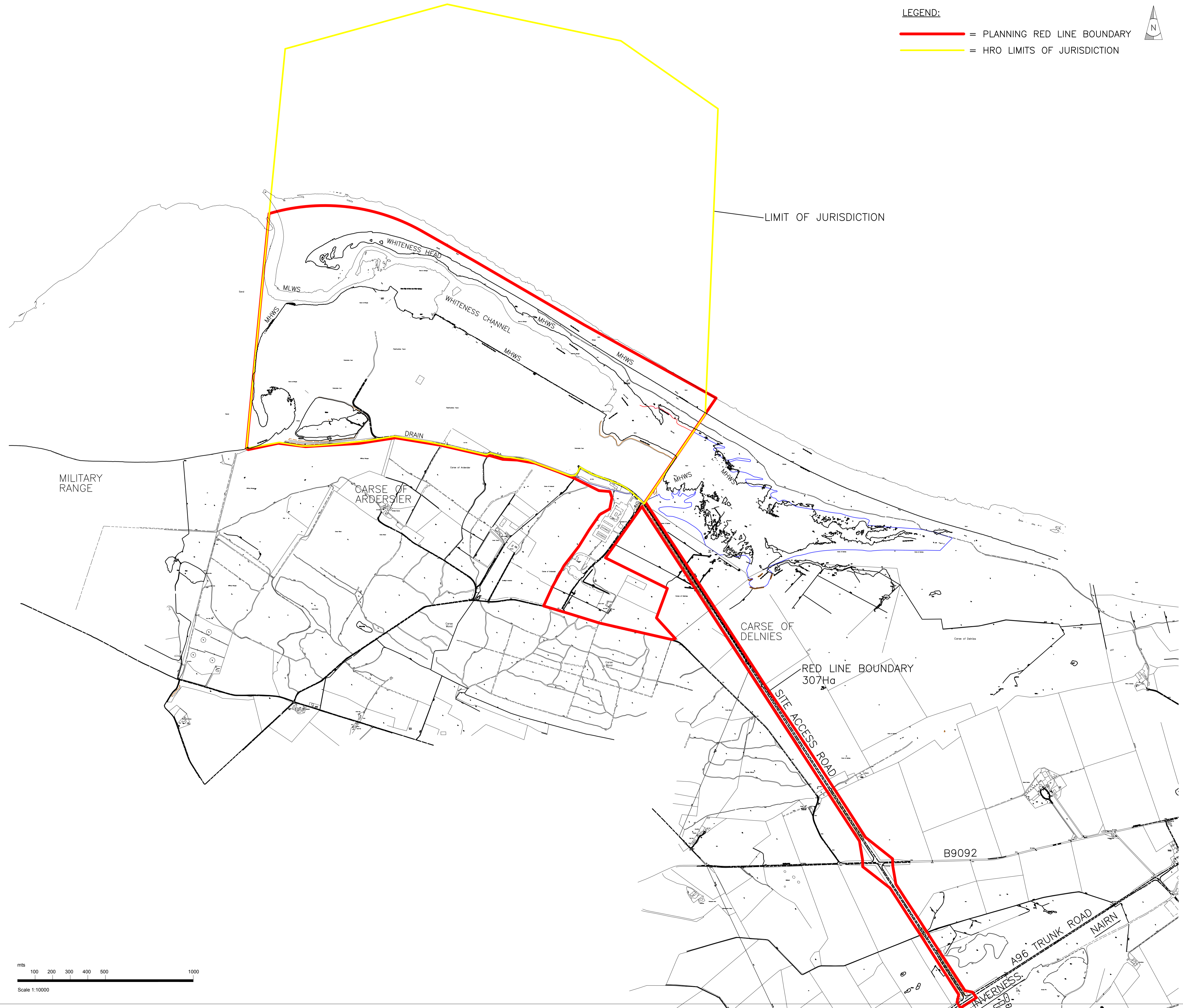
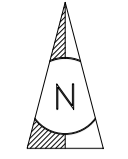
2.7 In relation to disturbance issues to common seals SNH's advice is that there will not be an adverse impact on the integrity of the Dornoch Firth and Morrich More SAC if conditions are applied to mitigate these effects. The key condition to protect the interests of this SAC is in respect of the marine mammal protection plan.

Decision

- 2.7 On the basis of this appraisal, and the conditions proposed, it can be concluded that the proposal will not adversely affect the integrity of the Inner Moray Firth SPA, Moray Firth pSPA, Moray Firth SAC or the Dornoch and Morrich More SAC.

LEGEND:

- = PLANNING RED LINE BOUNDARY
- = HRO LIMITS OF JURISDICTION



B	18/07/18	AFCA Dwg No. CA4393/721 revised title block	NW	AS
A	07/0813	MHWS line updated in line with survey	NW	AS
REV	DATE	REVISION	DRN	CHK

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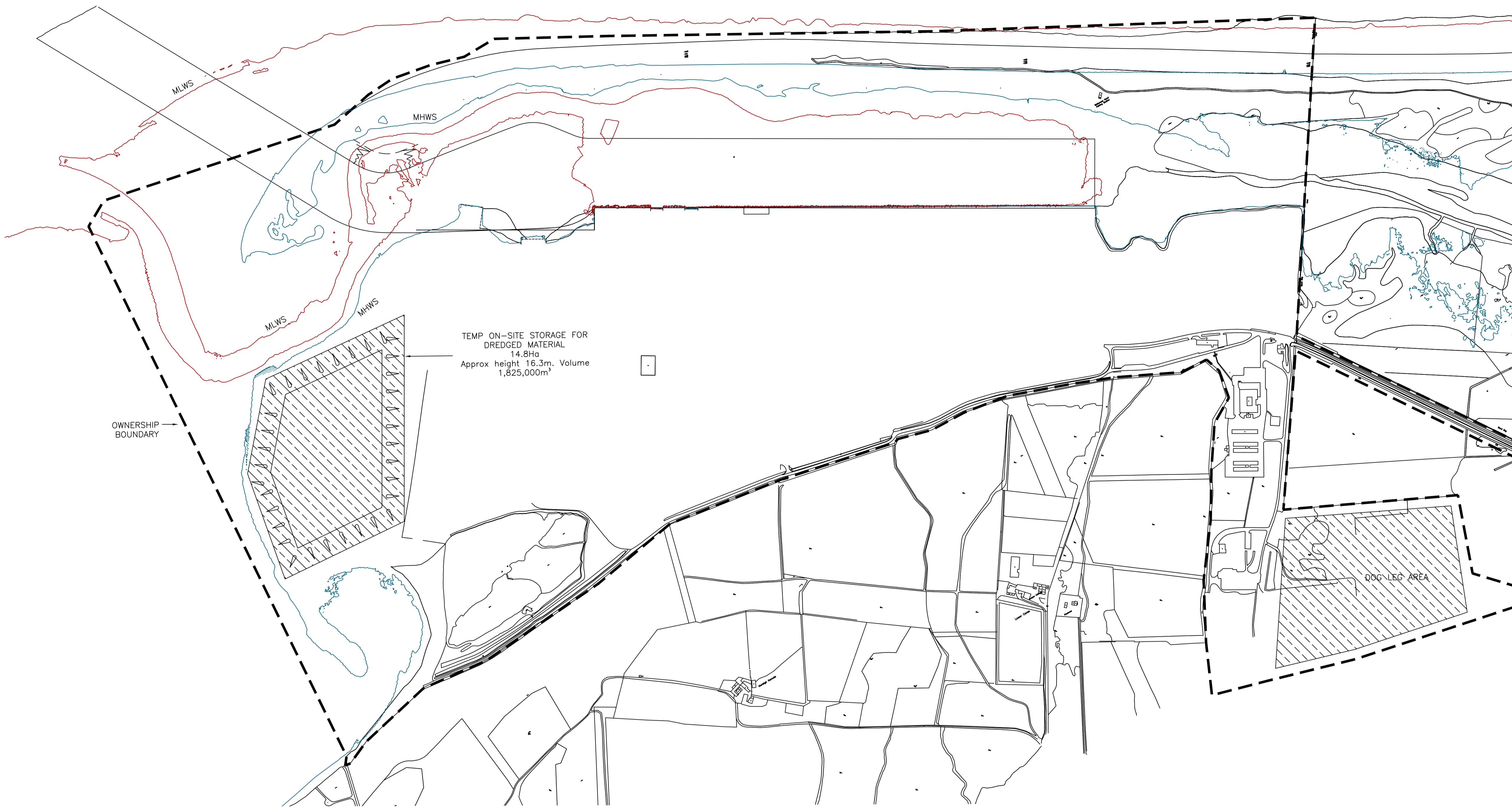
PROJECT :
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ARDERSIER PORT REDEVELOPMENT

TITLE :
PLANNING RED LINE BOUNDARY
& HRO LIMITS OF JURISDICTION

DRAWN : DM	DATE : 17/07/18	CHECKED : AM	AUTHORISED : AM
SCALE : (A1) 1:10,000		DRAWING STATUS :	

DRAWING No : 167112/21	REV : B
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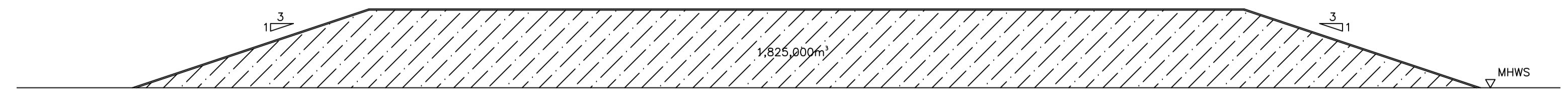


TEMP ON-SITE STORAGE FOR DREDGED MATERIAL
 14.8Ha
 Approx height 16.3m. Volume 1,825,000m³

OWNERSHIP BOUNDARY

DOG-LEG AREA

Yard Level +4.53m O.D. ▽	+6.6m C.D.
(2012) MHWS +2.1m O.D. ▽	+4.2m C.D.
O.D. ▽	+2.1m C.D.
MLWS -1.2m O.D. ▽	+0.9m C.D.
-2.1m O.D. ▽	▽C.D.



TYPICAL CROSS SECTION THROUGH STOCKPILE
 Scale 1:1000

REV	DATE	REVISION	DRN	CHK
E	19/07/18	AFCA DWG No. CA4393/722 REVISED TITLE BLOCK	DM	AM

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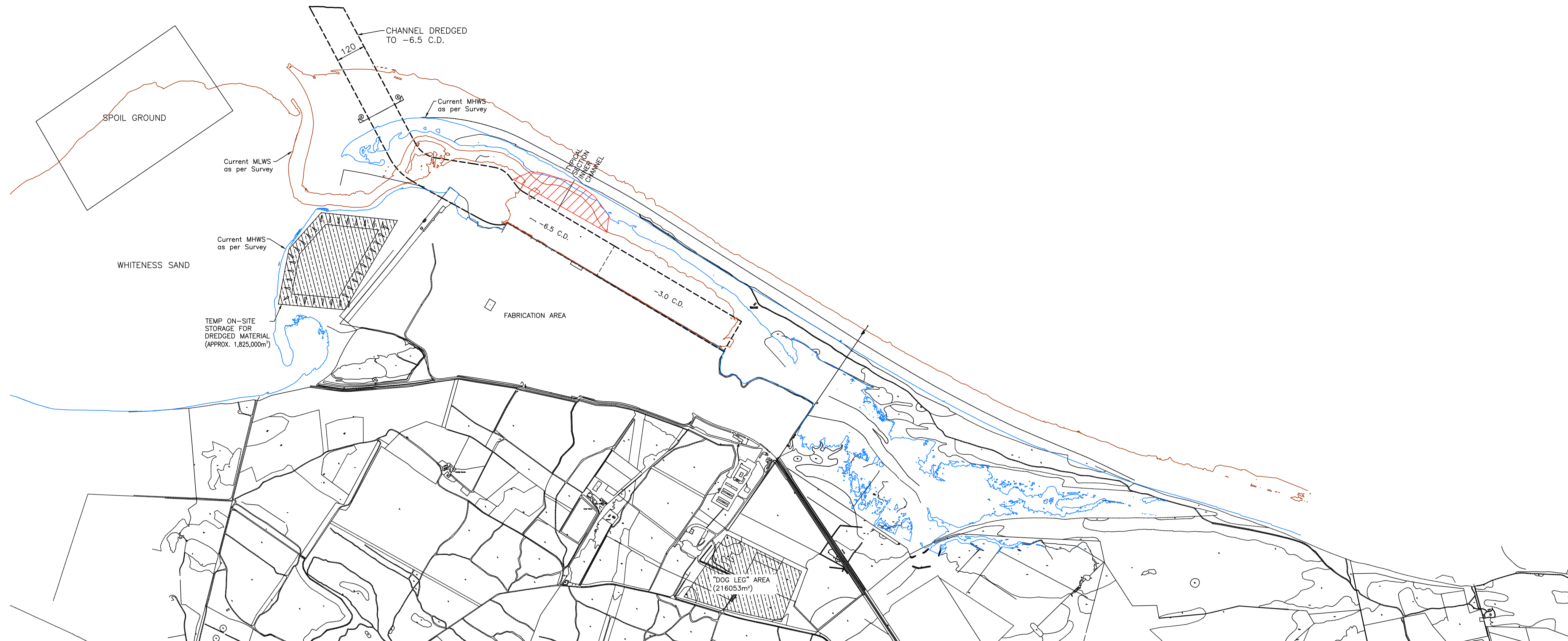
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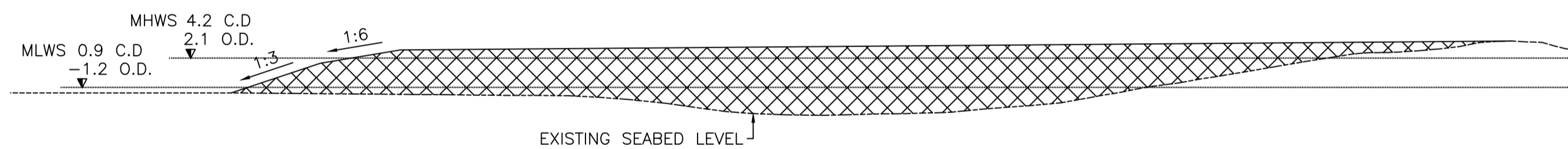
TITLE :
PROPOSED STOCKPILE OF DREDGED MATERIAL

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SCALE : (A1) AS SHOWN		DRAWING STATUS : -	

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KEY PLAN
SCALE 1:10000

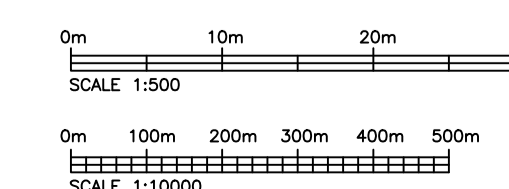


TYPICAL SECTION INNER CHANNEL (SPIT REINSTATEMENT)
SCALE 1:500

Chainage	Dredged Level (C.D.)	Existing Levels
100.00	-10.00	1.78
90.00	-10.00	1.93
80.00	-10.00	2.05
70.00	-10.00	2.25
60.00	-10.00	2.61
50.00	-10.00	2.77
40.00	-10.00	2.81
30.00	-10.00	2.83
20.00	-10.00	2.89
10.00	-10.00	2.74
0.00	-10.00	2.86
10.00	-10.00	2.90
20.00	-10.00	2.94
30.00	-10.00	2.97
40.00	-10.00	2.99
50.00	-10.00	2.98
60.00	-10.00	2.99
70.00	-10.00	3.00
80.00	-10.00	3.01
90.00	-10.00	3.01
100.00	-10.00	2.95
110.00	-10.00	2.94

TYPICAL SECTION X-X
SCALE 1:500

TOTAL DREDGED VOLUME = 2,300,000m³	
FILL AREAS	
REF.	VOLUME
DOG LEG	275,000m³
SPIT (INNER CHANNEL)	200,000m³
DISPOSAL TO SPOIL SITE ON WHITENESS SANDS	0m³
ON-SITE TEMPORARY STORAGE	1,825,000m³
TOTAL	2,300,000m³



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REV	DATE	REVISION	DRN	CHK

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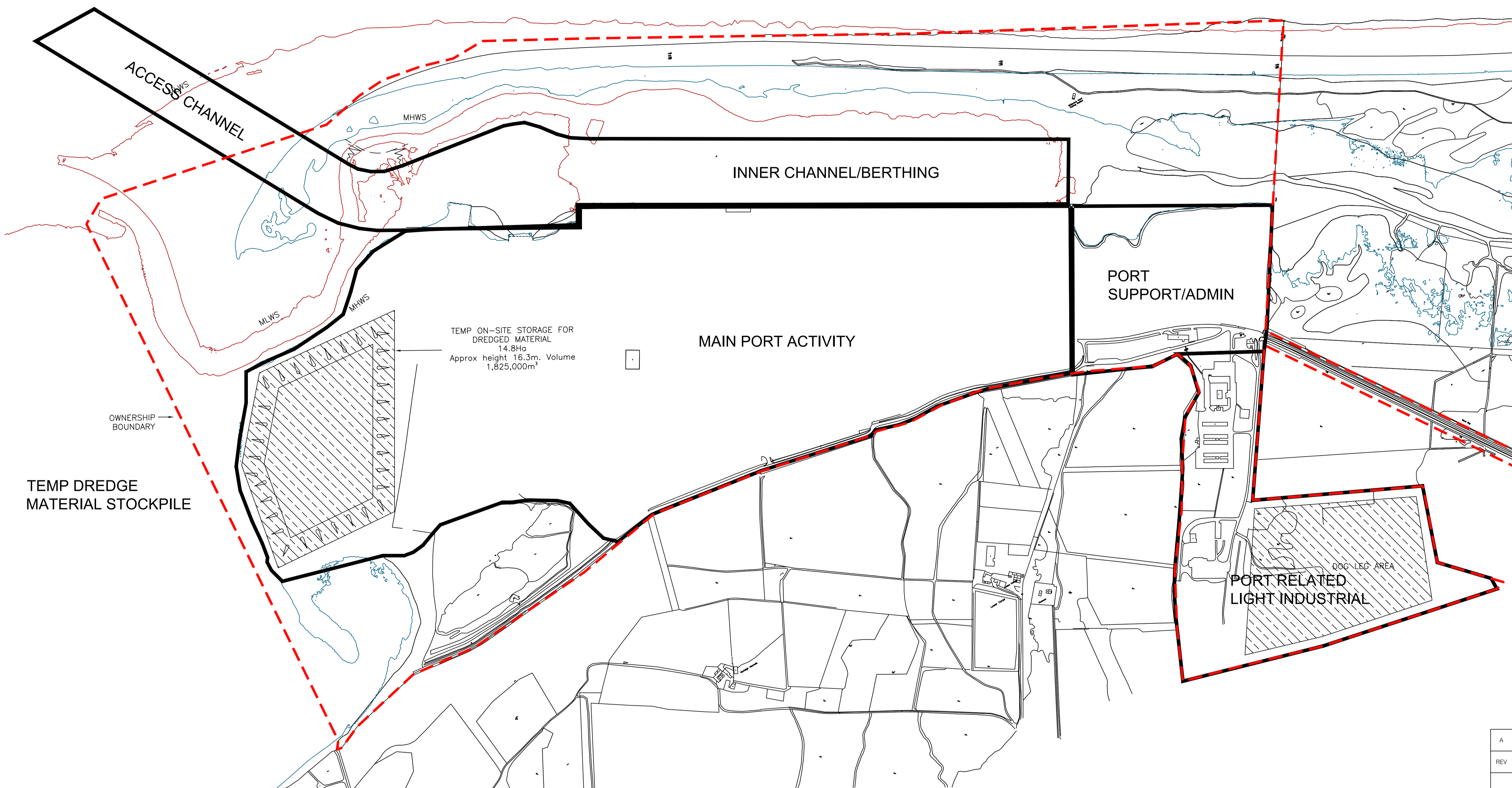
PROJECT :
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TITLE :
DREDGED MATERIAL DEPOSIT AREAS

DRAWN :	DATE :	CHECKED :	AUTHORISED :
DM	19/07/18	AM	AM

SCALE : (A1)	DRAWING STATUS :
1:500, 1:10,000	-

DRAWING No.:	REV:
167112/25	F



TEMP ON-SITE STORAGE FOR DREDGED MATERIAL
 14.8Ha
 Approx height 16.3m. Volume 1,825,000m³

TEMP DREDGE MATERIAL STOCKPILE

Yard Level +4.53m O.D.	▽	+6.6m C.D.
(2012) MHWS +2.1m O.D.	▽	+4.2m C.D.
O.D.	▽	+2.1m C.D.
MLWS -1.2m O.D.	▽	+0.9m C.D.
-2.1m O.D.	▽	▽C.D.

REV	DATE	REVISION	DRN	CHK
A	26/07/18	FIRST ISSUE	DM	AM

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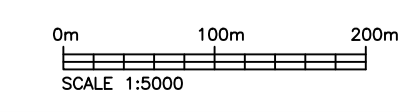
PROJECT :
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TITLE :
INDICATIVE MASTERPLAN
DREDGED MATERIAL

DRAWN : DM	DATE : 19/07/18	CHECKED : AM	AUTHORISED : AM
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SCALE : (A1)
1:5000

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