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17 July 2024

MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

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

DECISION NOTICE – MARINE LICENCES TO CONSTRUCT, ALTER OR IMPROVE WORKS, DREDGE AND DEPOSIT DREDGED SUBSTANCES OR OBJECTS ASSOCIATED WITH THE FARAY COMMUNITY WIND FARM, ISLE OF FARAY, ORKNEY.

1. Application and description of the works

On 11 June 2021, Orkney Islands Council (“the Applicant”) having its registered office at Town House, Victoria Street, Stromness, KW16 3AA submitted to the Scottish Ministers applications under Part 4 of the Marine (Scotland) Act 2010 (“the 2010 Act”) for the construction, alteration or improvement, dredging and deposit of dredged substances or objects associated with the Faray Community Wind Farm project at the Isle of Faray, Orkney (hereinafter collectively referred to as “the Works”) The applications were accompanied by an Environmental Impact Assessment Report (“EIA Report”) in accordance with The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 MW Regulations”).

- 1.1 The Works are part of a project to construct a terrestrial wind farm on the island of Faray (“Faray Wind Farm Development”) and the EIA Report considers all impacts from the Faray Wind Farm Development, both marine and terrestrial. A planning application for the terrestrial works associated with this project was submitted to the Orkney Islands Council Development Management. The planning application was called in for Scottish Ministers determination in September 2021 and was granted planning permission on 21 December 2022. This decision notice considers only the information relevant to the marine environmental aspects.
- 1.2 The Works are located at Scammalin bay on the Island of Faray, Orkney. They consist of an extension to an existing slipway, new jetty and a capital dredge program. The Faray Wind Farm Development will consist of six wind turbines of up to a maximum of 149.9 m height from ground to blade tip when vertical with an overall capacity approximately 28.8 Megawatts. A number of ancillary elements are also proposed, including access tracks, crane hard standings, underground cabling, possible external transformers, on-site substation and maintenance building, temporary construction compounds, borrow pits, permanent meteorological mast, none of which are within the marine environment.
- 1.3 The Works cover an area of approximately 3,218 square metres (“m²”) and involve developing infrastructure to accommodate commercial freight vessels to both facilitate the creation and subsequent operation and maintenance of the aforementioned Faray Wind Farm Development on the uninhabited island of Faray. The location and boundary of the site of the Works in Scammalin Bay, Orkney is shown in Appendix 1.
- 1.4 The Works include the following components located below the Mean High Water Springs (“MHWS”):
 - Construction of an extension to an existing slipway.
 - Construction of a landing jetty.
 - Capital dredging
- 1.5 To facilitate the completion of the Faray Wind Farm Development the Works within the marine area must be undertaken first. However, it is planned that all construction activity related to the Faray Wind Farm Development will be carried out as one continuous 24 month delivery programme.
- 1.6 The Works are planned to commence on 01 April 2025 at the earliest, and to be completed by 30 April 2026, at the latest. Planning permission has been conditionally granted to cover the aspects of the Faray Wind Farm Development taking place above MHWS .
- 1.7 Impact piling will be used during the Works, but piling will be time limited to avoid seal breeding season. Construction will be carried out between 07:00 to 20:00 seven days a week due to the remote location. However, all piling for

the specific construction of the jetty must be completed by the 15th of August in any given year.

Construction of extended slipway

- 1.8 The existent slipway is approximately 20m long and 3.5m wide. It was originally longer, but in its current state is severely damaged. This will be increased in size to a maximum of 36m long and 8m wide. Existing concrete slab and unsuitable fill material will be removed with the use of an excavator from the existing slipway. Mass pre-cast concrete stepped retaining walls will be placed to create the sides of the slipway. The area between the walls will then be filled with a combination of Class 1A and 1B fill before the slipway is completed with pre-cast in situ reinforced concrete slab. It will cover an area of 288 m² and be capable of accommodating standard local vessels up to 35m by 10m and up to 385 gross tonnage.

Construction of a landing jetty

- 1.9 The new landing jetty will be constructed to the north of the slipway. It will be a causeway up to 55m long by 10m wide terminating in a square, 20m by 20m docking structure. The jetty will be constructed of rock armour and infill topped with pre-cast in situ reinforced concrete. The docking structure will be formed using sheet piles, infilled and completed with reinforced concrete deck. It will cover an area of 950 m² and be capable of accommodating vessels up to 105.4m by 18.8m, and a maximum of 3,360 gross tonnage.

Capital dredging

- 1.10 The area around the existing slipway, landing jetty, and the approaches to the landing jetty are to be dredged to a depth of -1.0 m C.D using a backhoe and hopper barge. This is expected to generate 3000 m³ of dredge material of predominately (99%) sand, over a total dredge area of 3218 m². Up to 600 m³ (774 tonnes) will be dredged to facilitate the slipway extension. A further 2,400 m³ (3,096 tonnes) will be dredged to construct the landing jetty and vessel access channel. The material is to be deposited at the authorised Stromness A sea deposit site (FI 040) and is anticipated to be completed in 1-2 weeks.
- 1.11 This decision notice contains the Scottish Ministers' decision to grant regulatory approval for the Works as described above, in accordance with the 2017 MW Regulations.

2. Summary of environmental information

2.1 The environmental information provided by the Applicant was:

- An EIA Report that provided an assessment of the impact of the Works on a range of receptors.

2.2 A summary of the environmental information provided in the EIA Report is given below.

Landscape and Visual

- 2.3 An assessment of landscape and visual effects was carried out to identify the significant effects that are likely to arise as a result of the Works. It considered the effects on landscape and visual receptors, as well as the cumulative effect of the Works in addition to a number of other small wind farm developments in the locality. The process involved identifying those receptors with potential to be significantly affected and assessing the potential impacts that the construction and operation of the Works will give rise to. The significance of the effects was assessed through combining the sensitivity of each receptor with a prediction of the magnitude of change that will occur as a result of the Works.
- 2.4 The majority of the assessment was associated with the impacts of the terrestrial aspects of the Faray Wind Farm Development. However, it is recognised that the smaller scale components of the Works are located in an area of significant protection and will be apparent in-perpetuity. The visual impact of these are therefore considered to be long term and potentially in-perpetuity although they are also largely reversible if required.
- 2.5 Within the Faray Wind Farm Development, the construction and operation of the extended slipway and jetty will have a minor impact on the overall visual amenity. While both structures will be visible from several other islands, popular walking routes, viewpoints, and passing ferries it will be the presence of the tall construction cranes and the six emerging turbines that will have the greatest influence on landscape character.

Ornithology

- 2.6 After consultation with Nature Scot (“NS”), ornithological surveys were conducted during 2019/2020 to ascertain the avian baseline conditions. Based on the survey data, several species determined to be of local ornithological value or higher were taken forward for further assessment. These include several species of waders and gulls as well as black guillemot and shag.
- 2.7 The Works were identified as elements of the Faray Wind Farm Development which had a potential to impact the important ornithological features during both construction and operation. During construction of the Faray Wind Farm Development there is potential to cause loss of habitat, loss of foraging or breeding habitat as well as general disturbance and displacement.
- 2.8 During the operational phase of the Faray Wind Farm Development the potential impact of habitat change over time, both direct and indirect loss of foraging or breeding habitat as well as mortalities from collisions with turbines was considered.

- 2.9 The EIA report concluded that with standard mitigation in place the predicted effects were considered to be negligible for all important ornithological features and no significant cumulative effects are anticipated.
- 2.10 The standard mitigation proposed includes embedded mitigation for the Faray Wind Farm Development and specific mitigation for individual sites which will be included in a Construction Environmental Management Plan.
- 2.11 Embedded mitigation includes pre-construction ornithological targeted checks engaging a suitably qualified ecologist, to update the baseline information reported in the EIA report. Additionally, any vegetation clearance will occur out with the bird (and seal) breeding season (December – March inclusive) with the suitably qualified ecologist searching areas to be cleared within the breeding season ahead of any clearance. Mitigation also includes the vegetation removal outside the breeding season to reduce the attractiveness of those areas to breeding birds. Unnecessary disturbance to habitats will be avoided by minimising the extent of ground clearance. Finally, an ecological toolbox talk will be given to all site personnel and will outline the ornithological species and measures that need to be undertaken if such species be discovered, as well as logging any bird casualties. Specific mitigation measures include the creation of a biosecurity plan which will contain consideration of rodent control, provision of new breeding habitat in sections of a collapsing dyke and exclusion of grazing animals from foraging areas.

Terrestrial Ecology and Nature Conservation

- 2.12 Construction impacts to Mean Low Water Springs level were considered. The applicant carried out a range of ecological studies based on consultation with Orkney Islands Council (“OIC”), Scottish Environment Protection Agency (“SEPA”) and NS. The survey included desk studies of existing wildlife records and nearby designated sited and a range of habitat, otter, seal and bat field surveys.
- 2.13 The studies identified the presence of five sites of international and national importance designated for nature conservation, 15 designated seal haul-outs and two local nature conservation sites within 10 km of the site. The presence of grey seals and otter use of the island was also noted.
- 2.14 Adverse direct impacts on the terrestrial habitats include that of the land take for the extension of the slipway and landing jetty. Mitigation of the construction impact of these elements is an embedded design commitment with no construction between the 15 September and 31 December to avoid any disturbance of breeding grey seals.
- 2.15 The applicant acknowledges the potential impacts of both construction and operation of the Faray Wind Farm Development and commits to the development of a mitigation plan as part of the Construction Environmental Management Plan and will include provision of an Ecological Clerk of Works (“ECoW”), development of Species Protection Plans for otter and seal and monitoring of watercourse and field drains.

- 2.16 Provided the described commitments and process are in place the residual effects are assessed to be, at most, negligible adverse during construction for all described important ecological features. During operation, there will be, at most, temporary minor adverse impacts to individual seals, if maintenance visits or major repairs are required during the breeding season.
- 2.17 The EIA report concludes that with lack of connectivity to any other similar Works no cumulative effects are anticipated for the terrestrial ecology interest of the site.

Noise

- 2.18 The EIA report states that potential noise effects to ecological receptors were only evaluated in association with construction activities, construction traffic, operation of wind turbines and operation of other non-turbine fixed plant, and not any noise arising from marine construction and piling operations. The Works noise is considered separately as an underwater noise Assessment. Noise impacts resulting from construction and operation of the Faray Wind Farm Development are considered in the planning permission process and are not considered further in this decision notice.

Cultural Heritage

- 2.19 The entire island of Faray is of historical importance as a landscape with 6000 years of habitation, abandoned in the mid-20th century, the island is currently used for sheep grazing.
- 2.20 The applicant has identified both archaeological and cultural heritage sites of significance and assessed the potential impact of the Faray Wind Farm Development during both construction and operation, including proposed mitigation of predicted effects.
- 2.21 Eighty eight non designated heritage sites and one designated site were identified within the site. However, the Faray Wind Farm Development has been designed with cultural heritage in mind and to avoid direct impact upon the scheduled monument of Quoy Chambered Cairn as well as other known heritage assets where possible.
- 2.22 The majority of cultural heritage sites including the Quoy Chambered Cairn are out with the marine environment and many are post medieval; the slipway to be extended being built in 1935. All of the assets are recorded and mapped, the slipway being judged to be of low cultural importance.
- 2.23 The Works are greater than 1 km from the Quoy Cairn and any likely effects upon the setting due to construction will be temporary and short term. However, as new infrastructure the operation of the slipway and jetty will have a lasting effect.

- 2.24 It is acknowledged that there is a potential for presently unknown archaeological remains, particularly of prehistoric and post medieval dates being discovered during the construction phase and the applicant has committed to a programme for archaeological discovery. This will include geophysics, trial trenching and if required further archaeological investigation.
- 2.25 Any cumulative effects on cultural heritage are as a result of the Faray Wind Farm Development during the operational phase and not from the Works.

Marine Water and Sediment Quality

- 2.26 The Faray Wind Farm Development covers the entire island of Faray which comprises open pasture, a number of abandoned buildings and a small slipway. The Works cover only 500 m² to the east of the island and are within the marine environment.
- 2.27 The EIA report assesses the impact on the marine environment against relevant legislation including the Water Framework and Priority Substances Directives, the Scottish National Marine plan, Pilot Pentland Firth and Orkney Waters Marine Spatial Plan, Marine Scotland Action levels and the Canadian Sediment Quality Guidelines. The subsequent assessment considers both marine water quality and sediment quality and the impacts on the local environment.
- 2.28 The Works will require up to 3000m³ of material to be removed using a backhoe dredger and barge. It is estimated the dredging will take 2 weeks of operations during daylight hours. However, it is noted that there may be an ongoing requirement for maintenance dredging to facilitate the continued operation of the Faray Wind Farm Development and any subsequent decommissioning.
- 2.29 Currently the waterbody (Westray Firth) has an overall status of good, overall ecology and hydromorphology of good, and a chemical status of high. These classifications are expected to be maintained throughout the Works and on into 2027.
- 2.30 The material within the dredge area was classified as almost exclusively sand with very low levels of contamination well below Marine Scotland action levels. The primary impacts identified are those during the construction phase and any accidental spills or leaks.
- 2.31 The applicant will produce a Construction Environmental Management Plan (CEMP) and an Operational Environmental Management Plan (OEMP) both of which will include standard mitigation to maintain overall good status of the waterbody.
- 2.32 Overall, the effects of the increases in suspended sediment as a result of the dredging activity, deposit of material, operation and decommissioning are considered to be negligible and not significant for marine water quality due to

the low level of contamination, quantity of material and limited time the works will take.

Geology, Hydrology and Hydrogeology

2.33 The primary effect on geology, hydrology or hydrogeology are outwith the marine environment, and this aspect has been included within the terrestrial planning assessment. However, it is noted that the EIA report concludes likely effects from the Faray Wind Farm Development on hydrology, geology and hydrological receptors, taking account of standard mitigation have been assessed as negligible to minor.

2.34 The EIA concludes that The Works will have no impacts on geology, hydrology or hydrogeology.

Traffic and Transport

2.35 The EIA report states that the majority of traffic impact will be focussed on the Mainland of Orkney, away from the Works. It is considered that this aspect has been considered during the planning application process and will not be considered further in this decision notice.

Shadow flicker

2.36 The focus of this EIA report chapter is on the operation of the Faray Wind Farm Development. It is considered that this aspect has been considered during the planning application process and will not be considered further in this decision notice.

Socio-economics, Recreation and Tourism

2.37 While the EIA report does not specifically refer to any socio-economic, recreation or tourism benefits from the Works it is clear that there are benefits of the Faray Wind Farm Development to the local and wider Orkney communities. The benefits are most significant once the Faray Wind Farm Development is completed due to the proposed development being an essential part of the needs case required by Ofgem for the construction of an interconnector linking Orkney to the Scottish Mainland. A key aim of the proposed development is to generate profit to be used for the benefit of the people of Orkney. Benefits will be delivered via a community fund with funding distributed in the interests of Orkney and its inhabitants once the Faray Wind Farm Development is complete.

Aviation and Radar

2.38 The focus of this EIA report chapter is on the construction and operation of the Faray Wind Farm Development. It is considered that this aspect has been considered during the planning application process and will not be considered further in this decision notice.

Underwater Noise

- 2.39 The landing jetty will likely be constructed using sheet piles which causes high-amplitude, impulsive sounds that can result in a range of impacts to marine mammals, from behavioural changes to masking auditory cues used for navigation, communication and foraging and injury, such as physical damage to hearing systems. As such, the potential impacts of underwater noise from piling to marine mammals is assessed as part of the EIA report.
- 2.40 The EIA report gives details of the modelling carried out to determine the severity of effect on a range of marine mammals including pinnipeds (grey and harbour seals), cetaceans over a range of frequencies, low (baleen whales), mid (dolphins, minke and pilot whales) and high (harbour porpoise).
- 2.41 Seals are predicted to receive a cumulative sound exposure that exceeds temporary threshold shift but would not exceed permanent threshold shift. The assessment asserts that the probability of harbour seal in the area is low and therefore any effects negligible. However, that is not the case for the local grey seal population with a designated haul out in close proximity, the impact would likely be moderate and significant.
- 2.42 Baleen whales were predicted to have the largest extent of impact, predicted to exceed both temporary and permanent threshold limits. However, the likelihood of baleen whales in the area of the works is low due to the reduced depth of water.
- 2.43 With the use of standard mitigation in accordance with the Joint Nature Conservation Committee protocol for minimising the risk of injury to marine mammals from piling noise (2010) ("JNCC Piling Protocol"), dolphins, minke and pilot whales were predicted to receive dosages that are below the threshold for both the temporary and permanent threshold shifts.
- 2.44 Harbour porpoise were predicted to have the second largest extent of impact, in some circumstances exceeding both temporary and permanent threshold shift resulting in a moderate and significant impact.
- 2.45 With potential for moderate impact to some marine mammals additional mitigation has been proposed in addition to standard mitigation, including the commitment to pile no later than 15 August in any year. With the use of soft start, an exclusion zone with a marine mammal observer and a double bubble curtain the residual effects on marine mammals is determined to be reduced to minor or negligible and not significant. However, it is recognised that an EPS licence would be required

Other (Benthos, coastal process, marine radar and commercial fisheries)

- 2.46 The EIA report covers all other aspects which are telecommunications, air quality, carbon savings, coastal process, benthos, marine navigation and radar and commercial fisheries. There is considered to be no impact on telecommunications and no significant effects on air quality. Benthos, coastal process, marine radar and commercial fisheries have been assessed in light of the Works.
- 2.47 **Carbon Savings:** Carbon will be released whilst undertaking the Faray Wind Farm Development. However, it is considered this will be minimal in comparison with the generation of carbon free electricity and that carbon generation will be offset in approximately three months.
- 2.48 **Coastal Process:** The Works have the potential to interrupt natural coastal processes in the area. Given the relatively small size of the proposed structures, the rocky and sheltered nature of the site, lack of historic erosion recorded and the fact that the slipway was historically longer, effects to coastal processes were considered to be negligible and not significant
- 2.49 **Benthos:** The applicant consulted with NatureScot as there are noted priority marine features (PMF) seagrass and kelp. The Works will disturb 3,218m² of which 1,168m² is a permanent impact with the rest being dredged and expected to recover over time. With the use of video surveillance, the applicant has concluded that 300m² of seagrass would be dredged for the landing jetty and a similar area of kelp impacted by the slipway extension.
- 2.50 As the area of the Works is not in a site designated for either PMF and that both habitats are likely to be relatively abundant along the east coast of Faray the EIA Report conclusion is that the effect on benthic species including PMF's are minor and not significant.
- 2.51 **Marine Navigation and Radar:** The Works along with vessel journeys to the island, has the potential to impact marine navigation and radar within the area. After relevant consultation it was determined that there was no potential for significant effects on marine radar.
- 2.52 Once complete the Works will not interact with existing ferry routes and completion of the Works will be temporary in nature and contained within the bay. The effects to navigation are considered to be negligible and not significant.
- 2.53 **Commercial fisheries:** Based on a desk assessment the Works are likely to result in a temporary exclusion of inshore fishing activity jetty in the locality during construction with localised dredging. These aspects are temporary and localised in combination with a relatively small contribution to Orkney's total inshore fish landings it is concluded the effects to commercial fishing are negligible and not significant. However, open communication with the local fleet via Orkney Fisheries will be maintained for the duration of the construction works.

3. Consultation

- 3.1 In accordance with the 2017 MW Regulations advertisement of the Application and EIA report was made in the local and national press and on the application website. Notices were placed in the public domain and the opportunity given for those wishing to make representations to do so.
- 3.2 The dates for the consultation exercises are given below. The regulatory requirements regarding consultation and public engagement have been met and the responses received taken into consideration. Where matters have not been fully resolved, conditions have been included to ensure appropriate action is taken post consent.

Document	Date received	Consultation Period	Publication
EIA Report & Appendices	11 June 2021	24 September 2021 – 24 October 2021	Marine Scotland Information website (23 September 2021)
Marine licence application & supporting documentation			Orkney Islands council website (23 September 2021) Edinburgh Gazette (23 September 2021) The Orcadian (23 September 2021)

- 3.3 A summary of the responses is set out at sections 4, 5 and 6. The responses are available to view in full [here](#).

4. Summary of statutory consultee responses

- 4.1 Scottish Environment Protection Agency (“SEPA”), responded to the consultation on 20 October 2021. It referred to the SEPA Standing Advice for the Department for Business, Energy and Industrial Strategy and Marine Scotland on Marine Consultations stating that the Works were covered and should be considered during determination. The standing advice relevant to this project does not raise any significant environmental concerns providing best practice measures are followed.
- 4.2 NatureScot operating name of Scottish Natural Heritage, responded to the consultation on the 21 October referencing its response to terrestrial planning dated 01 September 2021, it also provided a Natura Appraisal form. The response dated 01 September stated that the Works are partly within the Faray and Holm of Faray SAC and likely to have a significant effect on the grey seal qualifying interest of the site. NS advised that this is due to the

potential for damage and disturbance of grey seals breeding, foraging and resting on and around Faray during the Works and subsequent operation of the Faray Wind Farm Development. However, NatureScot indicated that as long as no Works take place during the grey seal breeding season (15 September to 31 December), works abide by the outline Construction Environment Management Plan (which includes a commitment to avoid piling after August 15 in any year), mitigation was employed including adherence to the JNCC Piling Protocol and use of a bubble curtain was secured by condition the integrity of the site will not be adversely affected.

- 4.3 NatureScot similarly noted that the Works will have a likely significant effect on the harbour seal qualifying interest of the effects on the Sanday SAC 10.7 km to the west of the Works. This is due to the potential for damage and disturbance of harbour seals foraging or resting around Faray during the Works and subsequent operation of the Faray Wind Farm Development. NatureScot went on to state that with approved mitigation including adherence to the JNCC Piling Protocol and use of a bubble curtain was secured by condition the Works will not adversely affect the integrity of the site.
- 4.4 NS confirmed that the comments contained within the NS Planning Representation relative to the maintenance of the onshore Faray Wind Farm Development were not relevant to the marine licence applications and therefore it is considered that issues relating to maintenance of the Faray Wind Farm Development and any requirements relating to an Operational Management Plan will be considered through the planning process and are not relevant to this decision notice.
- 4.5 In relation to European Protected Species (“EPS”) NS noted that cetaceans may be at risk of damage or disturbance from the offshore piling operations and that an EPS licence was required. It concluded that the mitigation described with respect to both seal species would also be sufficient to avoid any significant effect on cetaceans.
- 4.6 Finally, in regard to benthic ecology, NatureScot advised that an area of kelp and sea grass beds within the area to be dredged would be lost, at least temporarily. This will have a significant and unavoidable impact on those Priority Marine Features (“PMFs”) at a regional scale but will not affect the national status of the PMFs.
- 4.7 Orkney Islands Council provided a response to the consultation on 05 October 2021 being aware that the Works are part of the Faray Wind Farm Development. It stated a number of policies that the proposed must meet including, Orkney Local Development Plan, National Marine Plan and the Pilot Pentland Firth and Orkney Waters Marine Spatial Plan. It had some remaining concerns surrounding noise and dust, cultural heritage and archaeology, transport infrastructure and road layout, natural and built heritage, soils and coastal erosion and, countryside and coastal access. It also noted that the design of the Works should be sufficient to be resilient to the predicted impacts of climate change over the lifetime of the structure.

- 4.8 The OIC raised concerns over the impacts including physical change to the seabed type, physical loss of benthic habitat and sediment disturbance. It noted the lack of survey data/images of the benthic habitats and species outwith the 100m transect of the proposed landing jetty and the 60m transect of the proposed extended slipway, adding that seagrass beds, kelp and seaweed communities on sublittoral kelp beds present in the area are Priority Marine Features of national conservation importance.
- 4.9 OIC conclude that without seabed survey images of the wider area adjacent to the Works, it is difficult to conclude the magnitude of impact associated with the proposal.
- 4.10 Historic Environment Scotland (“HES”) responded to the consultation on the 22 October 2021 stating that the proposals did not raise historic environment issues of national interest and therefore it did not object.
- 4.11 HES noted that there are no Historic Marine Protected Areas or scheduled monuments in the vicinity of the Works. There is one known Canmore marine site located approximately 1.2km to the south east of the proposed works area, Canmore ID: 330867 - Spitfire, Fersness Bay, Eday. However, it is content that the works will not impact on this historic environment asset.
- 4.12 The overall view of HES is that the archaeological potential for organic survival relating to previous landscapes is minimal. Given the absence of recorded losses in the area, it agrees that there are no issues with the proposed Works, and no mitigation is necessary for the historic environment below MHWS.

5. Summary of non-statutory consultee responses

- 5.1 Maritime and Coastguard Agency (“MCA”) responded to the consultation on the 4 November 2021, seeking clarification on how the proposed Works will impact wider marine users, shipping and navigation, adding that there was a general lack of consideration of navigational impact during construction and the subsequent operation considering the proposal is outside of port limits.
- 5.2 In the view of MCA the EIA report is lacking sufficient detail with regard to a wider port management plan to include both the Works on Faray and not solely the statutory harbour area of Hatston pier on mainland Orkney. The MCA would expect to see a Navigational Risk assessment relative to the scale of the Works being consented and note this was scoped out earlier in the consenting process, but it is not clear why.
- 5.3 MCA gave a further response on 21 March 2022 after clarifications were provided by the applicant on the points raised. MCA are satisfied that the proposed works will be developed to meet Port Marine Safety Code requirements as demonstrated by the commitment of OIC to undertake a navigational risk assessment which will be in consultation with local

stakeholder and MCA and reviewed by the Harbour authority prior to any works commencing.

- 5.4 MCA are satisfied that the applicant has confirmed their intention to apply for a Harbour Revision Order to bring the proposed site of works within a statutory harbour area. This however should be in place prior to any works commencing and any navigational and safety measures for mariners both during and post construction must be included within the operational environmental management plan.
- 5.5 Based on the aforementioned information, provided all maritime safety legislation is followed and standard conditions are included in the marine licences MCA have no objections to the Works.
- 5.6 Northern Lighthouse Board (“NLB”) provided a consultation response on 27 September 2021 stating that it has no objections to the Works and advising that OIC should issue Marine Safety Information and Notice to Mariners prior to and during the Works, which must be copied to the NLB and UK Hydrographic Office.
- 5.7 Once the Works are complete OIC must notify the UK Hydrographic Office of the as built layout of the Works along with revised depth on completion of dredging to enable the update of appropriate navigational publications.
- 5.8 Royal Yachting Association (“RYA”) provided a consultation response on 11 October 2021 confirming that it had no objection to the Works but suggesting that if the jetty were made accessible to recreational boats a number of local vessels would occasionally make use of it.
- 5.9 Scottish Water provided a consultation response on 27 September 2021 stating that it had no objection to the Works but that the Applicant should be aware that this does not confirm that the proposed development can currently be serviced. Scottish Water confirmed that there are no drinking water catchments or water abstraction sources, which are designated as Drinking Water Protected Areas under the Water Framework Directive, in the area that may be affected by the Works. Scottish Water also stated that it will not accept any surface water connections into its combined sewer system, except under extremely limited circumstances and the Applicant should contact them where there is a risk of this occurring.
- 5.10 UK Chamber of Shipping provided a consultation response on 27 September 2021 and has no objection to the Works.
- 5.11 Whale and Dolphin Conservation responded to the consultation on 27 September 2021 to advise that it would not be able to respond to the consultation.
- 5.12 Defence Infrastructure Organisation (DIO) responded on 07 October 2021 to advise the DIO had no objection to the proposed Works.

6. Representations from other organisations and members of the public

- 6.1 No representations were received from other organisations or members of the public.

7. Advice from 3rd Parties

- 7.1 Transport Scotland responded to the consultation on 21 October 2021 confirming that Transport Scotland have no objection to the Works on the grounds of traffic or related environmental impacts on the trunk road network.
- 7.2 Marine Scotland Science (“MSS”) provided advice on 01 December 2021 with respect to benthic ecology and physical environment and coastal processes. Regarding benthic ecology, MSS stated that they were in agreement with the comments made by both NS and OIC that both seagrass and kelp/seaweed communities area at risk from the proposed dredging aspect of the Works. MSS suggested additional benthic surveys be carried out covering a wider area along the Faray coast to better characterise the extent of kelp and seagrass communities.
- 7.3 Regarding the advice on physical environment and coastal processes, MSS stated that due to the relatively small size of the dredge and the deposition being at a designated deposit site it would be unlikely to result in a significant impact to the surrounding marine environment.

8. The Scottish Ministers’ Considerations and Main Determinative Issues

- 8.1 The Scottish Ministers, having taken account of all relevant information, consider that the main determining issues are:
- The extent to which the Works accord with and are supported by Scottish Government policy and the terms of Scotland’s National Marine Plan (“NMP”); and
 - the significant effects of the Works on the environment, which are in summary:
 - Marine Nature Conservation Areas and Marine Mammals
 - Benthic Ecology
 - Landscape and visual

Policy Context

- 8.2 As the Works are proposed to take place within the Scottish marine area, they are subject to the 2010 Act. The NMP covering inshore waters is a requirement of the 2010 Act. The NMP lays out the Scottish Minister’s policies for the sustainable development of Scotland’s seas and provides General Planning Principles (“GEN”), most of which apply to the Works. In addition, the NMP lays out sector specific objectives and policies for shipping, ports, harbours and ferries and specifically to safeguard the ferry routes and maritime

transport to island and remote mainland areas which provide essential connections. The relevant policies were considered as part of the EIA process with the Works being deemed to meet the requirements of the NMP and to be contributing towards achieving relevant sector specific policies and objectives.

Environmental Matters

- 8.3 The Scottish Ministers are satisfied that an environmental impact assessment has been carried out. Environmental information including the EIA Report has been produced and the applicable procedures regarding publicity and consultation laid down in regulations have been followed. The environmental impacts of the Works have been assessed and the Scottish Ministers have taken the environmental information into account when reaching their decision.
- 8.4 The Scottish Ministers have considered fully and carefully the applications, supporting documentation and all relevant responses from consultees and third party advice.

Marine Nature Conservation Areas and Marine Mammals

- 8.5 The Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Habitats Regulations”) require the Scottish Ministers to consider whether the Works would be likely to have a significant effect on a European site or European offshore marine site (either alone or in combination with other plans or projects), as defined in the 1994 Habitats Regulations.
- 8.6 In line with the view of NatureScot that the Works are likely to have a significant effect on the grey seal qualifying interest of the Faray and Holm of Faray Special Area of Conservation (SAC), and could affect the Sanday SAC protected for its harbour seals, Marine Directorate Licensing Operations Team (“MD-LOT”) on behalf of the Scottish Ministers, as the “competent authority”, was required to carry out an Appropriate Assessment (“AA”). Having had regard to the representations made by NatureScot it can be ascertained that the Works will not adversely affect the integrity of the SAC’s providing the conditions in the AA and the marine licences are adhered to. Having had regard to the reasons for which the site was designated and the associated conservation objectives, MD-LOT is content that the Works will not, on their own or in combination with other projects, adversely affect the integrity of the Faray and Holm of Faray SAC and Sanday SAC.

Benthic Ecology

- 8.7 The Scottish Ministers are satisfied that there will be no significant environmental effects on benthic interests as a result of the Works. It is acknowledged that there will be approximately 300m² each of seagrass and kelp habitat lost due to dredging. Although both OIC and MSS suggested that further surveys may be required, Scottish Ministers, having also taken the advice of NS, are of the opinion that while there will be a significant and

unavoidable impact on those PMFs at a regional scale, both seagrass and kelp will likely recover rapidly after the Works are completed. NS were also of the opinion that there will be no significant effects on the national status of either feature, consequently the Scottish Ministers are content that no additional surveys are required.

Landscape and Visual

8.8 Impacts upon landscape and visual receptors have been assessed in the applicant's EIA Report and Impacts upon landscape and visual receptors are considered to be unavoidable given the scale of the Faray Wind Farm Development. However, the Works form a minor part of the Faray Wind Farm Development and the Scottish Ministers are satisfied that the design of the Works and the mitigation proposed by the applicant in their EIA Report, have reduced the impact upon these receptors as far as practicable.

9. The Scottish Ministers' Determination and Reasoned Conclusion

9.1 The Scottish Ministers are satisfied that an environmental impact assessment has been carried out, and that the applicable procedures regarding publicity and consultation in respect of the applications have been followed.

9.2 The Scottish Ministers have weighed the impacts of the Works, and the degree to which these can be mitigated, against the economic benefits which would be realised. The Ministers have undertaken this exercise in the context of national and local policies.

9.3 The Scottish Ministers have considered the extent to which the Works accord with and are supported by Scottish Government policy, the terms of the NMP and local development plans and the environmental impacts of the Works. In particular the Scottish Ministers have considered the impacts on Marine Nature Conservation Areas and marine mammals, benthic ecology and landscape and visual.

9.4 The Scottish Ministers are satisfied that the environmental issues associated with the Works have been appropriately addressed by way of the design of the Works and mitigation. In particular, the Scottish Ministers are satisfied that the Works will not adversely affect the integrity of the Faray and Holm of Faray SAC or the Sanday SAC. The Scottish Ministers consider that the licensing tests in respect of an EPS disturbance application for cetaceans will likely be met and an EPS licence will likely be granted. An EPS licence may also need to be obtained from NatureScot for disturbance to otters however, the Scottish Ministers have no concerns that a licence would not be granted based on the information available.

9.5 In their consideration of the environmental impacts of the Works, the Scottish Ministers have identified conditions to be attached to the licences to reduce environmental impacts. These include development and adherence to the mitigation measures outlined the Schedule of Mitigation in the Applicant's EIA Report and the submission of an appropriate Construction Environment

Management Plan which will require the Licensee to adhere to the JNCC Piling Protocol and employ the use of a bubble curtain.

- 9.6 The Scottish Ministers are satisfied, having regard to current knowledge and methods of assessment, that this reasoned conclusion is valid.
- 9.7 The Scottish Ministers **grant marine licences subject to conditions** under Part 4 of the Marine (Scotland) Act 2010 for the construction, dredging and deposit of dredged substances or objects associated with the construction of the Faray Wind Farm Development, Scammalin Bay, Island of Faray, Orkney. The marine licences are attached at Appendix 2.
- 9.8 In accordance with the 2017 MW Regulations, the Applicant must publicise notice of this determination and how a copy of this decision letter may be inspected on the application website, in the Edinburgh Gazette and a newspaper circulating in the locality to which the applications relate. The Applicant must provide copies of the public notices to the Scottish Ministers.
- 9.9 Copies of this decision notice have been sent to the bodies consulted on the applications including the relevant planning authority, NatureScot, SEPA and HES. This decision notice has also been published on the [Marine Scotland Information website](#).
- 9.10 The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for consent. The rules relating to the judicial review process can be found on the website of the Scottish Courts – <http://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/court-of-session-rules>. Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours sincerely,

Peter Sparrow

Marine Licensing Group Leader, Marine Scotland - Licensing Operations Team

A member of the staff of the Scottish Ministers

18 July 2024

Appendix 1. Marine Licences

MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

LICENCE TO CONSTRUCT, ALTER OR IMPROVE WORKS IN THE SCOTTISH MARINE AREA

Licence Number: **MS-00009361**

The Scottish Ministers (hereinafter referred to as "the Licensing Authority") hereby grant a marine licence authorising:

Orkney Islands Council
Town House, Victoria Street
Stromness
KW16 3AA

to construct, alter or improve works as described in Part 2. The licence is subject to the conditions set out, or referred to, in Part 3.

The licence is valid from **18 July, 2024** until **17 July, 2030**

[Redacted]

Signed:

For and

Date of issue: 17 July, 2024

1. PART 1 - GENERAL

1.1 Interpretation

In the licence, terms are as defined in Section 1, 64 and 157 of the Marine Scotland Act 2010, and

- a) **"the 2010 Act"** means the Marine (Scotland) Act 2010;
- b) **"Licensed Activity"** means any activity or activities listed in section 21 of the 2010 Act which is, or are authorised under the licence;
- c) **"Licensee"** means Orkney Islands Council
- d) **"Mean High Water Springs"** means any area submerged at mean high water spring tide;
- e) **"Commencement of the Licensed Activity"** means the date on which the first vehicle or vessel arrives on the site to begin carrying on any activities in connection with the Licensed Activity;
- f) **"Completion of the Licensed Activity"** means the date on which the Licensed Activity has been installed in full, or the Licensed Activity has been deemed complete by the Licensing Authority, whichever occurs first;

All geographical co-ordinates contained within the licence are in WGS84 format (latitude and longitude degrees and minutes to three decimal places) unless otherwise stated.

1.2 Contacts

All correspondence or communications relating to the licence should be addressed to:

Marine Directorate - Licensing Operations Team
375 Victoria Road
Aberdeen
AB11 9DB
Email: MS.Marinelicensing@gov.scot

1.3 Other authorisations and consents

The Licensee is deemed to have satisfied itself that there are no barriers or restrictions, legal or otherwise, to the carrying on of the Licensed Activities in connection with the licensed activity. The issuing of the licence does not absolve the Licensee from obtaining such other authorisations and consents, which may be required under statute.

1.4 Variation, suspension, revocation and transfer

Under section 30 (1) of the 2010 Act the Licensing Authority may by notice vary, suspend or revoke the licence granted by them if it appears to the Licensing Authority that there has been a breach of any of its provisions. For any such other reason that appears to be relevant to the Licensing Authority under section 30(2) or (3) of the 2010 Act. Under the 2010 Act variations, suspensions, revocations and transfers of licences are subject to the procedures set out in section 31 of the Act.

Under section 30 (7) of the 2010 Act, on an application made by a licensee, the Licensing Authority may vary a licence if satisfied that the variation being applied for is not material.

Under section 30 (8) of the 2010 Act, on an application made by the licensee, the Licensing Authority may transfer the licence from the Licensee to another person.

1.5 Breach of requirement for, or conditions of, licence

Under section 39 of the 2010 Act it is an offence to carry on a Licensable Marine Activity without a marine licence and it is also an offence to fail to comply with any condition of a marine licence.

1.6 Defences: actions taken in an emergency

Under section 40 of the 2010 Act it is a defence for a person charged with an offence under section 39(1) of the 2010 Act in relation to any activity to prove that –
the activity was carried out for the purpose of saving life, or for the purpose of securing the safety of a vessel, aircraft or marine structure ('force majeure'), and
that the person took steps within a reasonable time to inform the Licensing Authority as set out in section 40(2) of the 2010 Act.

1.7 Offences relating to information

Under section 42 of the 2010 Act it is an offence for a person to make a statement which is false or misleading in a material way, knowing the statement to be false or misleading or being reckless as to whether the statement is false or misleading, or to intentionally fail to disclose any material information for the purpose of procuring the issue, variation or transfer of a marine licence or for the purpose of complying with, or purporting to comply with, any obligation imposed by either Part 4 of the 2010 Act or the provisions of this licence.

1.8 Appeals

Under Regulation 3(1) of the Marine Licensing Appeals (Scotland) Regulations 2011 a person who has applied for a marine licence may by summary application appeal to against a decision taken by the Licensing Authority under section 71(1)(b) or (c) or (5) of the Act.

2. PART 2 – PARTICULARS

2.1 Agent

ITPEnergised
60 Elliot Street
Glasgow
G3 8DZ

2.2 Location of the Licensed Activity

Scammalin Bay, Isle of Faray - Construction, within the boundary of

59° 12.438' N 02° 49.091' W
59° 12.442' N 02° 49.084' W
59° 12.422' N 02° 49.052' W
59° 12.424' N 02° 49.047' W
59° 12.415' N 02° 49.034' W
59° 12.408' N 02° 49.050' W
59° 12.417' N 02° 49.064' W
59° 12.418' N 02° 49.060' W
59° 12.412' N 02° 49.125' W
59° 12.414' N 02° 49.118' W
59° 12.398' N 02° 49.113' W
59° 12.381' N 02° 49.105' W
59° 12.380' N 02° 49.113' W
59° 12.397' N 02° 49.121' W

As shown in Annex One.

2.3 Description of the Licensed Activity

Construction of extended slipway and landing jetty.

As described in the application dated 11 June, 2021 and correspondence submitted in support of the application.

2.4 Descriptions of the materials to be used during the Licensed Activity

The licence authorises the use of the undernoted construction materials required in connection with the licensed activity, subject to the indicative amounts as specified below:

Rebar and dowels - 0.5 tonnes
Reinforced Concrete Slab - 50m³
Mass Concrete Slipway Walls - 50m³
Cobbles - 300m³
Sheet Piles - 800m²

Marine Laboratory, 375 Victoria Road,
Aberdeen AB11 9DB
www.scotland.gov.uk/marinescotland



Tie Rods - 700m
Wailings - 200m
Cobbles - 6250m3
Rock Armour - 2750m3
Rubber Marine Fenders - 12Nr

2.5 Contractor and Vessel Details

3. PART 3 – CONDITIONS

3.1 General Conditions

3.1.1 The Licensee must only construct the Works in accordance with this licence, the application and any plans or programmes approved by the Licensing Authority unless otherwise authorised by the Licensing Authority.

3.1.2 The Licensee must maintain the Works in accordance with the licence, the application and any plans or programmes approved by the Licensing Authority unless otherwise authorised by the Licensing Authority.

3.1.3 All conditions attached to the licence bind any person who for the time being owns, occupies or enjoys any use of the Works, whether or not the licence has been transferred to that person.

3.1.4 Only the materials listed in Part 2 of the licence may be used during the execution of the Licensed Activity.

3.1.5 All materials, substances and objects used during the execution of the Licensed Activity must be inert and must not contain toxic elements which may be harmful to the marine environment, the living resources which it supports or human health.

3.1.6 The Licensee must ensure that the Licensed Activity does not encroach on any recognised anchorage, either charted or noted in nautical publications, within the licensed area as described in Part 2 of the Licence.

3.1.7 In the event of any breach of health and safety or environmental obligations relating to the Licensed Activity during the period of the licence, the Licensee must provide written notification of the nature and timing of the incident to the Licensing Authority within 24 hours of the incident occurring. Confirmation of remedial measures taken and/or to be taken to rectify the breach must be provided, in writing, to the Licensing Authority within a period of time to be agreed by the Licensing Authority.

3.1.8 The Licensee must notify Source Data Receipt, The Hydrographic Office, Admiralty Way, Taunton, Somerset, TA1 2DN (e-mail: sdr@ukho.gov.uk; tel.: 01823 484444) of the progress and upon completion of the the Licensed Activity. Such notification must include a copy of the licence, and wherever possible, 'as built plans', in order that all necessary amendments to nautical publications are made.

3.1.9 Details of any marks or lights not required by the licence must be submitted to the Northern Lighthouse Board and its ruling complied with. The display of unauthorised marks or lights is prohibited.

3.1.10 The Licensee must remove the materials, substances or objects from below the level of Mean High Water Springs, or make such alterations as advised by the Licensing Authority, within one month of notice being given by the Licensing Authority at any time it is considered

necessary or advisable for the safety of navigation, and not replaced without further approval by the Licensing Authority. The Licensee shall be liable for any expense incurred.

3.1.11 Where any damage, destruction or decay is caused to the works, the Licensee must notify the Licensing Authority, Maritime and Coastguard Agency, Northern Lighthouse Board, Kingfisher Information Services of Seafish and the UK Hydrographic Officer, in writing, of such damage, destruction or decay as soon as reasonably practicable but no later than 24 hour after becoming aware of any such damage, destruction or decay.

3.1.12 If governmental assistance is required (including UK governmental assistance or the assistance of any UK devolved government) to deal with any emergency arising from:

- a) the failure to mark and light the works as required by the licence;
- b) the maintenance of the works; or
- c) the drifting or wreck of the works, to include the broadcast of navigational warnings

then the Licensee is liable for any expenses incurred in securing such assistance.

3.1.13 The Licensee must complete and submit a Close-out Report for the licensable marine activities that produced loud, low to medium frequency (10Hz-10kHz) impulsive noise in the online Marine Noise Registry no later than at 6 month intervals during the validity of the licence.

3.1.14 The Licensee must ensure that the Licensed Activity is only carried out at the location of the Licensed Activity specified in Part 2 of the licence.

3.2 Prior to the commencement of the Licensed Activity

3.2.1 The Licensee must complete and submit a proposed activity form in the online Marine Noise Registry for all Licensed Activities that will produce loud, low to medium frequency (10Hz-10kHz) impulsive noise no later than seven days prior to Commencement of the Licensed Activity. If any aspects of the Licensed Activity differ from the proposed activity form in the online Marine Noise Registry, the Licensee must complete and submit a new proposed activity form no later than seven days prior to Commencement of the Licensed Activity.

3.2.2 The Licensee must notify the Licensing Authority in writing of the name and address of any agent, contractor or sub-contractor not already listed in Part 2 of the licence being used to carry out any Licensed Activity listed in Part 2 of the licence. Such notification must be received by the Licensing Authority no less than 24 hours before the commencement of the Licensed Activity

3.2.3 The Licensee must issue local notification to marine users – including fisherman’s organisations, neighbouring port authorities and other local stakeholders – to ensure that they are made fully aware of the Licensed Activity.

3.2.4 The Licensee must ensure that HM Coastguard National Maritime Operations Centre, in this case zone2@hmcg.gov.uk is made aware of the Licensed Activity prior to commencement.

3.2.5 The Licensee must submit a Construction Environmental Management Plan ("CEMP") to the Licensing Authority for its written approval at least two months prior to the commencement of the works.

3.2.6 The Licensee is not permitted to commence any works prior to approval of the CEMP. The CEMP must be consistent with the marine licence application and supporting documents and must contain, but not be limited to, the following:

a) An offshore piling procedure including the adherence to the JNCC protocol for minimising the risk of injury to marine mammals from piling noise (JNCC, 2010) including employment of a MMO, pre-start search and delayed start to ensure that no seals are in the vicinity before piling commences, soft start of pile driving

b) Use of an air-bubble curtain.

3.2.7 All works must proceed in accordance with the approved CEMP. Any updates or amendments made to the CEMP must be submitted, in writing, to the Licensing Authority for its written approval no later than two months or at such a time as agreed with the licensing authority, prior to the planned implementation of the proposed amendments. It is not permissible for any works to commence prior to approval of the CEMP.

3.2.8 The Licensee must ensure that no works take place during the grey seal breeding season (15 September to 31 December inclusive).

3.2.9 The Licensee must ensure that no piling takes place after 15 August in any calendar year.

3.2.10 The Licensee must ensure that all works are carried out in line with the "Schedule of Environmental Commitments" submitted as part of the EIA report.

3.3 During the Licensed Activity

3.3.1 Only those persons acting on behalf of, and authorised by, the agent or the Licensee shall undertake the Licensed Activity.

3.3.2 The Licensee must ensure that any debris or waste materials arising during the course of the Licensed Activity are removed for disposal at an approved location above the tidal level of Mean High Water Springs.

3.3.3 The Licensee shall ensure that prior to the expiry of the licence, the works must be altered by taking all temporary structures to a place above Mean High Water Springs

3.3.4 The Licensee must ensure that copies of the licence are available for inspection by any authorised Enforcement Officer at:

- a) the premises of the Licensee;
- b) the premises of any agent acting on behalf of the Licensee; and
- c) the site of the Licensed Activity.

3.3.5 The Licensee must ensure that a copy of the licence is given to each contractor and sub-contractor employed to undertake the Licensed Activity.

3.3.7 The Licensee must ensure the best method of practice is used to minimise re-suspension of sediment during the Licensed Activity.

3.3.8 The Licensee must ensure appropriate steps are taken to minimise damage to the beach, foreshore/ and seabed by the Licensed Activity.

3.3.10 Any person authorised by the Licensing Authority must be permitted to inspect the site at any reasonable time.

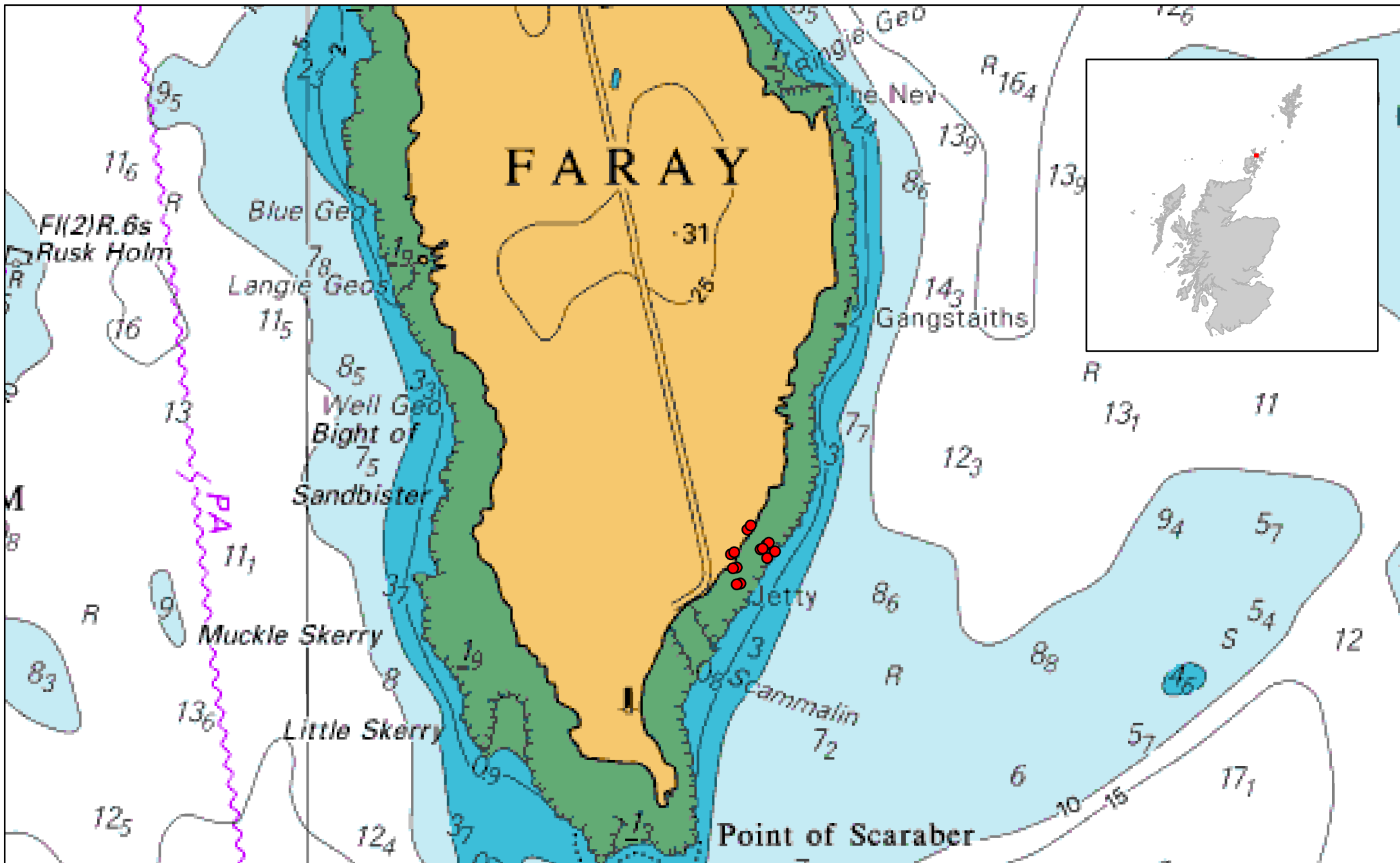
3.4 Upon Completion of the Licensed Activity

3.4.1 The Licensee must submit a written report regarding the materials used during the works to the Licensing Authority. The written report must be submitted on completion of the works and on the forms provided by the Licensing Authority no later than 31 October 2029.

3.4.2 The Licensee must ensure the beach, foreshore and seabed is returned to the original profile, or as close as reasonably practicable, following the Completion of the Licensed Activity.

NOTES

1. You are deemed to have satisfied yourself that there are no barriers, legal or otherwise, to the carrying out of the licensed activity. The issue of the licence does not absolve the licensee from obtaining such authorisations, consents etc which may be required under any other legislation.
2. In the event that the licensee wishes any of the particulars set down in the Schedule to be altered, the licensing authority must be immediately notified of the alterations. It should be noted that changes can invalidate a licence, and that an application for a new licence may be necessary.



MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

LICENCE TO CARRY OUT ANY FORM OF DREDGING AND DEPOSIT ANY SUBSTANCE OR OBJECT IN THE SCOTTISH MARINE AREA

Licence Number: **MS-00009362**

The Scottish Ministers (hereinafter referred to as "the Licensing Authority") hereby grant a marine licence authorising:

Orkney Islands Council
Town House, Victoria Street
Stromness
KW16 3AA

to carry out any form of dredging and deposit any substance or object as described in Part 2. The licence is subject to the conditions set out, or referred to, in Part 3.

The licence is valid from **18 July, 2024** until **17 July, 2027**

[Redacted]

Signed:

For and on behalf of the Licensing Authority

Date of issue: 17 July, 2024

1. PART 1 - GENERAL

1.1 Interpretation

In the licence, terms are as defined in Section 1, 64 and 157 of the Marine Scotland Act 2010, and

- a) **"the 2010 Act"** means the Marine (Scotland) Act 2010;
- b) **"Licensed Activity"** means any activity or activities listed in section 21 of the 2010 Act which is, or are authorised under the licence;
- c) **"Licensee"** means Orkney Islands Council
- d) **"Mean High Water Springs"** means any area submerged at mean high water spring tide;
- e) **"Commencement of the Licensed Activity"** means the date on which the first vehicle or vessel arrives on the site to begin carrying on any activities in connection with the Licensed Activity;
- f) **"Completion of the Licensed Activity"** means the date on which the Licensed Activity has been installed in full, or the Licensed Activity has been deemed complete by the Licensing Authority, whichever occurs first;

All geographical co-ordinates contained within the licence are in WGS84 format (latitude and longitude degrees and minutes to three decimal places) unless otherwise stated.

1.2 Contacts

All correspondence or communications relating to the licence should be addressed to:

Marine Directorate - Licensing Operations Team
375 Victoria Road
Aberdeen
AB11 9DB
Email: MS.Marinelicensing@gov.scot

1.3 Other authorisations and consents

The Licensee is deemed to have satisfied itself that there are no barriers or restrictions, legal or otherwise, to the carrying on of the Licensed Activities in connection with the licensed activity. The issuing of the licence does not absolve the Licensee from obtaining such other authorisations and consents, which may be required under statute.

1.4 Variation, suspension, revocation and transfer

Under section 30 (1) of the 2010 Act the Licensing Authority may by notice vary, suspend or revoke the licence granted by them if it appears to the Licensing Authority that there has been a breach of any of its provisions. For any such other reason that appears to be relevant to the Licensing Authority under section 30(2) or (3) of the 2010 Act. Under the 2010 Act variations, suspensions, revocations and transfers of licences are subject to the procedures set out in section 31 of the Act.

Under section 30 (7) of the 2010 Act, on an application made by a licensee, the Licensing Authority may vary a licence if satisfied that the variation being applied for is not material.

Under section 30 (8) of the 2010 Act, on an application made by the licensee, the Licensing Authority may transfer the licence from the Licensee to another person.

1.5 Breach of requirement for, or conditions of, licence

Under section 39 of the 2010 Act it is an offence to carry on a Licensable Marine Activity without a marine licence and it is also an offence to fail to comply with any condition of a marine licence.

1.6 Defences: actions taken in an emergency

Under section 40 of the 2010 Act it is a defence for a person charged with an offence under section 39(1) of the 2010 Act in relation to any activity to prove that –
the activity was carried out for the purpose of saving life, or for the purpose of securing the safety of a vessel, aircraft or marine structure ('force majeure'), and
that the person took steps within a reasonable time to inform the Licensing Authority as set out in section 40(2) of the 2010 Act.

1.7 Offences relating to information

Under section 42 of the 2010 Act it is an offence for a person to make a statement which is false or misleading in a material way, knowing the statement to be false or misleading or being reckless as to whether the statement is false or misleading, or to intentionally fail to disclose any material information for the purpose of procuring the issue, variation or transfer of a marine licence or for the purpose of complying with, or purporting to comply with, any obligation imposed by either Part 4 of the 2010 Act or the provisions of this licence.

1.8 Appeals

Under Regulation 3(1) of the Marine Licensing Appeals (Scotland) Regulations 2011 a person who has applied for a marine licence may by summary application appeal to against a decision taken by the Licensing Authority under section 71(1)(b) or (c) or (5) of the Act.

2. PART 2 – PARTICULARS

2.1 Agent

ITPEnergised
60 Elliot Street
Glasgow
G3 8DZ

2.2 Location of the Licensed Activity

2.2.1 Location of production of the dredge material

Scammalin Bay, Island of Faray - Dredge Site, within the boundary of

Area A

59° 12.381" N 02° 49.121" W
59° 12.383" N 02° 49.102" W
59° 12.366" N 02° 49.095" W
59° 12.364" N 02° 49.114" W

Area B

59° 12.437" N 02° 49.093" W
59° 12.442" N 02° 49.081" W
59° 12.441" N 02° 49.072" W
59° 12.430" N 02° 49.048" W
59° 12.424" N 02° 49.047" W
59° 12.415" N 02° 49.034" W

as per Annex one

2.2.2 Location of deposit of the substances or objects

STROMNESS A authorised sea deposit site FI040 within a circle centred at 58° 57.75' N 3° 26' W, with a radius of 0.16 nautical miles.

2.3 Description of the Licensed Activity

Capital dredging and sea deposit

As described in the application dated 11 June, 2021 and correspondence submitted in support of the application.

2.4 Descriptions of the materials to be dredged and substances or objects to be deposited

The licence authorises the dredging and deposit of the undernoted substances and objects required in connection with the licensed activity, subject to the maximum amounts as specified below:

3,870 wet tonnes to be dredged and deposited in total over period of licence.

2.5 Contractor and Vessel Details

As shown in Annex Two

3. PART 3 – CONDITIONS

3.1 General Conditions

3.1.1 The Licensee must only deposit the Substances or objects listed in Part 2 of the licence in accordance with the licence, the application and any plans or programmes approved by the Licensing Authority unless otherwise authorised by the Licensing Authority. Only those substances or objects described in Part 2 of the Schedule shall be deposited under authority of the licence. Any unauthorised materials associated with the substances or objects scheduled for deposit, including debris such as demolition waste, wood, scrap metal, tyres and synthetic materials, shall be disposed of on land at an approved location above the tidal level of Mean High Water Springs. All tank/hopper washings shall be deposited in the authorised sea deposit area(s).

3.1.2 Only the Substances or objects listed in Part 2 of the licence may be deposited during the execution of the Licensed Activity.

3.1.3 All materials, substances and objects used during the execution of the Licensed Activity must be inert and must not contain toxic elements which may be harmful to the marine environment, the living resources which it supports or human health.

3.1.4 In the event of any breach of health and safety or environmental obligations relating to the Licensed Activity during the period of the licence, the Licensee must provide written notification of the nature and timing of the incident to the Licensing Authority within 24 hours of the incident occurring. Confirmation of remedial measures taken and/or to be taken to rectify the breach must be provided, in writing, to the Licensing Authority within a period of time to be agreed by the Licensing Authority.

3.1.5 The Licensee must notify Source Data Receipt, The Hydrographic Office, Admiralty Way, Taunton, Somerset, TA1 2DN (e-mail: sdr@ukho.gov.uk; tel.: 01823 484444) of the progress and upon completion of the the Licensed Activity. Such notification must include a copy of the licence, and wherever possible, 'as built plans', in order that all necessary amendments to nautical publications are made.

3.1.6 The Licensee must deposit the substances or objects described in Part 2 of the marine licence in the following authorised sea deposit area(s): Stomness A, FI040: Up to a maximum quantity of 3,870 Wet Tonnes may be deposited during the period of validity of the licence, within 0.16nm radius of the point:
58° 57.75' N 3° 26' W

3.1.7 The Licensee must ensure that the Licensed Activity is only carried out at the location of the Licensed Activity specified in Part 2 of the licence.

3.1.8 The Licensee must ensure that no works take place during the grey seal breeding season (15 September to 31 December inclusive).

3.2 Prior to the commencement of the Licensed Activity

3.2.1 The Licensee must notify the Licensing Authority in writing of the name and address of any agent, contractor or sub-contractor not already listed in Part 2 of the licence being used to carry out any Licensed Activity listed in Part 2 of the licence. Such notification must be received by the Licensing Authority no less than 24 hours before the commencement of the Licensed Activity

3.2.2 The Licensee must issue local notification to marine users – including fisherman's organisations, neighbouring port authorities and other local stakeholders – to ensure that they are made fully aware of the Licensed Activity.

3.2.3 The Licensee must issue a notification to The Source Data Receipt team, UK Hydrographic Office (email: sdr@ukho.gov.uk) of commencement of the licensed activities, at least 10 days before commencement of the works. The information supplied must include the start date and end date, a description of the works, positions of the work area (WGS84), and details of any marking arrangements.

3.2.4 The Licensee must ensure that HM Coastguard National Maritime Operations Centre, in this case nmoccontroller@hmcg.gov.uk, is made aware of the Licensed Activity prior to commencement.

3.3 During the Licensed Activity

3.3.1 Only those persons acting on behalf of, and authorised by, the agent or the Licensee shall undertake the Licensed Activity.

3.3.2 The Licensee shall ensure that a log of activities is maintained on each vessel employed to undertake the Licensed Activity. The log(s) shall be kept onboard the vessel(s) throughout the Licensed Activity, and be available for inspection by any authorised Marine Enforcement Officer. The log(s) shall be retained for a period of six calendar months following expiry of the licence, and copies of the log(s) may be requested during that period for inspection by the Licensing Authority. The log(s) shall record in English the following information:

- a) the name of the vessel;
- b) the nature and quantity of each substance or object loaded for deposit;
- c) the date and time of departure from port, and the date and time of arrival at the authorised sea deposit area(s), on each occasion that the vessel proceeds to the designated sea deposit area(s);
- d) the date, time and position of commencement, and the date, time and position of completion, of each deposit operation;
- e) the course(s) and speed(s) throughout each deposit operation (multiple changes may be recorded as "various");
- f) the weather, including wind strength and direction, sea-state and tidal set throughout each deposit operation;
- g) the rate of discharge during each deposit operation, if appropriate, and the duration of each deposit operation (if the rate of discharge is not constant, the maximum and mean rates of discharge should be indicated);
- h) comments on the deposit operations, including any explanations for delays in the deposit operations; and
- i) the signature of the Master at the foot of each page of the record.

3.3.3 The Licensee must ensure that any debris or waste materials arising during the course of the Licensed Activity are removed for disposal at an approved location above the tidal level of Mean High Water Springs.

3.3.4 The Licensee must ensure that copies of the licence are available for inspection by any authorised Enforcement Officer at:

- a) the premises of the Licensee;
- b) the premises of any agent acting on behalf of the Licensee; and
- c) on board the vessel carrying out the Licensed Activity.

3.3.5 The Licensee must ensure that a copy of the licence is given to each contractor and sub-contractor employed to undertake the Licensed Activity.

3.3.6 The Licensee must ensure appropriate steps are taken to minimise damage to the seabed by the Licensed Activity.

3.3.7 Any person authorised by the Licensing Authority must be permitted to inspect the site at any reasonable time.

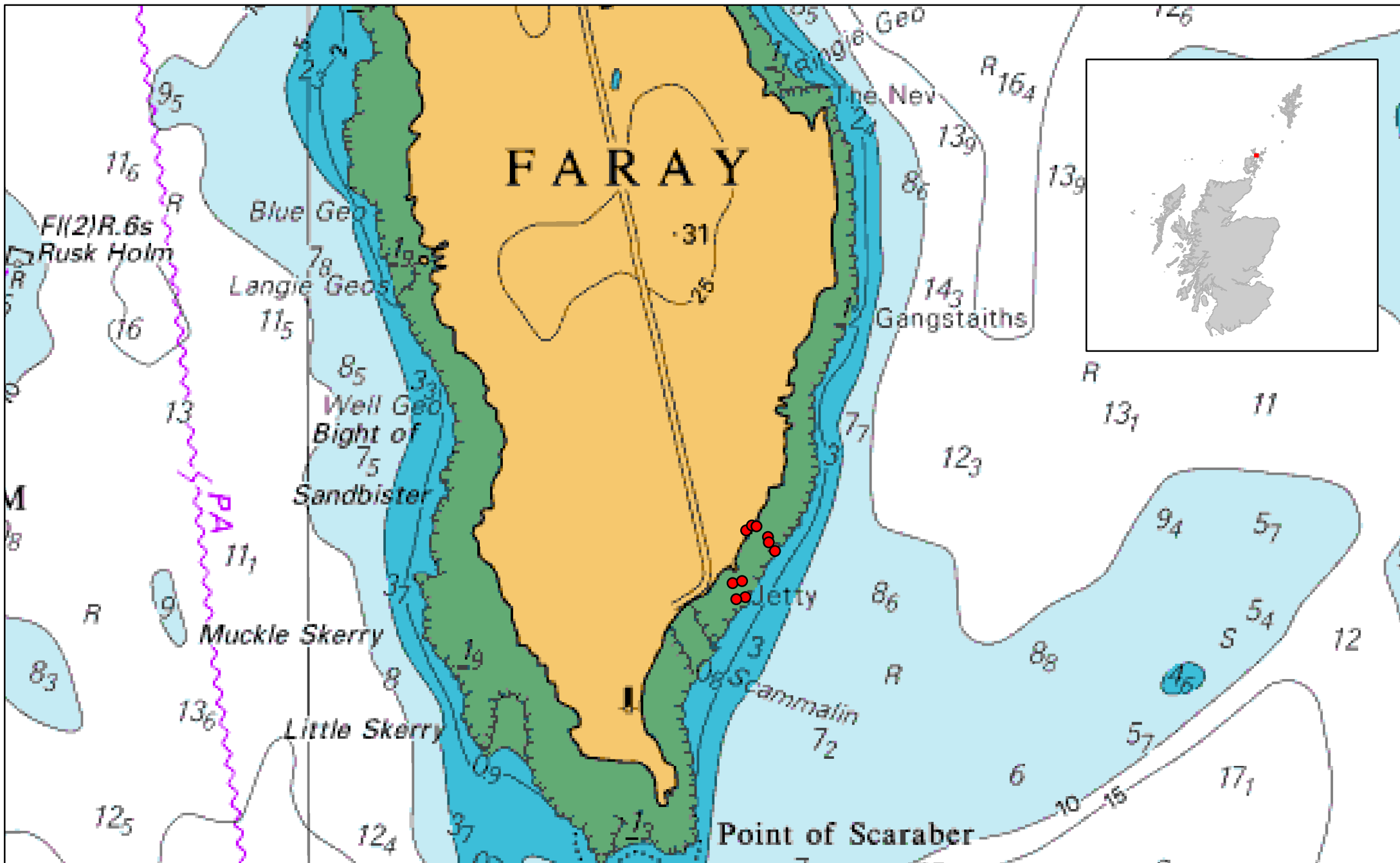
3.4 Upon Completion of the Licensed Activity

3.4.1 The Licensee must submit written reports to the Licensing Authority stating the nature and total quantity, in wet tonnes, of all substances or objects deposited under authority of the licence. The written reports must be submitted to the Licensing Authority annually and on the forms provided by the Licensing Authority.

3.4.2 If a new licence is required, the Licensee' must make an application at least fourteen weeks before the expiry date of the licence. This licence shall not continue in force after the expiry date of 19 June 2027.

NOTES

1. You are deemed to have satisfied yourself that there are no barriers, legal or otherwise, to the carrying out of the licensed activity. The issue of the licence does not absolve the licensee from obtaining such authorisations, consents etc which may be required under any other legislation.
2. In the event that the licensee wishes any of the particulars set down in the Schedule to be altered, the licensing authority must be immediately notified of the alterations. It should be noted that changes can invalidate a licence, and that an application for a new licence may be necessary.



ANNEX TWO

Vessels and contractors authorised to be used for dredge and disposal at licensed **Orkney Islands Council** locations.

Licence Number:

MD 00009362

Expiry Date:

19 July 2027

Contractors:

TBA

Vessel Name

IMO/MMSI

Flag Country

TBA

The agent or licensee must notify the licensing authority immediately if a vessel not listed on the annex one is to be used for dredge and disposal. The information required by the licensing authority regarding the additional vessel(s) will be the same as the information already provided for the vessels on the annex one. **Discharge operations using any additional vessel(s) may only commence if a revised annex one, including details of the additional vessel(s), is issued by the licensing authority.**

Signed: [Redacted]
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For and on behalf of the licensing authority

Date: 18 July 2024