

T: +44 (0)300 244 5046
E: ms.marinelicensing@gov.scot

MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

LICENCE TO CONSTRUCT, ALTER OR IMPROVE ANY WORKS WITHIN THE SCOTTISH MARINE AREA AND TO USE A VEHICLE, VESSEL, AIRCRAFT, MARINE STRUCTURE OR FLOATING CONTAINED TO REMOVE SUBSTANCES OR OBJECTS FROM THE SEABED WITHIN THE SCOTTISH MARINE AREA

Licence Number: 06909/20/0

Reference Number: 06909

Scottish Ministers (hereinafter referred to as "the licensing authority") hereby authorise:

**The Highland Council
Materials Testing Lab
Diriebught Depot
94 Diriebught Road
Inverness
IV2 3QN**

to construct, alter or improve any works within the Scottish marine area and to remove substances or objects from the seabed within the Scottish marine area as described in Part 2 of the attached Schedule. The licence is subject to the conditions of use set out, or referred to, in Part 3 of the said Schedule.

The licence shall be valid from 01 December 2020 until 30 November 2022.

Signed:

Malcolm Rose

For and on behalf of the licensing authority

Date: 11 June 2020

1. PART 1 – GENERAL

1.1. Interpretation

In this licence, unless otherwise stated, terms are as defined in sections 1, 64 and 157 of the Marine (Scotland) Act 2010:

- a) “the 2010 Act” means the Marine (Scotland) Act 2010
- b) “licensable marine activity” means any activity listed in section 21 of the 2010 Act
- c) “licensee” means the recipient of the licence
- d) “the licensing authority” means the Scottish Ministers
- e) “mean high water springs” (“MHWS”) means the average of high water heights occurring at the time of spring tides
- f) “seabed” means the ground under the sea

All geographical co-ordinates contained within this licence are in latitude and longitude format WGS84.

1.2. Contacts

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

Marine Scotland
Licensing Operations Team
375 Victoria Road
Aberdeen
AB11 9DB

Tel: +44 (0) 300 244 5046
Email: ms.marinelicensing@gov.scot

1.3. Other authorisations and consents

The licensee is deemed to have satisfied themselves that there are no barriers or restrictions, legal or otherwise, to the carrying out of the licensed operations. The issuing of this 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 of the 2010 Act the licensing authority may by notice vary, suspend or revoke this licence granted by them if it appears to the licensing authority that there has been a breach of any of the provisions of this licence or for any such other reason that appears to be relevant to the authority under section 30(2) or (3) of the 2010 Act.

Under section 30 of the 2010 Act the licensing authority may on an application made by the licensee, vary this licence if satisfied that the variation being applied for is not material.

Under section 30 of the 2010 Act the licensing authority may on an application made by the licensee, transfer this 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 provide full details of the matter to 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, either 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 by 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 the sheriff of any sheriffdom against a decision taken by the Scottish Ministers under section 29(1) of the 2010 Act.

2. PART 2 – PARTICULARS

2.1. Name(s) and address(es) of any other agents acting on behalf of licensee:

AECOM Limited
7th Floor Aurora
120 Bothwell Street
Glasgow
G2 7JS

2.2. Name(s) and address(es) of any contractors or sub-contractors acting on behalf of licensee:

As per Annex One

See condition 3.1.2

2.3. Name, description, registration number and country of registration of vessel(s) to be employed to undertake the removals:

As per Annex One

See condition 3.1.3

The vessels referred to above must be so constructed and equipped as to be capable of the proper performance of the licensed activities in compliance with the conditions set out in the Schedule.

2.4. Location of the licensed activities (hereinafter referred to as “the site”):

Uig Ferry Terminal, below MHWS within the area bounded by joining the points:

57° 35.277' N	006° 22.526' W
57° 35.265' N	006° 22.445' W
57° 35.185' N	006° 22.484' W
57° 35.151' N	006° 22.273' W
57° 35.112' N	006° 22.275' W
57° 35.111' N	006° 22.304' W
57° 35.049' N	006° 22.296' W
57° 35.046' N	006° 22.361' W
57° 35.142' N	006° 22.373' W
57° 35.174' N	006° 22.581' W

2.5. Description of the licensed activities:

The Uig Ferry Terminal development includes the following components located below the MHWS line:

- Widening of the pier approachway;
- Widening and strengthening of the existing berthing structure;
- Installation of new linkspan, lifting dolphins and bankseat;
- Extension of marshalling area by land reclamation (11,000m²) and associated rock armouring; and
- Construction of three oil separators and extension of a culvert pipe.

2.6. Nature and indicative quantity of substances or objects to be removed and materials to be used in the construction, alteration or improvement of any works as described in Part 2.5 of the licence:

Materials to be used in construction

17,625 tonnes of steel
45.9 tonnes of timber
32,944 tonnes of concrete
20,250m² of plastic/synthetic material
109,422 tonnes of sand
66,031 tonnes of gravel
9,733 tonnes of cobbles
34,845 tonnes of boulders
1,425 tonnes of bricks, glass and tarmac
180m of pipe

Substances or objects to be removed

5,290 tonnes of steel
193.8 tonnes of timber
1,028 tonnes of concrete
55m of pipe

3. PART 3 – CONDITIONS

3.1. General conditions

3.1.1. Licence conditions binding other parties

All conditions attached to this licence bind any person who for the time being owns, occupies or enjoys any use of the works for which this licence has been granted in relation to those licensed activities authorised under item 5 in section 21(1) of the 2010 Act whether or not this licence has been transferred to that person.

3.1.2. Agents, contractors, sub-contractors and vessels

The licensee must provide, as soon as is reasonably practicable prior to the licensed activities commencing, the name and function of any agent, contractor or sub-contractor appointed to undertake the licensed activities.

Any changes to the supplied details must be notified to the licensing authority, in writing, prior to any agent, contractor or sub-contractor undertaking any licensed activity.

The licensee must ensure that only those agents, contractors or sub-contractors notified to the licensing authority are permitted to undertake the licensed activities.

The licensee must give a copy of this licence and any subsequent variations that have been made to this licence in accordance with section 30 of the 2010 Act to any agent, contractor or sub-contractor appointed to carry out any part, or all, of the licensed activities. The licensee must satisfy themselves that any such agent, contractor or sub-contractor is aware of the extent of the licensed activity for which this licence has been granted, the activity which is licensed and the terms of the conditions attached to this licence.

3.1.3. Vessels

The licensee must submit full details of the vessels to be utilised in respect of the licensed removal of substances or objects, and their anticipated movements, to the licensing authority no later than one month, or at such a time as agreed with the licensing authority, prior to the commencement of the licensed activity. The vessel details provided must include the vessel type, vessel IMO number and vessel owner or operating company.

The licensee must ensure that a copy of this licence and any subsequent variations made to it in accordance with section 30 of the 2010 Act have been read and understood by the masters of any vessels being used to carry on any licensed activity under this licence, and that a copy of this licence is held on board any such vessel.

3.1.4. Material alterations to the licence application

The licensee must, where any information upon which the granting of this licence was based has, after the granting of the licence, altered in any material respect, notify the licensing authority of this fact, in writing, as soon as is practicable.

3.1.5. Submission of reports to the licensing authority

Where it would appear to the licensee that there may be a delay in the submission of the reports, studies or surveys to the licensing authority then the licensee must advise the licensing authority of this fact as soon as is practicable and no later than the time by which those reports, studies or surveys ought to have been submitted to the authority under the terms of this licence.

The reports, studies and surveys must include executive summaries, assessments and conclusions and any data may, subject to any rules permitting non-disclosure, be made publically available by the licensing authority, or by any such party appointed, at their discretion.

3.1.6. Environmental protection

The licensee must ensure that all reasonable, appropriate and practicable steps are taken at all times to minimise damage to the Scottish marine area caused by the licensed activity authorised under this licence.

The licensee must ensure that any unauthorised debris or waste materials arising during the course of the licensed activities are removed from the site for disposal at an approved location above the tidal level of MHWS.

The licensee must ensure that all substances and materials used during the execution of the licensed activities are inert (or appropriately coated or protected so as to be rendered inert) and do not contain toxic elements which may be harmful to the marine environment, the living resources which it supports or human health.

The licensee must ensure that the risk of transferring non-native species to and from the site is kept to a minimum by ensuring appropriate bio-fouling management practices are implemented during the licensed activities.

3.1.7. Availability of the licence for inspection

The licensee must ensure that copies of the licence are available for inspection by any persons authorised by the licensing authority at:

- a) the premises of the licensee;
- b) the premises of any agent, contractor or sub-contractor acting on behalf of the licensee;
- c) the site of the licensed activities; and
- d) any onshore premises directly associated with the licensed activities.

3.1.8. Inspection of the licensed activities

Any persons authorised by the licensing authority, must be permitted to inspect the licensed activities at any reasonable time.

3.1.9. Safety of Navigation

Prior to commencement of the licensed activities, the licensee must notify the UK Hydrographic Office to permit the promulgation of maritime safety information through the national Notice to Mariners system.

The licensee must remove the works from below the level of MHWS, or such alterations made, 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 consent by the licensing authority. The licensee shall be liable for any expense incurred.

3.2. Prior to commencement of the licensed activity

- 3.2.1.** The licensee must notify the licensing authority of the date of commencement of all licensed activities relating to the licence.
- 3.2.2.** The licensee must liaise with the Northern Lighthouse Board to discuss the navigational marking requirement prior to each phase of the construction works. This will include the permanent Aids to Navigation (“AtoN”) as well as any temporary AtoN required during the construction phases.
- 3.2.3.** The licensee must ensure that HM Coastguard, in this case nmoccontroller@hmcg.gov.uk, The National Maritime Operations Centre is made aware of the licensed activities prior to commencement.
- 3.2.4.** The licensee must issue a Notice to Mariners in advance of the proposed start date, clearly stating the nature and duration of these operations.
- 3.2.5.** The licensee must complete and submit a Proposed Activity Form in the online Marine Noise Registry for all licensable marine activities that will produce loud, low to medium frequency (10Hz-10kHz) impulsive noise no later than 7 days prior to commencement of the licensable marine activity. If any aspects of the licensable marine activities 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 7 days prior to commencement of the licensable marine activity.
- 3.2.6.** The licensee must produce and adhere to a Flood Risk Management Plan as detailed in the Flood Risk and Climate Change mitigation section of the Environmental Impact Assessment Report.
- 3.2.7.** The licensee must ensure that the activities are carried out in accordance with a Marine Mammal Management Plan (“MMMP”) which the licensee must submit, in writing, to the licensing authority for their written approval, no later than two months prior to the activities commencing or at such a time as agreed with the licensing authority. It is not permissible for any activities to proceed prior to the granting of such approval. In the event that the licensee wishes to update or amend any of the protocols in the MMMP, the licensee must submit, in writing, details of proposed updates or amendments to the licensing authority for their written approval, no later than one month or at such a time as agreed with the licensing authority, prior to the planned implementation of the proposed updates or amendments. It is not permissible for any activities associated with the proposed updates or amendments to proceed prior to the granting of such approvals. The MMMP must include consideration of:
 - a)** the employment of a Marine Mammal Observer (“MMO”)
 - b)** details of the locations and experience of the MMO
 - c)** details of the experience of the Passive Acoustic Monitoring (“PAM”) operators
 - d)** location of the PAM system and when it is to be used
 - e)** details of the MMO pre-piling watch

- f) details of the communication protocol between the MMO and PAM operators and piling contractors
 - g) details of any underwater noise measurement protocols, including the type of system to be used, how the noise levels will be analysed and calibrated and how the levels will be reported to the licensing authority
 - h) establishment of a 100m piling mitigation zone for harbour seals and 500m piling mitigation zone for cetaceans
 - i) details of the piling soft start procedure.
- 3.2.8.** The licensee must ensure that the licensed activities are carried out in accordance with a Construction Environmental Management Document (“CEMD”) which is to be submitted to the licensing authority no later than two months prior to the start of licensed activities for approval. In the event that the licensee wishes to update or amend the CEMD, the licensee must submit, in writing, details of proposed updates or amendments to the licensing authority for their written approval, no later than two month or at such a time as agreed with the licensing authority, prior to the planned implementation of the proposed updates or amendments. It is not permissible for any licensed activities associated with the proposed updates or amendments to proceed prior to the granting of such approvals. The CEMD must remain consistent with the application and supporting information. The CEMD must contain, but is not limited to containing:
- a) Control measures to limit the risk of marine invasive non-native species;
 - b) An oil separator inspection and maintenance plan; and
 - c) A programme of archaeological investigations to determine the palaeoenvironmental potential of the peaty deposits and organic sediments.

3.3. During the licensed activities

- 3.3.1.** The Licensee must ensure that the Joint Nature Conservation Committee (“JNCC”) guidelines for minimising the risk of injury to marine mammals from piling noise dated August 2010 (“JNCC guidelines”) are followed at all times in connection with piling unless further written approval is given by the licensing authority. The guidelines are available from the JNCC website <http://data.jncc.gov.uk/data/31662b6a-19ed-4918-9fab-8fbcff752046/JNCC-CNCB-Piling-protocol-August2010-Web.pdf>.
- 3.3.2.** If it is desired by the licensee to display any marks or lights not required by this licence then details of such marks or lights must be submitted to the Northern Lighthouse Board and their ruling must be complied with. The display of unauthorised marks or lights is prohibited.
- 3.3.3.** The licensee must adhere to the Commercial and Recreational Navigation mitigation detailed in chapter 18 of the Environmental Impact Assessment Report.
- 3.3.4.** The licensee must adhere to the Commercial Fisheries mitigation detailed in chapter 19 of the Environmental Impact Assessment Report.
- 3.3.5.** The licensee must ensure that the works are maintained at all times in good repair.
- 3.3.6.** The licensee must ensure suitable bunding and storage facilities are employed to prevent the release of fuel oils, lubricating fluids associated with the plant and equipment into the marine environment.

- 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.** In the event of the licensed activities being discontinued the works must be removed and the site cleared to the satisfaction of the licensing authority.
- 3.3.9.** If in the opinion of the licensing authority the assistance of a Government Department, including the broadcast of navigational warnings, is required to deal with any emergency arising from:
- a) The failure to mark and light the works as required by licence.
 - b) The maintenance of the works.
 - c) The drifting or wreck of the works.

The licensee shall be liable for any expenses incurred in securing such assistance.

- 3.3.10.** The licensee must ensure that no deviation from the schedule specified in the licence is made without the further written approval of the licensing authority.

3.4. On completion of the licenced activities

- 3.4.1.** The licensee must notify the licensing authority of the date of completion of all licensed activities relating to the licence.
- 3.4.2.** The licensee must submit a written report regarding the materials used and substances or objects removed during the licensed activities to the licensing authority. The written report must be submitted on completion of the licensed activities and on the forms provided by the licensing authority no later than 31 October 2023.
- 3.4.3.** 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 both progress and on completion of the licensed activities supply a copy of the licence, and wherever possible, 'as built plans', in order that all necessary amendments to nautical publications are made.
- 3.4.4.** 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 at 6 month intervals during the validity of the licence.

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.
3. Under Section 30 of the Marine (Scotland) Act 2010, the licensing authority may vary, suspend or revoke the licence, if it appears to the licensing authority that there has been a breach of any of the provisions of the licence or for any other reason that appears to be relevant to the licensing authority.
4. Under Section 39 of the Marine (Scotland) Act 2010, it is an offence to carry on a licensable marine activity or cause or permit any other person to carry on such an activity without a marine licence or fails to comply with any condition of a marine licence. It is a defence for a person charged with an offence under Section 40 in relation to any activity to prove that the activity was carried out for the purpose of saving life, or for the purposes of securing the safety of a vessel, aircraft or marine structure ('*force majeure*'), and that the person took steps within a reasonable time to provide full details of the incident to the licensing authority. (Under Annex II, Article 7 of the Convention for the Protection of the Marine Environment of the North-East Atlantic, the licensing authority is obliged to immediately report '*force majeure*' incidents to the Convention Commission).
5. All correspondence or communications relating to the licence should be addressed to:

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Marine Scotland
Marine Laboratory
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Aberdeen
AB11 9DB

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