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21 July 2020

**MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING
THE MARINE WORKS (ENVIRONMENTAL IMPACT ASSESSMENT)
(SCOTLAND) 2017 REGULATIONS (AS AMENDED)**

**DECISION NOTICE – MARINE LICENCE FOR THE CONSTRUCTION, CAPITAL
DREDGING AND DEPOSIT ACTIVITIES ASSOCIATED WITH THE NIGG ENERGY
PARK EAST QUAY (Per ENVIROCENTRE) DEVELOPMENT AT NIGG ENERGY
PARK, CROMARTY FIRTH**

1. Application and description of the works

- 1.1 On 20 June 2019 Global Energy Group having its registered office at Nigg Energy Park, Nigg, Ross-shire, IV19 1QU (“the Applicant”), submitted to the Scottish Ministers applications under Part 4 of the Marine (Scotland) Act 2010 for the construction, capital dredging and the deposit of dredged substances or objects associated with the Nigg East Quay Development at Nigg, Cromarty Firth (“the Works”). The applications were accompanied by an Environmental Impact Assessment Report (“EIA Report”) as required under The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) (“the 2017 MW Regulations”). The said applications are collectively hereinafter referred to as “the Application”.
- 1.2 The EIA Report received was also submitted to The Highland Council in relation to the associated onshore, terrestrial works for which planning permission is required. This Decision Notice considers only the information relative to the marine environment.
- 1.3 The Works involve the construction of a new quay adjacent to a new laydown area on the grounds of the former Dunskeath House with associated dredging and dredge spoil deposit activities as part of the redevelopment of the East quay at Nigg Energy Park.
- 1.4 The Works include the following marine components to allow the expansion of existing services provided at the Nigg Energy Park:

- Construction of quay and deep sea berth.
 - Dredge and deposit of dredge spoil.
- 1.5 A 250 metre (“m”) by 50m (0.88 hectares) quay with a perimeter wall which will be piled to retain locally dredged sediment to form an extended lay down area/pier. The quay will be finished with concrete coping and rock armour (if required)
 - 1.6 The quay wall will be constructed predominantly with the use of a vibrating hammer to drive both steel sheet and king piles into place. Impact pile driving will be used only if bedrock is encountered. At the north end of the structure and at the south wall, the main wall sections will be anchored by tie rods fixed to an anchor wall behind.
 - 1.7 The dredge will result in 165,000m³ of sediment being removed to create the deep sea berth of a minimum sea bed level of 12m below chart datum alongside the quay. The sediment will be removed by suction dredge and a barge mounted excavator will be available should bedrock be encountered.
 - 1.8 Up to 30,000m³ of dredged material of the appropriate particle size from the deep sea berth can be used as infill within the quay wall. This sediment will be either brought ashore and stockpiled alongside 25,000m³ of material recovered from previous development excavations for subsequent use as infill, or pumped directly from the seabed along floating pipework to the infill location.
 - 1.9 The remaining sediment will be deposited by bottom dumping at the Sutors licensed deposit site.
 - 1.10 It is proposed that the Works will take 10 months to complete in four overlapping phases once appropriate licences are in place.
 - Phase 1 creation of structures (including piling) – months 1 to 7
 - Phase 2 dredge and deposit of dredge material – months 5 to 9
 - Phase 3 concrete and services – months 6 to 9
 - Phase 4 surfacing and testing – months 8 to 10
 - 1.11 It is intended that construction activities take place from 7am to 7pm seven days a week. However, dredging is anticipated to be 24 hours per day, every day until the Works are complete as part of Phase 2.

This decision notice contains the Scottish Ministers’ decision to grant regulatory approval for the Works as described above, in accordance with regulation 23 of 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.
- Best Practicable Environmental Option (“BPEO”)
- Letter dated 22 August 2019 – Horse Mussel Considerations for Nigg East Quay.

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

Marine Ecology

- 2.3 A marine ecology assessment was carried out to consider the impact of the Works on designated sites close to the Works which have a marine element; Moray Firth SAC, Dornoch Firth and Morrich More SAC and Cromarty Firth SSSI. The assessment also considered the impact on marine mammals, migratory fish and the Cromarty South and Udale Bay Shellfish Waters Protected area. The assessment comprised of a desk study and consultation with relevant organisations. Additionally, computer modelling was used to predict underwater noise and the impacts of dredging and sediment dispersion. The assessment describes how the baseline conditions would change as a result of the Works, associated activities and the duration, both independently and in-combination with other activities in the area. The assessment is split into impacts during the construction phase and the subsequent operational phase.
- 2.4 During construction the primary impact identified was that of underwater noise, the noise generated from piling has a potential to cause injury or disturbance to marine mammals as well as migratory fish. This is likely to impact the Moray Firth SAC located adjacent to the Works designated for its bottle nose dolphin as well as the harbour seal interest of the Dornoch Firth and Morrich More SAC. The impact on migratory fish is considered to be negligible due to the fact that a significant area of sea will be unaffected by noise allowing passage of migratory fish.
- 2.5 Increase of sedimentation and increased turbidity were identified as potential pathways of impact due to the dredging and deposit required to create the new deep berthing. This could be detrimental to marine mammals and migratory fish as well as impacting the intertidal mudflats and sandflats of the Cromarty Firth SSSI and the shellfish protected waters of Cromarty South and Udale Bay. The EIA report concluded that the impact would not be significant as the increased sedimentation would be very localised and short term as the sediment is predominately sand.
- 2.6 The increased number of vessels required both during construction and after completion of the Works pose a potential collision risk to marine mammals. Higher vessel numbers might also lead to the potential spread of invasive non-native species (“INNS”) that could impact both the intertidal mudflats and sandflats of the Cromarty Firth SSSI and the Cromarty South and Udale Bay shellfish waters protected area.
- 2.7 An addendum letter is provided to specifically address the potential impact of the Works on the Horse mussel beds of the Cromarty South and Udale Bay shellfish waters protected area. As this priority marine feature is approximately 15km from the Works and sand transport modelling has shown that during dredging activity the sediment is unlikely to travel any distance from the site it was concluded that any impact would be insignificant.
- 2.8 Overall the impacts during construction were described as not significant after mitigation and were considered to be insignificant during the operational phase, with the exception of INNS.
- 2.9 It was noted that although INNS are widespread around Scotland, the rate and extent is difficult to predict, however the impacts may be permanent. Therefore, additional mitigations including pollution prevention guidelines and a biosecurity protocol will be included in the Construction Environmental Management plan (“CEMP”) to be submitted and approved by the regulatory authority prior to works beginning.

- 2.10 Cumulative impacts were assessed taking into consideration three other major developments; Invergordon Service Base – phase 4 development, Ardersier Port development and Aberdeen Harbour Expansion.
- 2.11 The primary mitigation strategy focuses on the development of a Marine Mammal Mitigation Plan (“MMMP”) drafted in consultation with University of Aberdeen Lighthouse Field Station and in line with current Joint Nature Conservation Committee (“JNCC”) guidance.
- 2.12 The MMMP includes the use of trained Marine Mammal Observers (“MMO”) during impact piling works. The MMMP also notes that during piling activities a 500m radius / 30 minute exclusion zone will be in effect. Additionally, soft starts and the use of Passive Acoustic Monitoring (“PAM”) will be employed.
- 2.13 The Applicant has included in the MMMP a protocol which includes the use of an MMO and the enforcement of a 250 m radius exclusion zone around the vessel prior to any deposit of material or substance from the Works area at the Sutors registered deposit site.
- 2.14 A works dialogue protocol has also been drafted to mitigate against cumulative effects that could result from the overlap of works with those at the Ardersier Port Development where underwater noise may be also be generated during impact piling operations. Two other major developments, Aberdeen Harbour Expansion and Invergordon Service Base (Phase 4) are also included in the works dialogue protocol although neither developments include impact piling.

Water Environment and Coastal Process

- 2.15 The Applicant has considered the potential impact of the Works on hydrology, water and sediment quality, tidal and wave action, and sediment transport processes. The Applicant made these assessments in line with the Water Framework Directive (“WFD”) which requires that there is no deterioration in the quality of surface or groundwater bodies and aims to achieve good ecological status or have the potential to achieve a good ecological status.
- 2.16 The Applicant provides evidence of how the WFD has been considered using a number of methods including desk based assessments, topography and bathymetry surveys, reference to the Dynamic Coast National Coastal change map and a comparison of modelling undertaken for adjacent developments as well as responses provided during consultation with key stakeholder. This evidence has been used to determine the baseline status and subsequently respond to concerns raised during consultation and detailed in the scoping opinion report.
- 2.17 The specific elements of the Works that were assessed with respect to the water environment and coastal process were: dredging of the proposed navigation channel and berths; construction and formation of the new quay; and subsequent port operations post project completion. The assessment takes into consideration the probability of the effect occurring and the duration of the effect.
- 2.18 There were multiple receptors considered by the Applicant including the Cromarty Firth SSSI, Rosemarkie to Shandwick Coast SSSI, Moray Firth SAC, Cromarty Firth SPA and RAMSAR as well as the operational coastal waters and sediment of the Outer Cromarty Firth and existing outfalls in the local vicinity.

- 2.19 Each receptor was assessed by identification of the potential impacts and magnitude followed by determination of mitigation measures to reduce or avoid potential impacts resulting in a statement of residual effects.
- 2.20 It was determined that all impacts resulting from the construction and operation of the Works on the water environment and coastal processes would be of either low or negligible magnitude, with the exception of a pollution incident, and that there will be no reduction in water quality.
- 2.21 The risk of impacts from pollution during construction will be managed through the CEMP which will include a Pollution Incident Response Plan (“PIRP”) that will follow all current guidance and provide a comprehensive spill response plan. A qualified Environmental Clerk of Works will be employed specifically to monitor the construction works as well as ensuring adherence to the CEMP and associated mitigation measures.
- 2.22 Prior to the start of the operational phase an Operational Environmental Management Document will be created with an updated PIRP to reflect the operational activities and risks.
- 2.23 As noted with other receptors a works dialogue protocol with other adjacent developments will be in place to avoid cumulative impacts to the water environment and coastal processes.
- 2.24 Provided all mitigation measures are implemented, the assessment concluded that the proposed development and subsequent operations would not result in any significant effects on the water environment and coastal processes.

Cultural Heritage and Archaeology

- 2.25 Cultural heritage is addressed within the terrestrial planning application. However, although unlikely, there is a potential of marine archaeology discovery during the Works. Marine archaeology is not specifically addressed in the EIA report.

Navigation and Vessel Movements

- 2.26 The EIA Report contains an extensive amount of detail pertaining to navigation and vessel movements. It is acknowledged that the Cromarty Firth is already utilised by a diverse range of marine traffic which could have a negative impact on the Moray Firth SAC and the Dornoch Firth and Morrich More SAC leading to the requirement to develop a robust MMMP which will include consideration of vessel movements.
- 2.27 A summary of vessel traffic is provided as a baseline against which to compare the impact of the additional traffic associated with both construction of the Works and subsequent operation on completion. It is noted that the Statutory Harbour Authority (“SHA”), Port of Cromarty Firth (“PoCF”) already operate, implement and monitor management plans for vessels transiting the Cromarty Firth to berth at Nigg. The EIA report continues with information regarding the potential of cumulative impacts due to other large scale development within a close range. It is however concluded that to mitigate against any adverse impacts from the additional vessel movements once a contractor is in place and specific details are known they will be included in the CEMP.

Ornithology

- 2.28 The EIA report details the assessment of the Ornithology interests at the site and its surroundings as part of the terrestrial ecology surveys and assessments. The Habitats Regulations Assessment (“HRA”) examines the potential effects on birds local to the site within the Cromarty Firth SPA and Moray Firth pSPA from construction and operational activities and is presented within the technical appendices of the EIA Report.

- 2.29 The potential effects from the new development were determined by establishing the baseline using surveys to note common species and suitable nesting habitat. Points of note were tern nesting sites to the west and wader roosting areas to the east of the proposed site.
- 2.30 A series of practical measures are detailed to avoid significant effects on birds during the construction phase as well as recommendations in the longer term to encourage birds to continue using the area during the operational phase. The measures include consideration of the timing of the Works, with vegetation clearance and demolition, where possible, be undertaken out-with the nesting season (March – August inclusive) or with a suitably qualified ecologist carrying out a nesting bird check no later than 24 hours prior to works commencing. A number of bird dissuasion methods will also be employed all of which will be detailed in the CEMP.
- 2.31 To ensure sufficient long term habitat for both Common and Arctic tern it is proposed that the Applicant will install a number of suitable artificial nest boxes around the site of the Works.
- 2.32 The HRA assessment of the effects of the Works on the bird species associated with Cromarty Firth SPA and Moray Firth pSPA focused on Bar-tailed godwit, Common terns and Waterfowl assemblage. It was concluded that there were no direct impacts on the SPA or pSPA, and that any potential indirect effects could be successfully mitigated.

Other Issues

- 2.33 A number of other topics were scoped out of full EIA assessment including terrestrial ecology, landscape and visual, cultural heritage, air quality, population and human health, natural disasters and climate change. It is anticipated that there will be no significant effects across these topics with one exception in landscape and visual terms. It is acknowledged that there may be significant visual and landscape effects from Nigg Ferry terminal and Cromarty beach during the subsequent operation of the facility, however these are localised and will not compromise any other important landscape or visual interests within the vicinity.

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 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 of 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	Date of consultation	Publication
EIA Report & Appendices; Marine licence applications & supporting documentation.	20 June 2019	14 October 2019 – 27 November 2019	Global Energy Group website (20 September 2019) Edinburgh Gazette (20 September 2019) Ross-shire Journal (20 September 2019) Marine Scotland Information (20 September 2019)

- 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 Environmental Protection Agency (“SEPA”) responded on 11 November 2019 stating it has no objection to this marine licence and have provided the same advice as that to the Planning Authority on the planning application for this proposal on 7 August 2019 (PCS/166247). SEPA specifically request that mitigation relating to surface water during construction be secured through a condition within the CEMP. It is a condition of THC planning consent that no development shall commence until a CEMP has been submitted and approved in consultation with SEPA, specifically including surface and ground water management.
- 4.2 SEPA also refer to their standing advice, it states that they do not anticipate any adverse environmental impacts from the dredging activities providing it is carried on in line with dredging best practice.
- 4.3 The Scottish Ministers are satisfied that the concerns of SEPA regarding water management have been addressed by the Highland Council through the planning permission process.

- 4.4 Historic Environment Scotland (“HES”) responded on 12 November 2019 stating that in their opinion the EIA Report did not include sufficient information on how the developer will deal with unexpected archaeological finds in the marine environment.
- 4.5 In response to the concerns of HES the Applicant proposed to include a protocol for unknown archaeological finds in the CEMP. HES in their response 18 February 2020 state they are content with that approach providing the submission, consultation and approval of the CEMP is part of a pre- commencement condition.
- 4.6 Scottish Natural Heritage (“SNH”) responded on 27 November 2019 providing a copy of advice given to The Highland Council on 08 August 2019 stating that although there are natural heritage interests of international importance on the site of the Works, in their view, these will not be adversely affected by the Works based on the information and mitigation.
- 4.7 SNH advised that the Works are likely to have a significant effect on the bottlenose dolphins of the Moray Firth SAC however, the Works will not adversely affect the integrity of the site as the mitigation (with respect to bottlenose dolphins) included in the application is in line with JNCC standard protocol. SNH support the use of MMO and PAM as well as soft start and consider it is appropriate for the Works. SNH also support the proposal for data collection from the PAM system to be consistent with the University of Aberdeen data already collected.
- 4.8 SNH requested clarification that the PAM system will have the dual purpose of noise monitoring and pre-piling mitigation. The applicant confirmed by email 26 May 2020 that PAM will be used pre-piling and for noise monitoring during the works, the specifics of when it will be used will be agreed in the CEMP
- 4.9 SNH also advised that the Works have the potential to have a significant effect on the harbour seal interest of the Dornoch Firth and Morrich More SAC. However, SNH are of the opinion that mitigation included in the EIA Report is appropriate and will help minimise impacts on the harbour seal feature of the Dornoch Firth and Morrich More SAC. Furthermore, SNH advised as the mitigation is in line with JNCC standard protocol they conclude that the Works will not adversely affect the integrity of the site.
- 4.10 SNH also considered the potential impacts on the Cromarty Firth SPA and Moray Firth pSPA and agree with the conclusions reached in the EIA Report that the Works will not have a likely significant effect on either SPA.
- SNH further advised that the Works are likely to require a European Protected Species (“EPS”) licence to cover disturbance to cetaceans.
- 4.11 The Highland Council (“THC”), stated in an email on 05 March 2020 that it had no comments to make on the marine licence as the submitted details were compatible/identical to those approved in respect of the terrestrial planning application.

5. Summary of non-statutory consultee responses

- 5.1 The Maritime and Coastguard Agency (“MCA”) responded on 19 February 2020 confirming they had no objection to consent being granted to either construction or dredging and deposit applications, subject to all maritime safety legislation being followed, the risk mitigation measures detailed in the MCA response are included in the

marine licence and cover letter. MCA also note that the Works are within the PoCF SHA area, as such MCA recommend that consultation takes place between the Applicant and the PoCF SHA to ensure a Safety Management System is developed accordingly and other suitable local safety measures are agreed.

- 5.2 NLB responded on 22 October stating no objections. Their recommendations with regards to navigational concerns associated with the Works will be included as conditions of the marine licences.
- 5.3 Royal Yachting Association Scotland had no comments or objections in their response dated 17 October 2019.
- 5.4 Defence Infrastructure Organisation did not raise any objections in their response of 23 October 2019.
- 5.5 The Royal Society for the Protection of Birds (“RSPB”), in their response of 01 November 2019, acknowledge that the Works have the potential to impact on the natural heritage interests associated with the Cromarty Firth SPA and the Moray Firth and Dornoch and Morrich More SACs. RSPB agree that the Works will not significantly affect the Cromarty Firth SPA interests as it is likely that breeding species such as Arctic tern will be far enough away from the development to not be affected. RSPB conclude that provided the mitigation proposed in EIA Report is followed there will be no significant effect on the interests of the SAC.
- 5.6 Scottish Water, in their response of 16 October 2019, requested that the applicant review where potential asset conflicts with Scottish Water exist and contact the Scottish Water Asset Impact Team (service.relocation@scottishwater.co.uk) as soon as practicable to discuss any potential issues identified.
- 5.7 The Port of Cromarty Firth (per Affric), in their response of 08 May 2020, PoCF focus on the maintenance of maritime safety and Pollution Incident Response Plans. Their comments will be addressed through conditions of the marine licences. Additionally the PoCF response highlights that dust mitigation should be included in the CEMP. PoCF raised a question with regard to surface water management, what site uses would require Pollution Prevention Control Authorisation and consequently had assessment of operational environmental effects been appropriately covered within the EIA submission. With regard to the dredge material, although a proportion will be used in the construction of the quay, PoCF request that the option of beneficial use at other locations is kept open for the duration of the works. The Scottish Ministers are satisfied that the concerns of PoCF regarding dust management and surface water management have been addressed by the Highland Council through the planning permission process.

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 Advice was requested from Marine Scotland Science (“MSS”) with regards to the proposed marine mammal mitigation on 09 March 2020. In their response of 26 March 2020 MSS advised that they were satisfied with the mitigation proposed.

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 the national marine plan and relevant local development plans
- the significant effects of the Works on the environment, which are in summary:
 - impacts on marine ecology
 - impacts on European Protected Species
 - impacts on marine archaeology and cultural heritage.

Policy Context

8.2 As the Works are proposed to take place within the Scottish marine area they are subject to the Marine (Scotland) Act 2010 (“the 2010 Act”). The 2015 Scottish National Marine Plan (“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”), and sector specific objectives and policies, which were considered as part of the EIA process.

8.3 The proposed works also require planning consent, as such the planning policy context was taken into consideration by the Applicant alongside the marine aspect. In Scotland, the frameworks for considering planning applications are:

- The National Planning Framework (NPF);
- Strategic Development Plans (SDPs); and
- Local Development Plans (LDPs).

8.4 The development plan in this instance comprised the Highland-wide Local Development plan (“HwLDP”), the Inner Moray Firth Local Development Plan (“IMFLDP”) and supplementary guidance contained in the Nigg Development Masterplan (“NDM”).

8.5 The HwLDP sets out the vision and strategy for the Inner Moray Firth to support the growth of jobs and population within the Easter Ross area with specific advice directly relating to Nigg. The IMFLDP identifies the Ross-shire growth area as a key area within the plan with the potential of 900 hectares of employment land available with a potential to provide a strengthened area of industrial growth, including key sites such as Nigg.

8.6 The NDM was developed by the Highland Council in 2013 and outlines a vision for the development of the site as a multi user industrial facility. The majority of the Works lie within the boundary of the NDM.

8.7 The National Planning Framework 3 (“NPF3”) was also considered in the EIA Report. The NPF3 sets context for development planning and provides a framework for the spatial development and long term vision for development and investment across Scotland as a whole over the next 20 – 30 years. The Nigg development is noted as a diverse and distinct opportunity within a key port and industrial site which is well placed to take full advantage of investment in the energy sector. It is also noted as being part of the Low Carbon and Renewables North Enterprise Area where development goes hand in hand with continued protection of the designated sites within the very special environment of the Firths.

- 8.8 The Scottish Ministers are satisfied that works accord with and are supported by Scottish Government policy and the terms of the NMP and relevant local development plans.

Environmental Matters

- 8.9 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.
- 8.10 The Scottish Ministers have considered fully and carefully the application, EIA Report, supporting documentation and all relevant responses from consultees.

Possible Effects on European Protected Sites and Marine Mammal Impacts

- 8.11 The Conservation of Habitats and Species Regulations 2017 and the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) (“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.

Owing to the view of SNH that the Works are likely to have a significant effect on the qualifying interests of Moray Firth SAC, Dornoch Firth and Morrich More SAC MS-LOT, on behalf of the Scottish Ministers, as the “competent authority”, were required to carry out an Appropriate Assessment (“AA”). Having had regard to the representations made by SNH it can be ascertained that the Works will not adversely affect the integrity of the SACs. Having determined that the Works will not adversely affect the integrity of the sites, and having regard to the reasons for which they were designated and the associated conservation objectives, MS-LOT concludes that there will be no adverse effect on the site integrity of the Moray Firth SAC or the Dornoch Firth and Morrich More SAC (where each SAC is taken as a whole), from the project either in isolation or in combination with other plans or projects, providing licence conditions are complied with.

- 8.12 A full explanation of the issues and justification for decisions regarding site integrity is provided in the AA (available here). SNH agreed with all conclusions reached in the AA.
- 8.13 Scottish Ministers are content that significant marine ecology impacts will be appropriately mitigated providing the Applicant adheres to the conditions set out in the AA and marine licences.

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 application have been followed.
- 9.2 The Scottish Ministers have weighed the impacts of the Works, and the degree to which these can be mitigated. The Scottish 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 accords with and is supported by Scottish Government policy, the terms of the NMP and local

development plans and the environmental impacts of the Works, in particular the impact on Moray Firth SAC, Dornoch Firth and Morrich More SAC and general marine ecology.

- 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 Ministers are satisfied that the Works will not adversely affect the integrity of the Moray Firth SAC or Dornoch Firth and Morrich More SAC. The Scottish Ministers consider it likely that the licensing tests in respect of an EPS application by the Applicant will be met.
- 9.5 The Scottish Ministers have had regard to the requirements of Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds, and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.
- 9.6 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 adherence to the MMMP and adherence to a CEMP to be submitted in support of the applications and approved prior to works commencing.
- 9.7 The Scottish Ministers are satisfied, having regard to current knowledge and methods of assessment, that this reasoned conclusion is still up to date.
- 9.8 The Scottish Ministers **grant marine licences subject to conditions** under Part 4 of the Marine (Scotland) Act 2010 for the construction, capital dredging and dredge spoil deposit activities associated with the Nigg East Quay Development. The marine licences are attached at Appendix 2.
- 9.9 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 application relates is situated.
- 9.10 Copies of this decision notice have been sent to the bodies consulted on the application including the relevant planning authority, SNH, SEPA, HES and all other consultees.
- 9.11 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 – [Court of Session Rules](#) Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours sincerely,

Marine Licensing Group Leader, Marine Scotland Licensing Operations Team

A member of the staff of the Scottish Ministers

21 July 2020

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MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

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

Licence Number: 07068/20/0

Reference Number: 07068

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

**Global Energy Group
Nigg Energy Park
Tain
Ross-shire
IV19 1QU**

to carry out dredging and to deposit in the sea the substances or objects particulars of which are 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.

This licence shall be valid from 21 July 2020 to 20 July 2021.

Signed:

Malcolm Rose

For and on behalf of the licensing authority

Date: 21 July 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” 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 and address of the producer of the substances or objects:

As per licensee.

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

Envirocentre
8 Eagle Street
Craighall Business Park
Glasgow
G4 9XA

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

As per Annex One

See condition 3.1.1

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

As per Annex One

See condition 3.1.2

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.

2.5. Place of production of the dredge material:

Nigg East Quay, within areas bounded by joining points:

57° 41.702' N	004° 01.571' W
57° 41.708' N	004° 01.316' W
57° 41.509' N	004° 01.245' W
57° 41.501' N	004° 01.552' W

As shown in Annex Two

Three specific dredge depths within the above area are noted below.

Dredge area to -6 meter below chart datum:

57° 41.588' N	004° 01.355' W
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57° 41.558' N 004° 01.353' W
57° 41.559' N 004° 01.313' W
57° 41.581' N 004° 01.315' W
57° 41.582' N 004° 01.320' W
57° 41.585' N 004° 01.329' W
57° 41.588' N 004° 01.346' W

Dredge area to -10 meter below chart datum:

57° 41.520' N 004° 01.311' W
57° 41.525' N 004° 01.402' W
57° 41.559' N 004° 01.313' W
57° 41.558' N 004° 01.404' W

Dredge area to -12 meter below chart datum:

57° 41.686' N 004° 01.462' W
57° 41.679' N 004° 01.411' W
57° 41.525' N 004° 01.402' W
57° 41.528' N 004° 01.454' W

2.6. Description of the licensable marine activities and composition of the substances or objects:

Capital dredging of 165,000m³ of material and deposit of dredged substances or objects at the Sutors (CR019) authorised dredge material deposit site to facilitate the development of Nigg East Quay.

- Dredging of 165,000m³ of predominantly sandy material in three areas with different dredging depths to be increased to depths; - 6m below chart datum, - 10m below chart datum and -12m below chart datum.
- Deposit of dredge material to the Sutors (CR019) authorised dredge material deposit site
- Use of dredge material on site as quay infill or to reclaim land

As described in the application dated 14 June 2019, and correspondence submitted in support of the application.

2.7. Quantity of capital dredge substances or objects to be deposited for land reclamation purposes or as infill:

Up to 30,000m³

2.8. Maximum quantity of capital dredge substances or objects to be deposited at the authorised dredge material deposit area Sutors CR019 within the period of validity of the licence:

Up to 150,000m³

3. PART 3 – CONDITIONS

3.1. General conditions

3.1.1. Agents, contractors and sub-contractors

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.

3.1.2. Vessels

The licensee must submit full details of the vessels to be utilised in respect of the licensed activity, 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 master's name, 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.

3.1.3. Force Majeure

If by any reason of force majeure any substance or object is deposited other than at the site which is described in this licence, then the licensee must notify the licensing authority of the full details of the circumstances of the deposit within 48 hours of the incident occurring (failing which as soon as reasonably practicable after that period of 48 hours has elapsed). Force majeure may be deemed to apply when, due to stress of weather or any other cause, the master of a vessel, vehicle or marine structure determines that it is necessary to deposit the substance or object other than at the specified site because the safety of human life or, as the case may be, the vessel, vehicle or marine structure is threatened. 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.

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 activity are removed from the site of the licensed activity for deposit at an approved location above the tidal level of MHWS.

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 activity.

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 activity;
- d) on-board any vessel carrying out the licensed activity; and
- e) any onshore premises directly associated with the licensed activities.

3.1.8. Inspection of the licensed activity

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

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. Separate notifications are required at the times of commencement and completion.

- 3.2.2.** 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.
- 3.2.3.** The licensee must transmit Marine Safety Information broadcasts when considered appropriate, both prior to and throughout, the dredging campaign.
- 3.2.4.** The licensee must prepare a Works Dialogue Protocol and share it with Ardersier Port, Aberdeen Harbour Expansion Project, and Port of Cromarty Firth.
- 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 commencement of the works, or less if agreed by the licensing authority. The CEMP must be consistent with the marine licence application and supporting documents and must contain, but not be limited to, the following:
- a) Mitigation and management measures for the CEMP outlined in Chapter 9: Schedule of Mitigation in the Nigg East Quay Volume 1: Environmental Impact Assessment Report dated 19 June 2019.
 - b) A protocol for unknown archaeological finds.
 - c) Mitigation and management measures below Mean High Water Spring outlined in the Nigg East Quay Volume 3: Technical Appendices, Nigg Quay East Ornithology Baseline Report, dated 10 June 2019.
 - d) Suitable procedures as part of the nesting bird checks if nests are found that could be disturbed by the works.
 - e) Artificial bird boxes must be suitable for Common and Arctic tern.
 - f) Details of times when passive acoustic monitoring will be utilised.

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.

3.3. During the licensed activity

- 3.3.1.** The licensee must ensure that the project is carried out in accordance with the Technical Appendix 4.1; Marine Mammal Mitigation Plan (“MMMP”) dated June 2019. In the event that the licensee wishes to update or amend any of the protocols within 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 works associated with the proposed updates or amendments to proceed prior to the granting of such approvals.

3.3.2. 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, must be disposed of on land at an approved location above the tidal level of MHWS.

3.3.3. The licensee must deposit all dredged substances and objects in the following area:

Deposit Area Name and Code: SUTORS, CR019

Within the area bounded by joining the points:

57° 41.250' N	003° 59.800' W
57° 41.060' N	003° 59.200' W
57° 41.250' N	003° 59.200' W
57° 41.060' N	003° 59.800' W

Up to a maximum of 150,000m³ may be deposited within the area during the period of validity of this licence.

3.3.4. All tank/hopper washings must be deposited in the authorised deposit area: SUTORS (CR019).

3.3.5. The method of deposit must be:

BOTTOM DUMPING

3.3.6. The licensee must ensure that a log of operations is maintained on each vessel employed to undertake the deposit activity. The log(s) must be kept on-board the vessel(s) throughout the deposit activity, and be available for inspection by any authorised Enforcement Officer. The log(s) must 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.

3.3.7. The log(s) must 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 deposit area(s), on each occasion that the vessel proceeds to the deposit area(s);
- d) the date, time and position of commencement, and the date, time and position of completion, of each deposit;
- e) the course(s) and speed(s) throughout each deposit. (Multiple changes may be recorded as "various");
- f) the weather, including wind strength and direction, sea-state and tidal set throughout each deposit;
- g) the rate of discharge during each deposit, if appropriate, and the duration of each deposit. (If the rate of discharge is not constant, the maximum and mean rates of discharge must be indicated);
- h) comments on the deposit activity, including any explanations for delays in the deposit;
- i) the signature of the Master at the foot of each page of the record.

- 3.3.8.** 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.
- 3.3.9.** The licensee must ensure that all vessels involved in construction adhere to the best practice guidelines as set out in the Scottish Marine Wildlife Watching Code at all times.

3.4. On completion of the licensed activity

- 3.4.1.** The licensee must notify the licensing authority of the date of completion of all licensed activities relating to the licence. Separate notifications are required at the times of commencement and completion.
- 3.4.2.** 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.
- 1.1.1.** The licensee must, within 28 days of completion of the licensable marine activity, supply Source Data Receipt, The Hydrographic Office, Admiralty Way, Taunton, Somerset, TA1 2DN (email: sdr@ukho.gov.uk; tel.: 01823 337900) with the revised water depths, in order that all necessary amendments to nautical publications are made. The licensee must notify the licensing authority of the notification at the time it is made.

NOTES

1. You are deemed to have satisfied yourself that there are no barriers, legal or otherwise, to the carrying out of the licensed activities. 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 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 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:

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

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

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

Licence Number: 07069/20/0

Reference Number: 07069

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

**Global Energy Group
Nigg Energy Park
Tain
Ross-shire
IV19 1QU**

to construct, alter or improve works and to remove substances or objects from the seabed 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 **21 July 2020 until 20 July 2021**.

Signed:

Malcolm Rose

For and on behalf of the licensing authority

Date: 21 July 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” 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:

Envirocentre
8 Eagle Street
Craighall Business Park
Glasgow
G4 9XA

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. Location of the works (hereinafter referred to as “the site”):

Nigg East Quay, within the area bounded by joining the points:

57° 41.693' N	004° 01.478' W
57° 41.695' N	004° 01.323' W
57° 41.544' N	004° 01.316' W
57° 41.542' N	004° 01.467' W

As shown in Annex Two.

2.4. Description of the works:

Construction of a new quay adjacent to a new laydown area.

As described in application dated 14 June 2019, and correspondence submitted in support of the application.

2.5. Quantity of substances or objectives for removal and nature and indicative quantity of materials used below Mean High Water Springs level in the construction, alteration or improvement of the works described in Part 2.4 of the licence:

Materials to be used in construction

3,800 tonnes of steel
32 tonnes of timber
4,780 tonnes of concrete
4,015 tonnes of silt
19,668 tonnes of sand
3,319 tonnes of gravel
1,230 tonnes of cathodic protection anodes (Al-Zn-In)

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 works for which this licence has been granted, the activity which is licensed and the terms of the conditions attached to this licence.

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.

3.1.3. Force Majeure

If by any reason of force majeure any substance or object is deposited other than at the site which is described in this licence, then the licensee must notify the licensing authority of the full details of the circumstances of the deposit within 48 hours of the incident occurring (failing which as soon as reasonably practicable after that period of 48 hours has elapsed). Force majeure may be deemed to apply when, due to stress of weather or any other cause, the master of a vessel, vehicle or marine structure determines that it is necessary to deposit the substance or object other than at the specified site because the safety of human life or, as the case may be, the vessel, vehicle or marine structure is threatened. 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.

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 works are removed from the site of the works for disposal at an approved location above the tidal level of Mean High Water Springs.

The licensee must ensure that all substances and materials used during the execution of the works 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 works.

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 works; and
- d) any onshore premises directly associated with the licensed activities.

3.1.8. Inspection of the works

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

3.1.9. Safety of Navigation

The licensee must remove the works from below the level of Mean High Water Springs, 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 works

- 3.2.1.** The licensee must notify the licensing authority of the date of commencement of all licensed activities relating to the licence. Separate notifications are required at the times of commencement and completion.
- 3.2.2.** The licensee must ensure that HM Coastguard, in this case nmoccontroller@hmcg.gov.uk, The National Maritime Operations Centre, is made aware of the works prior to commencement.
- 3.2.3.** The licensee must review where potential asset conflicts with Scottish Water exist and contact the Scottish Water Asset Impact Team (service.relocation@scottishwater.co.uk) as soon as practicable to discuss any potential issues identified.
- 3.2.4.** 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.
- 3.2.5.** An Operational Environmental Management Document (“OEMD”) must be in place prior to the commencement of works and must include mitigation and management outlined in Chapter 9: Schedule of Mitigation in the Nigg East Quay Volume 1: Environmental Impact Assessment Report dated 19 June 2019 and include a Pollution Incident Response Plan (“PIRP”).
- 3.2.6.** The licensee must prepare a Works Dialogue Protocol and share it with Ardersier Port, Aberdeen Harbour Expansion Project, and Port of Cromarty Firth.
- 3.2.7.** The licensee must submit a Construction Environmental Management Plan (“CEMP”) to the licensing authority for its written approval at least two months prior to commencement of the works, or less if agreed by the licensing authority. The CEMP must be consistent with the marine licence application and supporting documents and must contain, but not be limited to, the following:
 - a) Mitigation and management measures for the CEMP outlined in Chapter 9: Schedule of Mitigation in the Nigg East Quay Volume 1: Environmental Impact Assessment Report dated 19 June 2019.
 - b) A protocol for unknown archaeological finds.
 - c) Mitigation and management measures below Mean High Water Spring outlined in the Nigg East Quay Volume 3: Technical Appendices, Nigg Quay East Ornithology Baseline Report, dated 10 June 2019.

- d) Suitable procedures as part of the nesting bird checks if nests are found that could be disturbed by the works.
- e) Artificial bird boxes must be suitable for Common and Arctic tern.
- f) Details of times when passive acoustic monitoring will be utilised.

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.** Prior to commencement of the licensed activities, the licensee must appoint an Environmental Clerk of Works (“EnvCoW”) who will be responsible for ensuring delivery of the CEMP. The EnvCoW must be on site during licensed activities, as determined by the CEMP, and must have authority to halt activities if necessary.

3.3. During the works

- 3.3.1.** The licensee must ensure that the project is carried out in accordance with the Technical Appendix 4.1; Marine Mammal Mitigation Plan (“MMMP”) dated June 2019. In the event that the licensee wishes to update or amend any of the protocols within 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 works associated with the proposed updates or amendments to proceed prior to the granting of such approvals.
- 3.3.2.** 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.
- 3.3.3.** 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.
- 3.3.4.** The licensee must ensure that the works are maintained at all times in good repair.
- 3.3.5.** 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.
- 3.3.6.** The licensee must ensure the best method of practice is used to minimise re-suspension of sediment during the works.
- 3.3.7.** The licensee must ensure appropriate steps are taken to minimise damage to the foreshore and seabed by the works.

- 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.
- 3.3.11.** The licensee must ensure that all vessels involved in construction adhere to the best practice guidelines as set out in the Scottish Marine Wildlife Watching Code at all times.

3.4. On completion of the works

- 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 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 2021.
- 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 works 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:

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

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