

T: +44 (0)300 244 5046

E: [md.marine.licensing@gov.scot](mailto:md.marine.licensing@gov.scot)



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

Shetland Islands Council  
8 North Ness Business Park  
Lerwick  
Shetland  
ZE1 0LZ

19 December 2023

## **MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING**

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

#### **DECISION NOTICE – MARINE LICENCES TO DREDGE AND DEPOSIT SUBSTANCES OR OBJECTS AND TO CONSTRUCT, ALTER OR IMPROVE WORKS ASSOCIATED WITH THE FAIR ISLE HARBOUR IMPROVEMENTS AT FAIR ISLE HARBOUR**

##### **1. Application and description of the work**

- 1.1 On 05 June 2023, Shetland Islands Council (“the Applicant”) having its registered office at 8 North Ness Business Park, Lerwick, Shetland, ZE1 0LZ submitted to the Scottish Ministers applications under Part 4 of the Marine (Scotland) Act 2010 (“the 2010 Act”) for capital dredging, sea deposit of dredged materials and for the construction, alteration or improvements of works associated with the Applicant’s harbour development at Fair Isle Harbour (hereinafter collectively referred to as “the Works”). The applications were accompanied by an Environmental Impact Assessment Report (“EIA Report”) in accordance with The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 MW Regulations”).
- 1.2 The Works are located at Fair Isle Harbour on the Fair Isle and involve the following licensable marine activities below Mean High Water Springs (“MHWS”):
  - Capital dredging and deposit of dredged substances or objects;
  - Extension to existing breakwater;
  - Construction of new quay and linkspan; and
  - Replacement of slipway and improvements to existing pier.
- 1.3 The Works are expected to take approximately 3 years to complete, with the construction works being carried out in two phases. Phase one spans eight months

and will encompass the improvements to the existing pier and slipway structures. Phase two will take 6 months and involve the construction of the new quay and linkspan and extension to the existing breakwater. Capital dredging and sea deposit of dredged material will take place over 17 months.

#### *Capital Dredging and deposit of dredged substances or objects*

- 1.4 The Works include capital dredging and sea deposit of dredged material to facilitate the safe navigation of the new larger roll on – roll off vessel and the construction of the new quay. The dredging to facilitate the safe navigation will increase the water depth to -4.5 metres (“m”) chart datum (“C.D.”). Dredging to facilitate the new quay construction will increase the depth to -4 m C.D. The maximum dredge volume is approximately 2,730 cubic metres (“m<sup>3</sup>”) or 5,340 wet tonnes. Of this 1280 m<sup>3</sup> is anticipated to be soft sediments with the remaining 1,450 m<sup>3</sup> rock. A backhoe dredger or cutter suction dredger will be used to remove the sediment material with a barge mounted excavator used for the removal of the rock. Dredged material will be loaded onto a barge and deposited at the Scalloway designated sea deposit site (FI095), which is the closest open deposit site to the Works. The material will be deposited from the barge using the bottom discharge method.

#### *Extension to existing breakwater*

- 1.5 The existing Fair Isle Harbour breakwater is approximately 80 m in length and 25 m in width. To provide greater shelter for the new quay and linkspan, the breakwater will be extended in height and in area. Approximately 3000 m<sup>3</sup> of rock armour will be used for the extension and the rock will be delivered to site by vessel.

#### *Construction of new quay and linkspan*

- 1.6 A new quay will be constructed between the northern end of the existing quay and breakwater. The new quay will include a new linkspan to facilitate the berthing of the new vessel. The new quay construction consists of approximately 1,070 m<sup>3</sup> of prefabricated concrete caisson units along with 9,600 m<sup>3</sup> of aggregate for backfilling the new quay. The aggregate will include site won rock obtained during terrestrial works. Any additional aggregate required and the prefabricated concrete structures will be delivered to site by vessel. The height of the new quay will be +3.4 m C.D.
- 1.7 Once the required depth has been dredged to allow construction of the quay to commence, concrete foundations will be cast in-situ with steel dowels installed into the bedrock to create a level footing for the precast caisson units to be installed on top of. A concrete mattress will be installed on the breakwater behind the caisson units to prevent any fine aggregate backfill being lost into the breakwater. The aggregate, which may include site won rock, will be used to infill the area between the breakwater/land and caisson units. Precast concrete deck panels will be installed on top of the caisson units and block paving installed on top of the backfill aggregate.
- 1.8 A linkspan is to be installed on the new quay to improve resilience of the ferry service and improve safety for both passenger access and goods handling. The

linkspan to be installed is 14 m in length and 5.5 m wide at the nose. The steel linkspan deck will be fabricated off site and delivered to site by vessel. For the construction of the linkspan support structure, concrete foundations will be cast in-situ with steel dowels installed into the bedrock to create a level footing for the precast caisson units to be installed on top of. Jacking frame cylinders will be installed on top of the support structures along with an A-frame to support spragging of the linkspan. An access walkway will be constructed over the sea from the new quay to the southerly linkspan support structure.

### *Replacement of slipway and improvements to existing pier*

- 1.9 The existing steel slipway will be replaced to facilitate a new, larger vessel. The existing slipway rails and concrete cross members will be removed with the footings remaining in place. New steel beams will be installed on top of 18 new concrete bases anchored into the seabed using steel dowels. The slipway rail will then be installed on top of the steel beams. The length of the slipway will be approximately 48 m below MHWS. It is anticipated that divers will be used for part of the construction of the slipway. Repairs will also be carried out on the existing pier structure including the replacement of fenders to accommodate the new vessel.
- 1.10 This decision notice contains the Scottish Ministers' decision to grant regulatory approval for the Works as described above, in accordance with the 2017 MW Regulations.
- 1.11 An EIA Report was also submitted to Shetland Islands Council in relation to the associated onshore, terrestrial works and for which planning permission has been applied for but not yet granted. This decision notice considers only the information relevant to the marine environment.

## **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,
  - Report to Inform Appropriate Assessment for Harbour Improvement Works at North Haven Bay, Fair Isle,
  - Historic Environment Desk Based Assessment.
- 2.2 A summary of the environmental information provided in the EIA report is given below.

### *Archaeology and Heritage*

- 2.3 To assess the impact of the Works on archaeology and heritage assets, the Applicant undertook a desk based study and a site visit. This study used a one kilometre area around the site of Works to identify designated and non-designated heritage assets. To inform the study, the Applicant used readily available historical

and archaeological records, one walkover survey and the regional archaeologist for the Shetland Amenity Trust was consulted.

- 2.4 The Applicant identified one designated built heritage asset and four scheduled monuments within the survey area as well as a number of non-designated built heritage assets and non-designated archaeological remains.
- 2.5 The direct impact on these receptors is mainly due to the visual impact and as such is not considered significant. A small hand operated crane is situated on the existing pier. The Works are expected to have a moderate permanent adverse impact on the setting of the asset during the construction phase. However the crane was removed by the Applicant a number of years ago and has not been reinstated. There were found to be no impacts to assets during the operational phase of the Works.

### Terrestrial Biodiversity

- 2.6 To assess the impact of the Works on Terrestrial Biodiversity, the Applicant determined the baseline conditions of the site. A desk based study and ecological surveys were undertaken.
- 2.7 The assessment identified potential impacts on a number of designated sites, protected species, notable habitats and species during both construction and operation of the Works. Within this chapter of the EIA Report, the Applicant considers the impact of the Works on the Fair Isle wren qualifying interest of the Fair Isle Special Protection Area ("SPA"), the consideration of the other qualifying interests of the Fair Isle SPA can be found within the Marine Ecology chapter of the EIA Report.

#### *Fair Isle Special Area of Conservation ("SAC")*

The Applicant identified the potential impacts on the vegetated sea cliffs qualifying interest of the Fair Isle SAC during the construction phase as the loss, gain or degradation of habitat. The new quay will also result in the direct permanent loss of vegetated sea cliffs qualifying interest. The overall balance of direct habitat loss verses direct habitat gain will result in a direct loss of approximately 1,257 square metres (0.1 hectares ("ha")) of the vegetated sea cliff qualifying interest of the Fair Isle SAC. This is a small loss in relation to the 129.04 ha of this habitat within the Fair Isle SAC, as a result, this impact on the SAC is insignificant. There is also the potential for the risk of pollution such as silt, dust or petrochemical degradation of the SAC habitat adjacent to the Works. This impact is short term and temporary and whilst will result in a direct negative impact, given the area to be impacted, the result on the SAC will be insignificant.

The Applicant also identified the potential of impact to the Fair Isle SAC during the operation phase of the Works. There is the potential pollution from vehicle traffic and general vessel operations (e.g. maintenance) associated with general harbour operations. As these impacts are associated with ongoing and

current harbour operations and not directly as a result of the Works, there will be no additional impact on the Fair Isle SAC.

- 2.8 The Applicant, when designing the Works embedded mitigation within the design. This included minimising direct loss of SAC habitats to facilitate expansion of the noust and breakwater, and designing the breakwater to minimise direct loss of fulmar nesting.

#### *Fair Isle SPA – Fair Isle wren*

The Applicant identified multiple potential impacts on the Fair Isle wren during the construction phase. These include the damage, destruction or disturbance of active nests within the site and the introduction of predatory mammals to the Fair Isle. The timing of the Works will mean that the noisy construction activities around the expansion of the noust, above MHWS, will occur before the breeding season, this may encourage birds to nest in alternative locations where they are less likely to be impact by the Works. There is the potential for introduction of non-native species from equipment and materials being transported to the site. This risk is significant, as such the Applicant has created a Biosecurity Management Plan (“BMP”) to mitigate these risks.

The Applicant also identified the potential of impact to the Fair Isle wren during the operation phase of the Works. There is the potential pollution from vehicle traffic and general vessel operations (e.g. maintenance) associated with general harbour operations. As these impacts are associated with ongoing and current harbour operations and not directly as a result of the Works, there will be no additional impact on the Fair Isle wren.

- 2.9 Within the EIA Report the Applicant set out mitigation for the protection of designated sites. With regards to the Fair Isle wren, measures to protect the SPA qualifying interest will be set out within a BMP, as detailed above, a Report to Inform Appropriate Assessment (“RIAA”) and a Construction Bird Mitigation Plan. The Applicant will adhere to monitoring and mitigation during the construction and subsequent operation phases as set out in section 1.3.2 of the RIAA, this will include monitoring for invasive non-native species and the presence of an Ecological Clerk of Works on site during key periods of the construction phase. The Applicant will create the Construction Bird Mitigation Plan following discussions with NatureScot. It will include details of species on site, construction activities which could impact them, a pre-construction bird survey to identify nests within and adjacent to the Works, establishment of exclusion zones where required and the ongoing monitoring of active nests to avoid damage, destruction of unlawful disturbance. The BMP and RIAA were included within the EIA Report and reviewed by NatureScot as part of the marine licence consultation process.

#### *Climate Change*

- 2.10 During construction increased greenhouse gas emissions are expected due to the vehicles, plant and equipment required for the Works, as well as generators for electricity as Fair Isle is not connected to the national grid. The final source of emissions is from the materials required and their transport to the site. Within the

design of the Works, the Applicant has implemented embedded mitigation to reduce or prevent avoidable emissions. This includes the provision of a site waste management plan, environmental management plan and using site won material in construction. The Applicant has considered the effects of the Works to be non-significant.

- 2.11 The Applicant also considered the impact of climate change on the Works, it identified climate change brought the risk of heatwaves, low rainfall and drought, heavy rainfall and flooding, rising sea levels and potential increase in storms. The Applicant during the design process has incorporated mitigation and adaptation measures to address the risks. Due to this embedded mitigation the impact of climate change on the Works will not be significant.

### Socio-economics

- 2.12 To assess the potential effects of the Works on socio-economics, the Applicant undertook a desk-based assessment which looked at two survey areas. A local study area covering the Fair Isle and a wider study area which covered the Shetland Islands. The Applicant assessed the baseline conditions, with particular attention to employment, population, health and well-being, economic development, living costs and tourism and recreation.
- 2.13 The Applicant identified that during the construction phase of the Works, 8-10 full time equivalent (“FTE”) construction jobs will be created. This represents a large proportional increase to the number of workers on Fair Isle. There is likely to be a temporary major beneficial effect on employment in Fair Isle during the construction phase.
- 2.14 During the operational phase, the Applicant identified that the existing permanent crew members of the Fair Isle ferry service, who reside on the Island, will be retained by the arrival and employment of the new vessel. The Works will therefore secure the employment of what is 19% of the Fair Isle’s working age population. It is expected that a further 4 FTE indirect jobs will be supported through the supply chain linkages and a further 1 FTE job through induced effects. Overall the Works will provide a long term, moderate beneficial effect on employment. It will also provide a beneficial effect on preventing population decline as it will increase the mobility of residents to and from the Fair Isle, making it a more attractive place to live and improving the quality of life. The new vessel will also be more accessible which is particularly important as the Fair Isle has an ageing population. It is also expected as more goods can be transported to the Fair Isle, it may also reduce the living costs of residents. Economically the Works are expected to have a long term moderate beneficial effect, with greater access to economic opportunities on the mainland. The increased reliability of the vessel should also encourage more tourists to the Fair Isle which will have a long term benefit to tourism and recreation.

### Landscape, Seascape and Visual

- 2.15 The Applicant carried out a desk-based study and fieldwork for the Landscape, Seascape and Visual Impact Assessment. The Works area is located within the Shetland National Scenic Area.

- 2.16 During the construction phase of the Works, significant adverse landscape effects would be limited to the landscape character of the site and the character of the small harbour coastal character. This is due to the proximity of the Works to these receptors, which include changes to existing harbour infrastructure and construction of new structures. This impact would not significantly alter the current conditions beyond the construction phase given the harbour would return to current operational conditions. Visually, the construction impact of the Works could potentially have a significant effect on the residents and visitors to the Fair Isle however it was assessed that those associated with the Shetland National Scenic Area would be negligible.
- 2.17 The Applicant assessed that the Works would not result in a significant effect on landscape or visual effects during the operation.

### Marine Geomorphology

- 2.18 The Applicant assessed the impact of the Works on marine geomorphology, coastal processes, marine water and sediment quality. A desk based study was carried out on hydrodynamics, waves, sediment transport and dredge plume. A benthic survey campaign, including seabed grab sampling, was also carried out to characterise the habitats and species present. Physical processes, namely waves, tides and sediment transport, constitute the primary effect pathways. Marine water and sediment quality were identified as the main receptors.
- 2.19 The Applicant assessed the impact during the construction phase on both the site of Works and the proposed dredged material deposit site. The assessment looked at potential impact pathways which included changes to suspended sediment concentrations and sediment deposition, changes to local hydrodynamics and sediment transport pathways, as well as potential changes to dissolved oxygen concentrations, levels of chemical contaminants in water and redistribution of sediment-bound contaminants from dredging and the deposit of dredged material. The changes to suspended sediment concentrations and sediment deposition are assessed to be negligible and not significant as the impact will be highly localised at the dredging location and any sediment should settle within a number of minutes. Hydrodynamics and sediment transport pathways at the dredged material deposit site were assessed as negligible and not significant due to the low volume of material and highly localised extent of the deposit. There are no significant impacts expected from the Works from impacts on water and sediment quality.
- 2.20 During the operational phase of the Works, the changes to hydrodynamics, wave and associated combined sediment transport are expected to be small in magnitude and highly localised in extent covering the area around the breakwater and berthing pocket. Due to this, the impact of the Works are assessed as negligible and not significant.

### Marine Ecology

- 2.21 The Applicant considered the impact of the Works on marine ecology receptors including benthic habitats and species, fish and shellfish, marine mammals and

sea bird and coastal waterbirds. The data collection included a series of intertidal and subtidal surveys within area of Works and the wider area, including the Scalloway designated sea deposit site and the stack in the middle of the bay which provides nesting and habitat to birds. An on-site benthic ecology survey as well as a desk based review of publicly available data supported the creation of baseline nature conservation and marine ecology features in the study area. An underwater noise study and an airborne noise modelling study were also undertaken. The Applicant also assessed impacts on designated sites.

### *Benthic Habitats and Species*

The Applicant undertook benthic ecology surveys to inform the baseline conditions. These surveys identified only low value habitats within the survey areas.

During the construction phase, the Applicant identified that the Works will result in loss of habitat and changes to benthic habitats and species. Due to the embedded mitigation within the design of the Works, the low value habitats and limited scope of the Works, these impacts were assessed not to be significant. During the operational phase of the Works, there would be direct loss of benthic habitat, possible changes to benthic habitats and species due to any requirement for maintenance dredging and indirect changes to benthic habitat as a result of changes to wave reflection. These impacts however are all considered not to be significant due to the low sensitivity of habitats to changes in wave action.

### *Fish and Shellfish*

The Applicant identified a number of Priority Marine Features (“PMF”) present in the waters along with other protected species during the benthic ecology survey. This included the PMF’s cod, skate, whiting, halibut, mackerel and sandeels. It identified potential impacts during the construction phase from change to habitat, loss of habitat and changes to water and sediment quality on the PMF’s. Due to the embedded mitigation within the design of the Works, these impacts were assessed not to be significant. No impacts were assessed as significant during the operational phase of the Works.

### *Marine Mammals*

The Applicant identified a number of marine mammal species which frequent the area in the proximity of the Works. It identified potential impacts to these from disturbance from underwater noise and vibration and airborne noise and vibration during the construction phase of the Works. However these impacts are assessed as not significant due to temporary short term nature of the Works. There are no impacts assessed to marine mammals during the operational phase.

### *Sea Bird and Coastal Waterbirds*

The Works are located within the Fair Isle SPA, which has a number of bird qualifying interests which include: Arctic skua, Arctic tern, Fair Isle wren, fulmar,



gannet, great skua, guillemot, kittiwake, puffin, razorbill, shag and breeding birds. There has been a decline in bird numbers on the Fair Isle. The decline has been attributed, amongst other reasons, to a decline in prey species, warming seas, and avian influenza. The Works are located within North Haven, which is mostly used by migratory birds temporarily stopping to rest rather than breeding birds. The only species to nest within the footprint of the Works is fulmar. These nests are found on the stack in the middle of the breakwater and adjacent cliffs. Whilst only this species was found to nest in the area, a small number of other species will use the area for foraging and/or loafing.

During the construction phase, birds could be impacted by airborne/underwater noise and visual disturbance, changes to habitat and foraging and the introduction of mammalian predators. The potential for airborne noise to impact birds has been considered by the Applicant in two areas, the terrestrial works surrounding the expansion of the noust which is subject to Shetland Island Council planning permission and the construction works around the new quay, breakwater and linkspan. The noise surrounding the new quay, breakwater and linkspan is to be considerably less than that of the expansion of the noust, as such it is likely that only the fulmar nesting on the stack and fulmar and puffin on the cliffs opposite will be directly impacted by the Works associated with the marine licence. The timing of the Works is such that the noisy activities around the expansion of the noust, above MHWS, will commence before the fulmar begin to select their nest, this should allow them to nest elsewhere. As the Works are temporary in nature and the birds have the ability to nest in other locations, the impact is likely not to be significant. Airborne noise may impact bird loafing or foraging within North Haven bay however, due to the numbers regularly observed doing so being low, the impact on these receptors would be negligible. The Applicant has identified three activities likely to produce underwater noise with the potential to disturb birds rock armour placement, dredging and vessel movement. The underwater noise assessment carried out by the Applicant concluded that the dredging and vessel movement has the highest risk of disturbance to birds and required further assessment. Arctic tern is the only species that is consistently, although only in low numbers, observed actively foraging within North Haven bay and therefore the only species to be considered as impacted. Arctic terns would be impacted during foraging where they are below the surface of the water for only a few seconds. Due to this and the small number of birds using the bay for foraging the impact of underwater noise on birds is considered as negligible. Changes to habitat for foraging during construction have been identified as a possible impact from the Works. The main risk would be from increased sediment causing a reduction in water quality which could impact the ability for birds, primarily Arctic tern, oyster catcher and ringed plover, to detect prey species. The main impact pathway would be from the dredging works. This impact would be limited in area and not expected to impact the full bay and will mainly be limited to the dredge footprint. Any increased sedimentation is likely to dissipate rapidly. Only a low number of birds currently use North Haven bay for foraging. Due to this and the abundance of prey species at other locations, the impact of changes to habitat for foraging during the construction is considered negligible. There is the potential for the introduction of mammalian predators during the construction phase of the Works. Fair Isle is free from rat, feral ferret, red fox, stoat and American mink.

The main predator to some of the bird qualifying interest of the SPA are from both domestic and feral cats and field and house mouse. The introduction of any new predator could have a severe impact on a number of species, however this is an ongoing major risk with any seabird island. The Applicant has assessed that the Works will only result in a small increase in the risk of the introduction. To mitigate this risk, the Applicant has produced a BMP which it will adhere to. With this mitigation in place the risk of incursion is considered negligible and the overall impact would be negligible.

The Applicant also identified a number of impact pathways during the operation phase of the Works. These are changes to habitat for foraging, disturbance to fulmars nesting on the stack and the introduction of mammalian predators. The Applicant assessed that the impact to habitat for foraging would result from the impact of dredging on prey species such as sandeels. They are likely to be impacted by change in water and sediment quality. However the main risk is during the dredging activities rather than an ongoing decrease in water quality or increasing sedimentation, therefore the operation impact is negligible. The design for the new quay was undertaken to minimise the loss of nesting habitat to fulmars nesting on the stack. However, the stack will no longer be isolated and people and vehicles will be in close proximity to it. The Applicant will erect a fence on the new quay to reduce the potential for any disturbance. Given the abundance of alternative habitat and low number of the population to be impacted it will result in a minor adverse impact on the species. The Applicant assessed there is the potential for the introduction of mammalian predators to the Fair Isle during the operational phase. As the impact pathway is via the ferry, this is an ongoing risk which is already a risk with the current ferry. The Applicant will adopt the procedures within the BMP to mitigate against this risk.

- 2.22 The Applicant has proposed a range of good practise mitigation which are built into the Works and will be adopted by the successful contractor to minimise the potential for disturbance or displacement to sea bird and coastal waterbirds from the Works. The mitigation will be secured as conditions on any marine licence.

### Other Considerations

- 2.23 The Applicant considered the impact of the Works on the risk of major accidents and disasters as well as the impact on harbour users within the other considerations chapter of the EIA Report.
- 2.24 The Applicant assessed that the receptors that could be affected during construction by a major accident and disaster as population and human health, designated sites, scarce habitats, particular species, marine environment, groundwater source, built environment and soil or sediment.
- 2.25 To mitigate against any impact, the Applicant has included a number of embedded mitigation measures within the first iteration environmental management plan. It has further advised that the second iteration will include a comprehensive package of pollution prevention measures to avoid accidental pollution events during the construction phase.

- 2.26 To assess the impact on other users of North Haven Harbour, the Applicant identified the baseline conditions. This included the details of the harbour, the operator as well as the number and type of visiting vessels. The Applicant identified that there will be a potential increase in hazards to navigation during the construction phase of the works. The ferry operations will continue throughout the construction phase, therefore it is essential there is de-confliction between ferry, other users and the vessels involved in the construction activities. De-confliction may be needed if the barge is working on the breakwater and dredging vessel simultaneously and also if rock armouring and construction of the new quay coincide. The Applicant will issue regular notices to mariners throughout the duration of the Works to harbour users to make them aware of availability of berths and segregation from construction works. With this mitigation the impact of the Works will be insignificant.
- 2.27 During the operational phase of the Works, it is not anticipated that the changes to the harbour layout and introduction of a new vessel will impact other users using the harbour or the safe navigation.

### 3. Consultation

- 3.1 In accordance with the 2017 MW Regulations advertisement of the marine licence application and EIA Report was made in the Edinburgh Gazette, local press and the Applicant's website. Notices were placed in the public domain and the opportunity given for those wishing to make representations to do so.
- 3.2 The dates for the consultation exercises are given below. The regulatory requirements regarding consultation and public engagement have been met and the responses received taken into consideration.

Document	Date received	Consultation Period	Publication
EIA Report & Appendices	15 August 2023	01 September 2023 – 01 October 2023	Marine Scotland Information Website (23 August 2023)
Marine licence applications & supporting documentation			Edinburgh Gazette (01 September 2023) Shetland Times (01 September 2023)

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

### 4. Summary of statutory consultee responses

- 4.1 Historic Environment Scotland (“HES”) responded on 29 September stating that it had no objection to the Works and had no comments to make on the EIA Report. It advised that it was investigating the removal of the scheduled monument, North Haven Crane which was previously located on site. It advised that the surface of the pier into which the crane was set forms part of the existing scheduling and that this designation will be reviewed once investigations are finalised. However, HES advised that the Works are unlikely to affect either the site or setting of the crane.
- 4.2 NatureScot provided a response on 26 September 2023 and provided clarification on its advice on 12 December 2023. It advised that while the Works will have adverse landscape effects during the construction phase, the harbour will be reinstated to similar conditions as the baseline so there will be no significant long-term landscape impacts. As such, the Works will not have an adverse effect on the integrity of the Shetland National Scenic Area or the objectives of the designation.

NatureScot further advised that the impact on the Fair Isle Research and Demonstration Marine Protected Area during the construction and operational phases are negligible and non-significant. It also advised that adherence to the BMP will minimise the risks of introducing invasive marine species on vessel hulls and that the Works will not significantly compromise the Fair Isle Research and Demonstration Marine Protected Area objectives.

With regard to the Fair Isle SPA, NatureScot advised that the Works are likely to have a significant effect on the qualifying interest of the Fair Isle SPA. It identified that during the construction phase, there is likely to be disturbance to breeding birds from noise. However it advised that as the noise will be from the expansion of the noust, above MHWS, and will start prior to nesting season, this will give the birds the opportunity to habituate or avoid the area. With the mitigation contained within the RIAA and secured through a marine licence condition, NatureScot advised that there would be no adverse impact on the site integrity of the Fair Isle SPA from noise. NatureScot noted that an Ecological Clerk of Works will be present on site and liaise with Fair Isle Bird Observatory warden to ensure the arctic tern colony at Bu Ness will not be affected, and to minimise any impacts on other birds. Therefore, NatureScot advised that the disturbance will be temporary and will not affect the breeding population to a significant extend.

NatureScot advised of the loss of breeding habitat from the Works. The total impacted number of fulmars, represents 0.02% of the breeding population. As there is the potential for these birds to relocate to other suitable habitat within the SPA, this impact is considered negligible. The terrestrial construction of a fence on the new quay will also limit the disturbance to fulmars during the operational phase of the Works.

NatureScot advised of the potential for the introduction of predatory mammals to the Fair Isle. However, it advised that the adherence to the BMP will minimise these risks.

NatureScot advised of the potential for changes to water and sediment quality during the construction and operational phases of the Works. However, it advised that these are predicted to be negligible and not significant.

In conclusion, considering these impacts, NatureScot advised that the Works will not have an adverse impact on the integrity of the Fair Isle SPA.

4.3 Scottish Environment Protection Agency (“SEPA”) provided a response on 05 September 2023 referring Scottish Ministers to the SEPA standing advice for Marine Scotland consultations. This includes advice in relation to pollution prevention and advice for the disposal of dredged material.

4.4 Shetland Islands Council and Shetland Planning Partnership (“SPP”) provided a response on 25 September 2023. SPP advised that the Works are exempt from the requirement for a works licence under the Zetland Council Act 1974, as the Shetland Islands Council are the Applicant. A corresponding EIA planning application 2023/142/PPF is currently pending consideration before the planning authority for the works within their remit. SPP welcomed the inclusion of the biosecurity management plan and a waste management plan, which conforms to the requirements set out in the Shetland Islands Regional Marine Plan.

## **5. Summary of non-statutory consultee responses**

5.1 Scottish Fishermen’s Federation responded on 01 October 2023 stating it would file a nil return to the consultation.

5.2 Scottish Water responded on 04 September 2023 stating it had no objection to the Works. Scottish Water advised that the Applicant should be aware that should the Works require service from Scottish Water, for example, access to the water treatment works and/or combined sewer system, the Applicant should contact Scottish Water at the earliest opportunity to discuss making a connection request.

5.3 Royal Yachting Association Scotland responded on 04 September 2023 stating it had no objection to the Works.

5.4 Northern Lighthouse Board (“NLB”) provided a response on 25 September 2023 stating that it had no objection to the Works. NLB recommended that a number of standard conditions be included within any marine licence and requested engagement with the Applicant regarding any temporary and/or permanent Aids to Navigation which might be required during the construction phase and on completion of the project.

5.5 Maritime and Coastguard Agency (“MCA”) provided a response on 28 September 2023 stating that it has no objections to the Works provided that all maritime safety legislation is adhered to. The MCA advised that as the Works are within the limits of a Statutory Harbour Authority (“SHA”), namely North Haven, Shetland Islands Council, the SHA is responsible for the safety of navigation within their waters. The MCA further provided some advice regarding storage of materials, and that the Applicant should see approval/agreement with the SHA for the Works. Additionally the UK Hydrographic office should be informed of any change data including engineer drawings, hydrographic surveys and details of new or changed aids to navigation.

## **6. Advice from 3rd Parties**

6.1 Marine Directorate – Science, Evidence, Data and Digital (“MD-SEDD”) responded on 28 September 2023 in relation to the social and economic impacts. It advised it was pleased to note the range of sectors which were considered in the baseline conditions of the socio-economic chapter of the EIA Report. This identified a range of potential beneficial effects of the Works with no negative effects discovered. MD-SEDD advised that the Applicant should keep communities informed about the Works and set up mechanisms for community feedback about the project.

## **7. Representations from other organisations and members of the public**

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

## **8. The Scottish Ministers’ Considerations and Main Determinative Issues**

### Determination of Marine Licence Applications

8.1 In determining the applications for a marine licences (including the terms on which they are granted and what conditions, if any, are to be attached to them) the Scottish Ministers have had regard to:

- the need to protect the environment, protect human health, prevent interference with legitimate uses of the sea and such other matters as the Scottish Ministers consider relevant;
- the effects of any use intended to be made of the works when constructed; and
- representations received from persons with an interest in the outcome of the applications.

### Environmental Matters

8.2 The Scottish Ministers are satisfied that an EIA 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.

8.3 The Scottish Ministers have considered fully and carefully the applications, supporting documentation and all relevant responses from consultees and third party advice.

8.4 The Scottish Ministers, having taken account of all relevant information and regulatory requirements, consider that the main determining issues are:

- the extent to which the Works accord with and are supported by the Scottish Government policy and the terms of Scotland’s National Marine Plan (“NMP”); and

- the main effects of the Works on protecting the environment and human health and preventing interference with the legitimate use of the sea are in summary impacts on:
  - Birds, which include the impact on a European site.

### Policy Context

8.5 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 NMP covering inshore waters is a requirement of the 2010 Act. The NMP lays out the Scottish Ministers’ policies for the sustainable development of Scotland’s seas and provides General Planning Principles, and sector specific objectives and policies, specifically to develop offshore wind and marine renewable energy. The Works have been considered in relation to the UK Marine Policy Statement (“UKMPS”) which looks to achieve a clean, healthy, safe productive and biologically diverse oceans and seas. The Works have also been considered in relation to the policies of the Shetland Islands Marine Spatial Plan (“SIMSP”) which was adopted as supplementary to the Shetland Local Development Plan. The relevant policies were considered, with the Works being deemed to meet the requirements of the NMP, UKMPS and SIMSP and to be contributing towards achieving relevant sector specific policies and objectives.

### 8.6 Impacts of the Works on the environment

#### *Impacts on European sites and Birds*

8.7 The Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Habitats Regulations”) require the Scottish Ministers to consider whether the Works would be likely to have a significant effect on a European site (either alone or in combination with other plans or projects), as defined in the 1994 Habitat Regulations.

8.8 In line with the view of NatureScot that the Works are likely to have a significant effect on the qualifying interests of the Fair Isle SPA the Scottish Ministers, as the “competent authority”, were required to carry out an Appropriate Assessment (“AA”).

8.9 Having regard to the representations made by NatureScot, it can be ascertained that the Works will not adversely affect the integrity of the Fair Isle SPA providing the Applicant adheres to the conditions set out in the AA and the marine licences. Further considering the reasons for which the site was designated and the associated conservation objectives, the Scottish Ministers are content that the Works will not on their own or in combination with other projects, adversely affect the integrity of the Fair Isle SPA.

8.10 A full explanation of the issues and justification for decisions regarding site integrity is provided in the AA found here: [Marine Scotland - Aberdeen.dot](#)

8.11 The Scottish Ministers consider that, having taken into account the information provided by the Applicant, the representations of the consultative bodies, and

having regard to the conditions attached, there are no outstanding concerns in relation to the impact of the Works on birds or European sites which would require a marine licence to be withheld.

## **9. The Scottish Ministers' Determination and Reasoned Conclusion**

- 9.1 The Scottish Ministers are satisfied that an EIA has been carried out, and that the applicable procedures regarding publicity and consultation in respect of the applications have been followed.
- 9.2 The Scottish Ministers have weighed the impacts of the Works, and the degree to which these can be mitigated. The Ministers have undertaken this exercise in the context of national and local policies.
- 9.3 The Scottish Ministers have considered the extent to which the Works accord with and are supported by Scottish Government policy, the terms of the NMP and local development plans and the environmental impacts of the Works. In particular, the Scottish Ministers have considered the impacts on various species of birds.
- 9.4 The Scottish Ministers are satisfied that the environmental issues associated with the Works have been appropriately addressed by way of the design of the Works and mitigation. In particular, the Scottish Ministers are satisfied that the Works will not adversely affect the integrity of the Fair Isle SPA.
- 9.5 In their consideration of the environmental impacts of the Works, the Scottish Ministers have identified conditions to be attached to the licences to reduce environmental impacts. These include development and adherence to the mitigation measures outlined in the Schedule of Mitigation in the Applicant's EIA Report and BMP and adherence to the mitigation listed in section 1.3.2 of the RIAA. Also the creation and adherence to a Construction Bird Monitoring Plan.
- 9.6 The Scottish Ministers are satisfied, having regard to current knowledge and methods of assessment, that this reasoned conclusion, as required under the 2017 MW Regulations, is valid.
- 9.7 The Scottish Ministers are satisfied that regard has been given to protecting the environment, protecting human health, and preventing interference with legitimate uses of the sea, as well as other factors considered to be relevant.
- 9.8 The Scottish Ministers grant marine licences subject to conditions under Part 4 of the Marine (Scotland) Act 2010 for the construction, dredging and deposit of dredged material associated with the Fair Isle Harbour Development. The marine licences are attached at Appendix 2.
- 9.9 The embedded mitigation and any additional mitigation identified in the EIA Report has been incorporated into the conditions of the marine licences.
- 9.10 In accordance with the 2017 MW Regulations, the Applicant must publicise notice of this determination and how a copy of this decision letter may be inspected on the application website, in the Edinburgh Gazette and a newspaper circulating in



the locality to which the applications relate. The Applicant must provide copies of the public notices to the Scottish Ministers.

- 9.11 Copies of this decision notice have been sent to the bodies consulted on the applications including the relevant planning authority, NatureScot, SEPA and HES. This decision notice has also been published on the [Marine Scotland Information website](#).
- 9.12 The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for consent. The rules relating to the judicial review process can be found on the website of the Scottish Courts – <http://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/court-of-session-rules>. Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

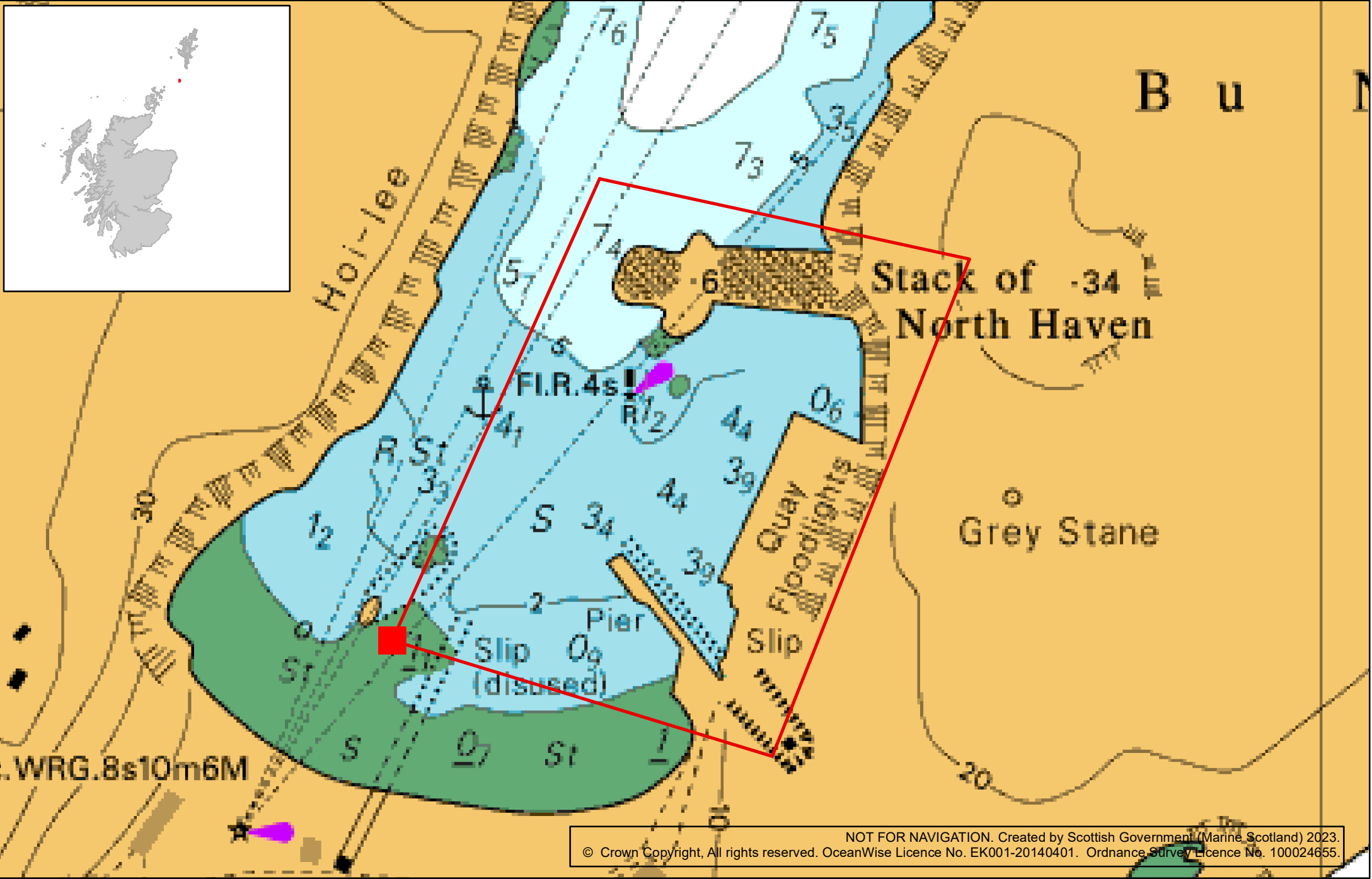
**Yours sincerely,**

Anni Mäkelä

Marine Licensing Group Leader, Marine Directorate - Licensing Operations Team

A member of the staff of the Scottish Ministers

# Appendix 1 - Location of the Works



# Appendix 2 - Marine Licences

**MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING**

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

Licence Number: **MS-00010439**

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

**Shetland Islands Council**  
**8 North Ness Business Park**  
**Lerwick**  
**Shetland**  
**ZE1 0LZ**

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

The licence is valid from **01 February, 2024** until **30 April, 2028**

Signed: .....

Kirsten Watson

For and on behalf of the Licensing Authority

Date of issue: 19 December, 2023

## **1. PART 1 - GENERAL**

### **1.1 Interpretation**

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

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

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

### **1.2 Contacts**

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

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

### **1.3 Other authorisations and consents**

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

### **1.4 Variation, suspension, revocation and transfer**

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

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

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

### **1.5 Breach of requirement for, or conditions of, licence**

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

### **1.6 Defences: actions taken in an emergency**

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

### **1.7 Offences relating to information**

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

### **1.8 Appeals**

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

## **2. PART 2 – PARTICULARS**

### **2.1 Agent**

Stantec  
 Capital Square  
 3rd Floor  
 58 Morrison Street  
 Edinburgh  
 EH3 8BP

### **2.2 Location of the Licensed Activity**

North Haven, Fair Isle, Shetland, within the area bound by joining the points:

Harbour Improvement Works  
 59° 32.268' N 01° 36.229' W  
 59° 32.275' N 01° 36.224' W  
 59° 32.291' N 01° 36.251' W  
 59° 32.297' N 01° 36.250' W  
 59° 32.303' N 01° 36.286' W  
 59° 32.322' N 01° 36.235' W  
 59° 32.340' N 01° 36.246' W  
 59° 32.348' N 01° 36.221' W  
 59° 32.346' N 01° 36.172' W  
 59° 32.334' N 01° 36.166' W  
 59° 32.312' N 01° 36.156' W  
 59° 32.317' N 01° 36.187' W  
 59° 32.287' N 01° 36.212' W  
 59° 32.282' N 01° 36.208' W  
 59° 32.270' N 01° 36.212' W

As shown in Annex One.

### **2.3 Description of the Licensed Activity**

Construction, alteration and improvement of harbour works

As described in the application dated 05 June, 2023 and correspondence submitted in support of the application.

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

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

Materials used to construct permanent works:

Marine Laboratory, 375 Victoria Road,  
 Aberdeen AB11 9DB  
[www.scotland.gov.uk/marinescotland](http://www.scotland.gov.uk/marinescotland)





Steel 24 tonnes  
Concrete 6031 tonnes  
Plastic 1850 square metres  
Gravel 17,615 tonnes  
Boulders 3000 cubic metres  
2 No. Timber posts  
50 No. Fenders

## 2.5 Contractor and Vessel Details

### **3. PART 3 – CONDITIONS**

#### **3.1 General Conditions**

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

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

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

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

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

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

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

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

3.1.9 The Licensee must remove the materials and substances from below the level of Mean High Water Springs, or make such alterations as advised by the Licensing Authority, within one month of notice being given by the Licensing Authority at any time it is considered necessary or advisable for the safety of navigation, and not replaced without further approval by the Licensing Authority. The Licensee shall be liable for any expense incurred.

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

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

- a) the failure to mark and light the works as required by the licence;
  - b) the maintenance of the works; or
  - c) the drifting or wreck of the works, to include the broadcast of navigational warnings
- then the Licensee is liable for any expenses incurred in securing such assistance.

3.1.12 In the event of the Licensed Activity being discontinued the materials used or substances under the authority of the licence must be removed to the satisfaction of the Licensing Authority.

3.1.13 The Licensee must ensure that the works/deposited objects are maintained at all times in good repair.

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

3.1.15 The Licensee must adhere to the mitigation listed in section 1.3.2 of the Report to Inform Appropriate Assessment submitted to the Licensing Authority on 15 August 2023. In the event that the Licensee wishes to update

or amend any of the mitigation measures in the Report to Inform Appropriate Assessment, the Licensee must submit, in writing, details of proposed updates or amendments to the Licensing Authority for its 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.

3.1.16 The Licensee must adhere to the Biosecurity Management Plan submitted to the Licensing Authority on 15 August 2023. In the event that the Licensee wishes to update or amend the Biosecurity Management Plan, the Licensee must submit, in writing, details of proposed updates or amendments to the Licensing Authority for its 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.

3.1.17 The Licensee must prepare a Construction Bird Mitigation Plan prior to Commencement of the Licensed Activity and adhere to it during at all times. The Licensee must provide the Licensing Authority with written confirmation that NatureScot is content with the proposed Construction Bird Mitigation Plan prior to the implementation.

3.1.18 The Licensee must adhere to the Schedule of Mitigation and Monitoring listed in section 16 of the Fair Isle Harbour Improvement Works, Environmental Statement, Volume 1: Main Report, submitted to the Licensing Authority on 15 August 2023. In the event that the Licensee wishes to update or amend the Schedule of Mitigation and Monitoring, the Licensee must submit, in writing, details of proposed updates or amendments to the Licensing Authority for its 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.

3.1.19 The Licensee must adhere to the Site Waste Management Plan submitted to the Licensing Authority on 15 August 2023. In the event that the Licensee wishes to update or amend the Site Waste Management Plan, the Licensee must submit, in writing, details of proposed updates or amendments to the Licensing Authority for its 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.

### **3.2 Prior to the commencement of the Licensed Activity**

3.2.1 The Licensee must provide the name and function of any agent, contractor or sub-contractor appointed to undertake the Licensed Activities, as soon as is reasonably practicable prior to the Licensed Activities commencing.

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

3.2.3 The Licensee must contact the local statutory harbour authority, in this case Shetland Islands Council, prior to Commencement of the Licensed Activity to discuss the requirements for navigational warnings and a works licence.

### **3.3 During the Licensed Activity**

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

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

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

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

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

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

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

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

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

### **3.4 Upon Completion of the Licensed Activity**

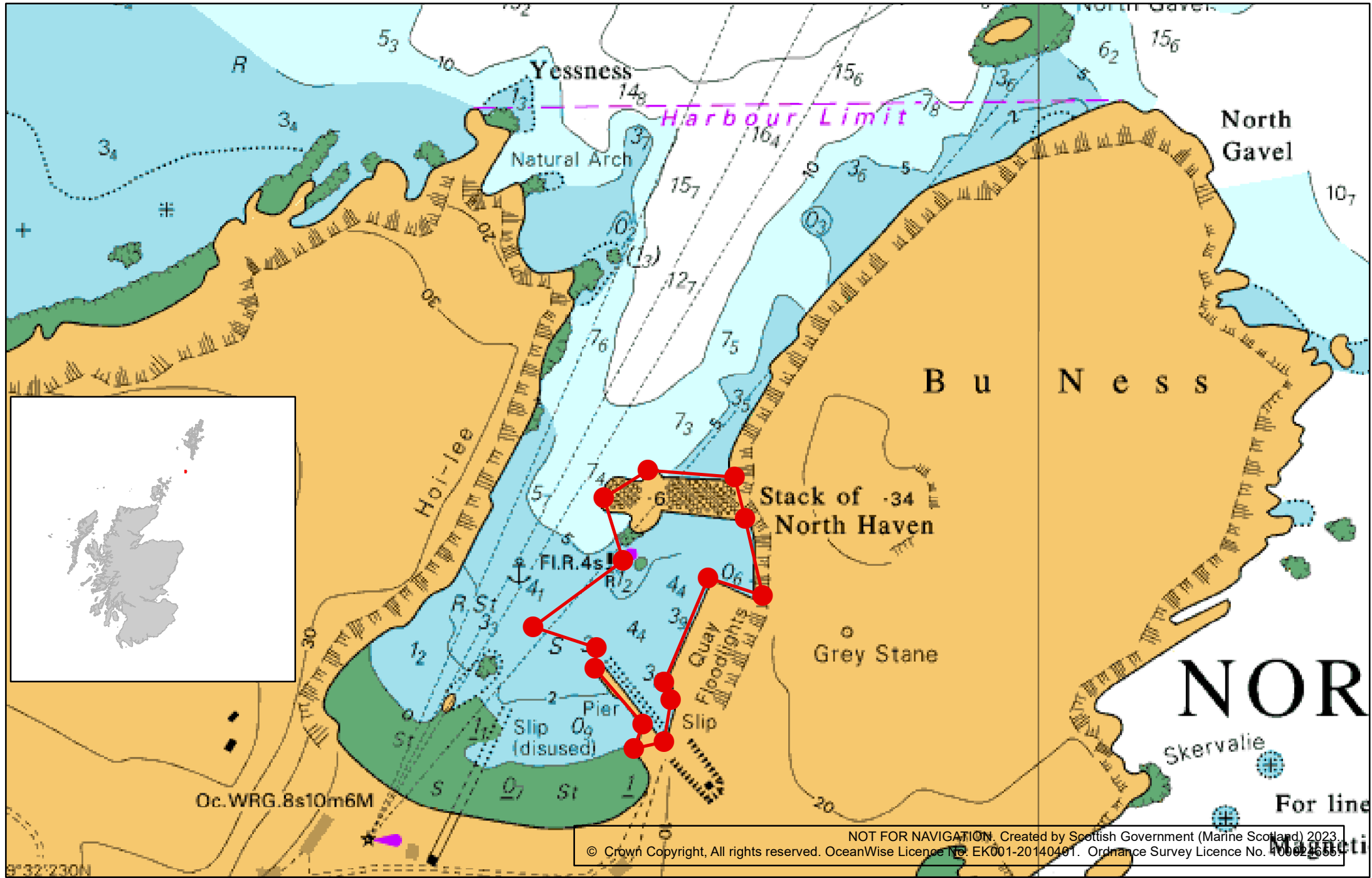
3.4.1 The Licensee must submit a written report regarding the materials used during the works to the Licensing Authority. The written report must be submitted on completion of the works and on the forms provided by the Licensing Authority no later than 31 October 2029.

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

## **NOTES**

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

Annex One to MS-00010439  
Chart showing location of Licensed Activity



**MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING**

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

Licence Number: **MS-00010529**

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

**Shetland Islands Council**  
**8 North Ness Business Park**  
**Lerwick**  
**Shetland**  
**ZE1 0LZ**

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

The licence is valid from **01 May, 2024** until **30 April, 2027**

Signed: .....

Kirsten Watson

For and on behalf of the Licensing Authority

Date of issue: 19 December, 2023

## **1. PART 1 - GENERAL**

### **1.1 Interpretation**

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

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

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

### **1.2 Contacts**

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

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

### **1.3 Other authorisations and consents**

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

### **1.4 Variation, suspension, revocation and transfer**

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

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

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

### **1.5 Breach of requirement for, or conditions of, licence**



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

### **1.6 Defences: actions taken in an emergency**

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

### **1.7 Offences relating to information**

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

### **1.8 Appeals**

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

## **2. PART 2 – PARTICULARS**

### **2.1 Agent**

Stantec  
 Capital Square  
 3rd Floor  
 58 Morrison Street  
 Edinburgh  
 EH3 8BP

### **2.2 Location of the Licensed Activity**

#### 2.2.1 Location of production of the dredge material

New Haven, Fair Isle, Shetland Dredge, within the area bound by joining the points:

##### Dredge Area A

59° 32.302' N 01° 36.282' W  
 59° 32.303' N 01° 36.282' W  
 59° 32.304' N 01° 36.279' W  
 59° 32.304' N 01° 36.275' W  
 59° 32.303' N 01° 36.271' W  
 59° 32.304' N 01° 36.267' W  
 59° 32.305' N 01° 36.263' W  
 59° 32.305' N 01° 36.260' W  
 59° 32.303' N 01° 36.252' W  
 59° 32.302' N 01° 36.250' W  
 59° 32.300' N 01° 36.245' W  
 59° 32.292' N 01° 36.252' W  
 59° 32.291' N 01° 36.261' W  
 59° 32.298' N 01° 36.290' W

##### Dredge Area B

59° 32.307' N 01° 36.218' W  
 59° 32.307' N 01° 36.222' W  
 59° 32.308' N 01° 36.226' W  
 59° 32.311' N 01° 36.237' W  
 59° 32.314' N 01° 36.239' W  
 59° 32.315' N 01° 36.238' W  
 59° 32.318' N 01° 36.239' W  
 59° 32.318' N 01° 36.240' W  
 59° 32.318' N 01° 36.242' W  
 59° 32.321' N 01° 36.248' W  
 59° 32.322' N 01° 36.247' W  
 59° 32.321' N 01° 36.236' W  
 59° 32.325' N 01° 36.238' W

59° 32.331' N 01° 36.181' W  
59° 32.319' N 01° 36.176' W  
59° 32.315' N 01° 36.179' W  
59° 32.316' N 01° 36.185' W  
59° 32.320' N 01° 36.183' W  
59° 32.318' N 01° 36.193' W  
59° 32.316' N 01° 36.192' W  
59° 32.306' N 01° 36.207' W

As shown in Annex One

#### 2.2.2 Location of deposit of the substances or objects

SCALLOWAY authorised sea deposit site FI095 within a circle centred at 60° 6.900' N 1° 21.100' W, with a radius of 0.05 nautical miles.

### 2.3 Description of the Licensed Activity

Capital dredging and deposit of dredged substances and objects.

As described in the application dated 14 August, 2023 and correspondence submitted in support of the application.

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

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

5,340 Wet tonnes of dredged substances or objects may be deposited between 01 May 2024 and 30 April 2027.

### 2.5 Contractor and Vessel Details

As shown in Annex Two

### **3. PART 3 – CONDITIONS**

#### **3.1 General Conditions**

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

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

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

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

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

3.1.6 The Licensee must deposit the substances or objects described in Part 2 of the marine licence in the following authorised sea deposit area(s): Scalloway FI095: Up to a maximum quantity of 5,340 Wet Tonnes may be deposited during the period of validity of the licence, within a circle centred at 60° 6.900' N 001° 21.100' W with a radius of 0.05 nautical miles.

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

3.1.8 The Licensee must adhere to the mitigation listed in section 1.3.2 of the Report to Inform Appropriate Assessment submitted to the Licensing Authority on 15 August 2023. In the event that the Licensee wishes to update or amend any of the mitigation measures in the Report to Inform Appropriate Assessment, the Licensee must submit, in writing, details of proposed updates or amendments to the Licensing Authority for its 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.

3.1.9 The Licensee must adhere to the Biosecurity Management Plan submitted to the Licensing Authority on 15 August 2023. In the event that the Licensee wishes to update or amend the Biosecurity Management Plan, the Licensee must submit, in writing, details of proposed updates or amendments to the Licensing Authority for its 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.

3.1.10 The Licensee must prepare a Construction Bird Mitigation Plan prior to Commencement of the Licensed Activity and adhere to it during at all times. The Licensee must provide the Licensing Authority with written confirmation that NatureScot is content with the proposed Construction Bird Mitigation Plan prior to the implementation.

3.1.11 The Licensee must adhere to the Schedule of Mitigation and Monitoring listed in section 16 of the Fair Isle Harbour Improvement Works, Environmental Statement, Volume 1: Main Report, submitted to the Licensing Authority

on 15 August 2023. In the event that the Licensee wishes to update or amend the Schedule of Mitigation and Monitoring, the Licensee must submit, in writing, details of proposed updates or amendments to the Licensing Authority for its 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.

3.1.12 The Licensee must adhere to the Site Waste Management Plan submitted to the Licensing Authority on 15 August 2023. In the event that the Licensee wishes to update or amend the Site Waste Management Plan, the Licensee must submit, in writing, details of proposed updates or amendments to the Licensing Authority for its 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.

### 3.2 Prior to the commencement of the Licensed Activity

3.2.1 The Licensee must provide the name and function of any agent, contractor or sub-contractor appointed to undertake the Licensed Activities, as soon as is reasonably practicable prior to the Licensed Activities commencing.

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

3.2.3 The Licensee must contact the local statutory harbour authority, in this case Shetland Islands Council, prior to Commencement of the Licensed Activity to discuss the requirements for navigational warnings and a works licence.

### 3.3 During the Licensed Activity

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

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

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

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

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

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

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

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

### 3.4 Upon Completion of the Licensed Activity

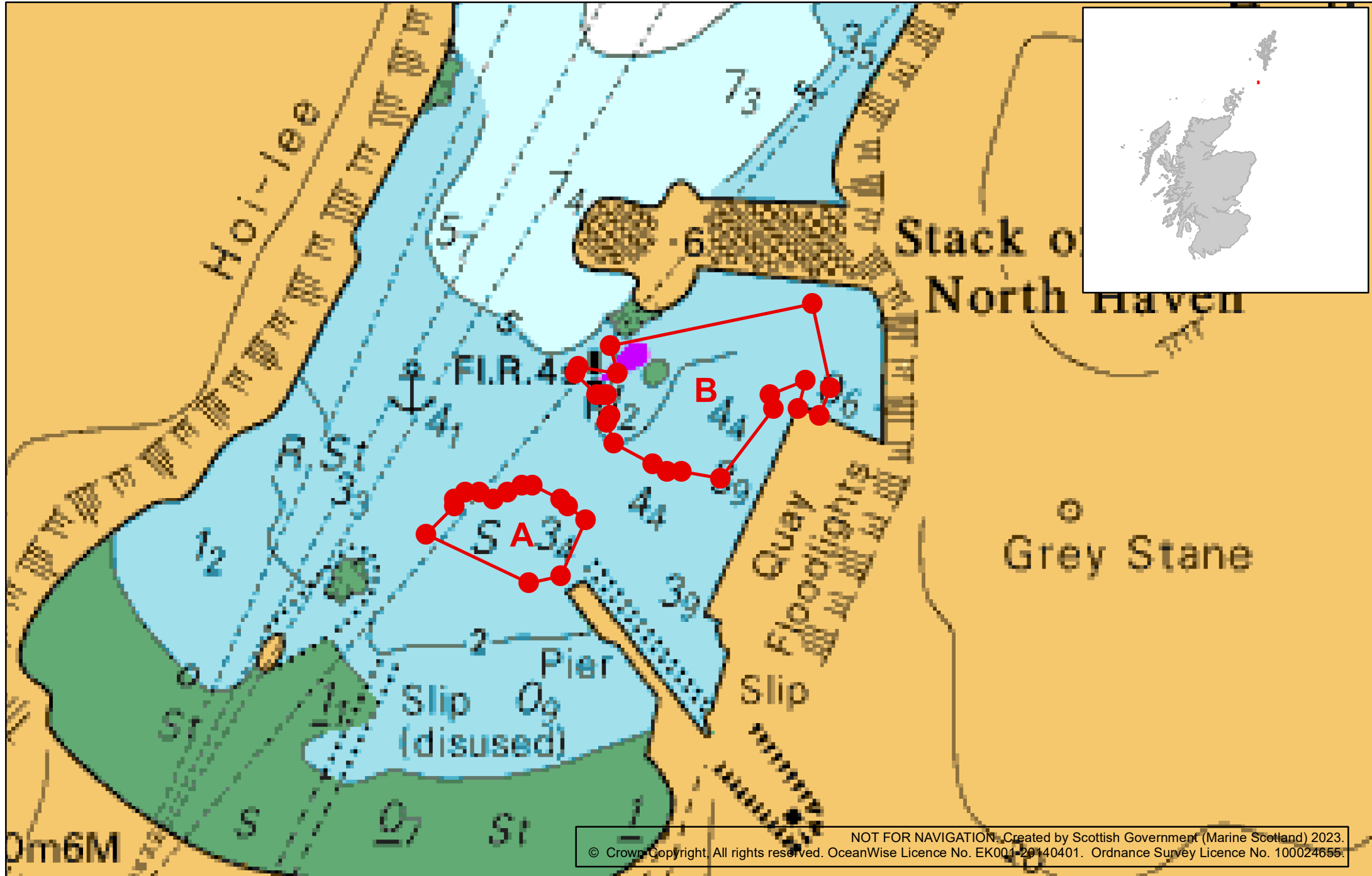
3.4.1 The Licensee must submit written reports to the Licensing Authority stating the nature and total quantity, in wet tonnes, of all substances or objects deposited under authority of the licence. The written reports must be submitted to the Licensing Authority annually and on the forms provided by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

## **NOTES**

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

Annex One to MS-00010529

Chart showing the location of production of the substances or objects to be deposited under the authority of the Licence





## ANNEX TWO

Vessels and contractors authorised to be used for deposit of dredged substances and objects at licensed **Shetland Islands Council** locations.

Licence Number:

MS-00010529

Expiry Date:

30 April 2027

Contractor:

Vessels Name

IMO

Flag

TO BE CONFIRMED

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

Signed: .....

Anni Makela

For and on behalf of the licensing authority

Date: 19 December 2023