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MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

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

Licence Number: 06860/19/0

Reference Number: 06860

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


**Ardersier Port Limited
3rd Floor Royal Buildings
Victoria Street
Derby
England
DE1 1ES**

to construct, alter or improve works within the Scottish marine area as described in Part 2 of the attached Schedule.

This licence is subject to the conditions set out in Part 3 of the said Schedule and is valid from **19 September 2019** until **31 August 2024**.

Redacted

Signed:


Malcolm Rose

For and on behalf of the licensing authority

Date: 19 September 2019

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
Marine Laboratory
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, contractors or sub-contractors acting on behalf of licensee:

See condition 3.1.2

2.2. Location of construction works:

Ardersier Port within the area bounded by joining the following points:

57° 35.829' N	003° 59.729' W	57° 35.987' N	004° 00.365' W
57° 35.950' N	004° 00.136' W	57° 36.016' N	004° 00.356' W
57° 35.926' N	004° 00.161' W	57° 36.032' N	004° 00.395' W
57° 35.938' N	004° 00.199' W	57° 36.031' N	004° 00.512' W

As shown in Figure 1 of Annex One.

2.3. Description of the works:

Redevelopment of Ardersier Port including:

- Construction of a new 464m sheet piled quay wall
- Placement of temporary bund along quay wall

As described in application dated 23 November 2018, and correspondence submitted in support of the application.

2.4. Indicative nature and quantity of materials to be used in construction works:

Materials to be used in construction:

Steel/Iron, 6510 tonnes
Timber, 30 tonnes
Sand/Gravel, 474500
Rubber fender, 15 tonnes

Materials to be removed during construction:

Steel/Iron, 460 tonnes
Silt, 1400 tonnes
Sand, 49500 tonnes
Gravel, 15100 tonnes

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

3.1.3. Vessels

The licensee must submit full details of the vessels to be utilised in respect of the works, 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 works. 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.

3.1.4. 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.

3.1.5. 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.

3.1.6. 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 must, subject to any rules permitting non-disclosure, be made publically available by the licensing authority, or by any such party appointed, at their discretion.

3.1.7. Environmental protection

The licensee must ensure that all measures listed in the Schedule of Mitigation submitted as part of the Construction Environmental Management Document, subject to the amendments and modifications made within this licence and with the exception of the provision of tern rafts unless a valid marine licence is held for the deposit of these tern rafts, are implemented throughout the works to address significant environmental effects.

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 debris or waste materials placed below MHWS during the construction of the works are removed from the site, as soon as is reasonably practicable, for disposal at a location above MHWS approved (as appropriate) by the Scottish Environment Protection Agency.

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.

The licensee must ensure that if oil based drilling muds are utilised they must be contained within a zero discharge system.

3.1.8. 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.

3.1.9. Inspection of the works

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

3.1.10. 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.

3.1.11. Sediment Transport Monitoring Plan

The licensee must ensure that the Sediment Transport Monitoring Plan, dated 21 September 2018, is fully implemented. In the event that the licensee wishes to update or amend any of the protocols in the Sediment Transport Monitoring Plan, 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 approval.

3.2. Prior to commencement of the works

- 3.2.1.** The licensee must, no later than 7 days prior to commencement of the works, notify the licensing authority of the proposed start date of the works.
- 3.2.2.** The licensee must issue marine safety information as considered appropriate prior to the commencement of the works.
- 3.2.3.** The licensee must ensure that HM Coastguard, in this case nmoccontroller@hmcg.gov.uk, The National Maritime Operations Centre, is made aware of the works prior to commencement.
- 3.2.4.** The licensee must ensure that no marine construction works occur prior to the completion of the construction of the permanent dredge spoil storage bund, constructed above MHWS in accordance with drawing 670191-018, shown in Figure 2 of Annex One.

3.3. During the works

- 3.3.1.** The licensee must ensure that no construction works take place within 250m of any current roost site between 1 October and 31 March inclusive each year.
- 3.3.2.** The licensee must ensure that a minimum distance of 50m is maintained between the designated seal haul-out site and any piling activities between 1 June and 31 August inclusive each year.
- 3.3.3.** The licensee must ensure that only the materials listed in Part 2 of this licence are used during the construction of the works.
- 3.3.4.** The licensee must ensure that all works are carried out in accordance with the approved Construction Environmental Management Document, dated 21 September 2018, and ensure that all mitigation measures listed are fully implemented, subject to the amendments and modifications made within this licence and with the exception of the provision of tern rafts unless a valid marine licence is held for the deposit of these tern rafts. In the event that the licensee wishes to update or amend any of the protocols in the Construction Environmental Management Document, 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 approval.
- 3.3.5.** The licensee must adhere to the approved Marine Mammal Protection Plan and Marine Mammal Observation Protocol, included within the Construction Environmental Management Document, dated 21 September 2018 subject to the amendments and modifications made within this licence.
- 3.3.6.** The licensee must ensure that no piling works take place in sea states greater than 3, or during periods of darkness or poor visibility unless a protocol has been agreed in writing with the licensing authority to protect the bottlenose dolphin feature of the Moray Firth Special Area of Conservation.
- 3.3.7.** The licensee must ensure that all visual monitoring of marine mammals is carried out by a Joint Nature Conservation Committee trained Marine Mammal Observer
- 3.3.8.** The licensee must ensure that the works are marked and/or lighted as required by the Northern Lighthouse Board and the marking to be continued unless and until the licensing authority rescind this direction.
- 3.3.9.** 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.
- 3.3.10.** The licensee must ensure that the works are maintained at all times in good repair.

- 3.3.11.** 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.
- 3.3.12.** The licensee must ensure the best method of practice is used to minimise re-suspension of sediment during these works.
- 3.3.13.** In the event of the works being discontinued prior to their completion, the licensee must remove the works and clear the site to the satisfaction of the licensing authority.
- 3.3.14.** 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; or
 - c) The drifting or wreck of the works.

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

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

3.4. On completion of the works

- 3.4.1.** The licensee must, within 7 days of completion of the works, notify the licensing authority of the date of completion of the works.
- 3.4.2.** The licensee must submit a written report regarding the materials used during construction 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 2024. Where appropriate, nil returns must be provided.
- 3.4.3.** The licensee must issue a Notice to Mariners clearly stating the as-laid positions of the buoys within the buoyed channel.
- 3.4.4.** The licensee must, within 28 days of completion of the works, supply Source Data Receipt, The Hydrographic Office, Admiralty Way, Taunton, Somerset, TA1 2DN (email: sdr@ukho.gov.uk; tel.: 01823 337900) with a copy of the 'as built plans' along with the 'as-laid' positions of the buoyed channel, 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 operations. 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:

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Aberdeen
AB11 9DB

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Email: ms.marinelicensing@gov.scot

Annex One – Indicative plan showing the location of the licensed activities

Figure 1: The location of the construction works showing the existing and new quay wall. Only the portion of the wall marked as within the “Extent of application for Construction Licence (app 2018)” is licenced under this marine licence.

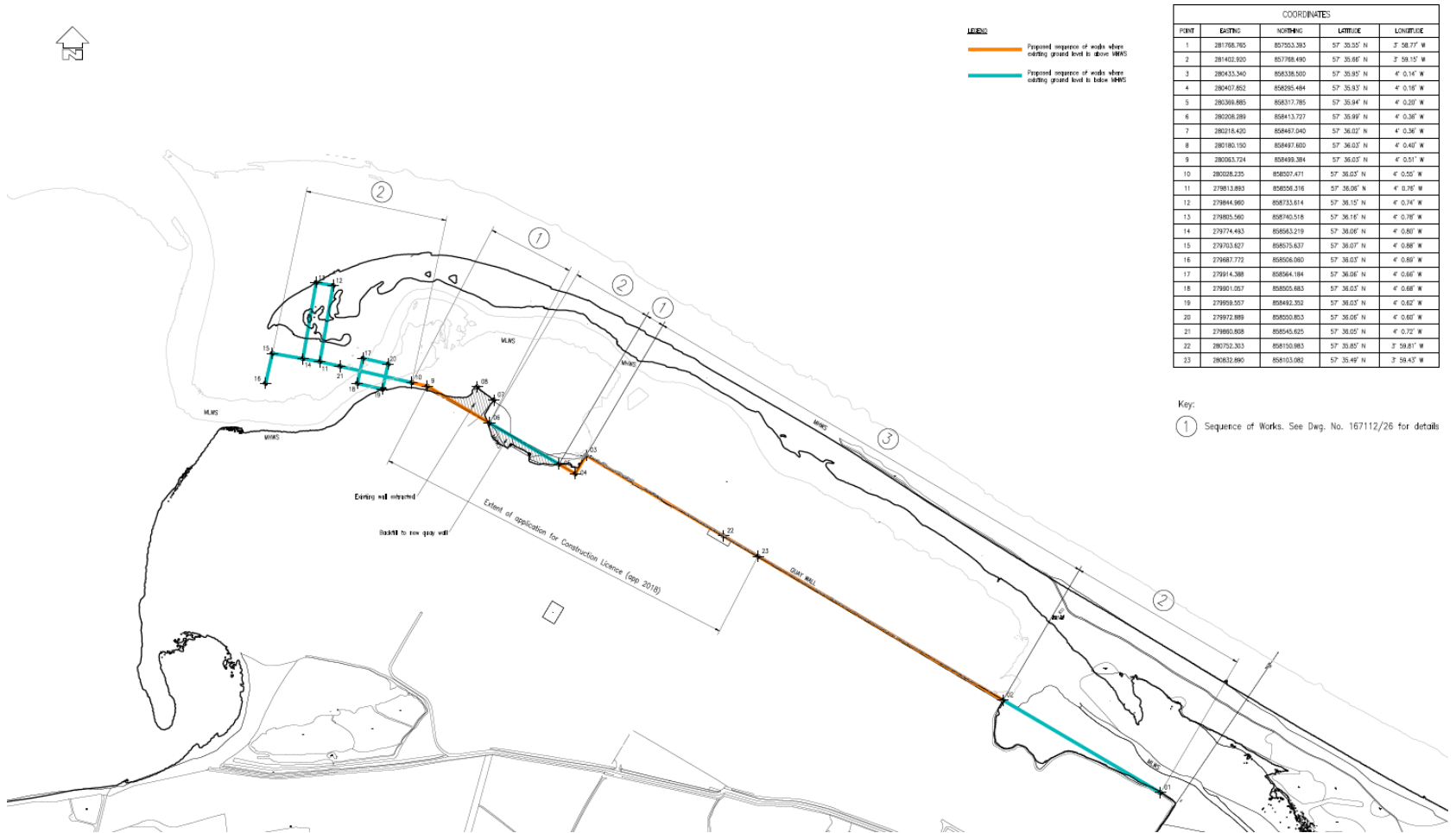


Figure 2: Land storage area bund (Applicant drawing reference number 670191-018)

