

MARINE SCOTLAND ACT 2010, PART 4 MARINE LICENSING

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

Licence Number: **MS-00008851**

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

Leask Marine Limited
6 Crowness Road
Hatston Industrial Estate
Kirkwall
Orkney KW15 1RG

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 April, 2021** until **31 March, 2023**

Signed:

Rebecca Bamlett

For and on behalf of the Licensing Authority

Date of issue 31 March, 2021

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 Leask Marine Limited
- 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 Scotland
Licensing Operations Team
Marine Laboratory
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

European Marine Energy Centre Ltd
Old Academy
Stromness
Orkney
KW16 3AW

2.2 Location of the Licensed Activity

FALL OF WARNESS AND SHAPINSAY SOUND,

Shapinsay Sound Test Site:

58 59.853' N 002 52.438' W
58 59.932' N 002 52.938' W
59 00.263' N 002 52.257' W
59 00.241' N 002 52.757' W

Fall of Warness Test Site:

59 09.634' N 002 48.283' W
59 09.629' N 002 48.098' W
59 09.487' N 002 48.113' W
59 09.491' N 002 48.299' W

As shown in Annex One.

2.3 Description of the Licensed Activity

Installation, testing, removal and decommissioning of up to eight rock anchors.

As described in application dated 15 July, 2020 and correspondence submitted in support of the application.

2.4 Descriptions of the materials to be used during Licensed Activity

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

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Permanent Deposits:

Steel anchors - 8 No. (48 Tonnes in total)

Temporary Deposits:

Submersible drill - 30 tonnes (steel),
point vessel moorings - 4 No. (96 tonnes total)

2.5 Contractor and Vessel Details

3. PART 3 – CONDITIONS

3.1 General Conditions

3.1.1 The Licensee must at all times construct and maintain the licensed activity in accordance with this Licence, the Application and the plans and programmes approved by the Licensing Authority.

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

3.1.3 The Licensee must ensure that only the materials, substances or objects listed in Part 2 of the licence are used during the execution of the Licensed Activity and that all materials, substances or objects used during the execution of the works are inert and do not contain toxic elements which may be harmful to the marine environment, the living resources which it supports or human health.

3.1.4 The Licensee must ensure that the Licensed Activity does not encroach on any recognised anchorage, either charted or noted in nautical publications, within the licensed area.

3.1.5 In the event of any breach of health and safety or environmental obligations relating to the licensed activity during the period of this 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.

3.1.6 The licensee must notify Source Data Receipt, The Hydrographic Office, Admiralty Way, Taunton, Somerset, TA1 2DN (e-mail: sdr@ukho.gov.uk; tel.: 01823 484444) of both progress and on completion of the licensed activity supply a copy of the licence, and wherever possible, 'as built plans', in order that all necessary amendments to nautical publications are made.

3.1.7 If it is desired to display any marks or lights not required by the licence then details must be submitted to the Northern Lighthouse Board and its ruling complied with. The display of unauthorised marks or lights is prohibited.

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

3.1.9 Should the construction of the Licensed Activity be halted before the completion, the licensee must notify the licensing Authority and, within a timescale agreed by the Licensing authority, submit a decommissioning plan to the Licensing Authority for approval. The plan must be based on best practice at that time. The Licensee shall be liable for all costs.

3.1.10 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/deposited objects as required by this licence;
- b) the maintenance of the works;/deposited object or
- c) the drifting or wreck of the works/deposited object,

to include the broadcast of navigational warnings, then the Licensee is liable for any expenses incurred in securing such assistance.

3.1.11 The Licensee must submit all reports and notifications to the Licensing Authority, in writing, as are required under this licence within the time periods specified in this licence. Where it would appear to the Licensee that there may be a delay in the submission of the reports or notifications 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 or notifications ought to have been submitted to the Licensing Authority under the terms of this licence.

The reports must include executive summaries, assessments and conclusions and any data will, subject to any rules permitting non-disclosure, be made publicly available by the Licensing Authority or by any such party appointed at its discretion.

Reports prepared pursuant to another consent or licence relating to the Works by the Licensee or by a third party may also be used to satisfy the requirements of this licence.

Such reports will include all appropriate reports stipulated within the Project Environment Monitoring Plan.

3.1.12 The Licensee must adhere to all mitigation and monitoring as detailed within the Project Environmental Monitoring Plan ("PEMP") submitted with the application, unless otherwise agreed with the Licensing Authority. The Licensee must ensure that all personnel adhere to the Scottish Marine Wildlife Watching Code as detailed within the PEMP during installation, operation, inspection and removal activities authorised under this licence. The Licensee must submit a written report to the Licensing Authority detailing all monitoring and mitigation implemented during installation, operation and removal activities. The written report must be submitted no later than one calendar month after completion of each phase of the works.

3.2 Prior to the commencement of the Licensed Activity

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

3.2.2 The Licensee must 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.

3.2.3 The Licensee must, prior to and no less than seven calendar days before the Commencement of the Licensed Activity, notify the Licensing Authority, in writing, of the date of Commencement of the Licensed Activity authorised under the licence..

3.2.4 The Licensee must ensure that HM Coastguard, in this case renewables@hmcg.gov.uk, is made aware of the works prior to commencement.

3.2.5 The Licensee must issue a Notice to Mariners in advance of the Commencement of the works, clearly stating the nature and duration of the works.

3.2.6 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.

3.2.7 The Licensee must ensure that all personnel adhere to the Scottish Marine Wildlife Watching Code where appropriate during all construction, operation and maintenance activities authorised under this licence.

3.2.8 The Licensee must no later than three calendar months (or such other period as agreed with the Licensing Authority) prior to the Commencement of the licensed activity, provide the Licensing Authority with Third Party Verification (or a suitable alternative as agreed in writing with the Licensing Authority) for the lifespan of the licensed activity. Commencement of the licensed activity cannot take place until such approval is granted.

3.2.9 The Licensed Activity must, at all times, be constructed in accordance with the Project Information Summary and Construction Method Statement as submitted at Application. Any updates or amendments made to the approved Project Information Summary must be submitted, in writing, to the Licensing Authority for their prior written approval.

3.2.10 The Licensee must, no later than 7 days prior to Commencement of the Licensed Activity, notify the UK Hydrographic Office (“UKHO”) of the proposed licensed activity to facilitate the promulgation of maritime safety information and updating of Admiralty charts BA2562 and publications through the national Notice to Mariners system.

3.2.11 The Licensee must gain the approval/agreement of the responsible local navigation authority or the Harbour Authority/Commissioners/Council. The Harbour Authority/Commissioners/ Council may wish to issue local warnings to alert those navigating in the vicinity to the presence of the works as deemed necessary.

3.2.12 The Licensee must update the EMEC site wide ERCoP in consultation with OELO@mcga@gov.uk prior to commencement of the Licensed Activity.

3.3 During the Licensed Activity

3.3.1 The licensee must ensure that the licensed activity is maintained at all times in good repair.

3.3.2 In the event of the Licensed Activity being discontinued the materials used or substances and objects deposited under the authority of the licence shall be removed to the satisfaction of the Licensing Authority.

3.3.3 The Licensee must ensure that only those agents, contractors or sub-contractors notified to the Licensing Authority are permitted to undertake the works.

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) site of the Licensed Activity

3.3.5 The Licensee must at all times construct and maintain the licensed activity in accordance with this Licence, the Application and the plans and programmes approved by the Licensing Authority.

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

3.3.7 The Licensee must in the case of damage to, or destruction or decay of, the Licensed Activity, notify the Licensing Authority, in writing, as soon as reasonably practicable, following such damage, destruction or decay. The Licensee must carry out any remedial action as required by the Licensing Authority, following consultation with the Maritime and Coastguard Agency ("MCA"), the Northern Lighthouse Board ("NLB") or any such advisors as required by the Licensing Authority.

3.3.8 The Licensee must ensure that any vessels permitted to engage in the construction of the Licensed Activity are marked in accordance with the International Rules for the Prevention of Collisions at Sea whilst under way, and in accordance with the UK Standard Marking Schedule for Offshore Installations if the vessel is secured to the seabed.

3.3.9 The Licensee must ensure that no radio beacon or radar beacon operating in the marine frequency bands is installed or used on the licensed activity without the prior written approval of the Office of Communications ("OfCom").

3.4 Upon Completion of the Licensed Activity

3.4.1 The Licensee must adopt measures to prevent the introduction and spread of invasive non-native species as a result of the Licensed Activities.

3.4.2 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.

3.4.3 The Licensee must, no later than 14 days following the Completion of the works and/or Licensed Activity notify

the Licensing Authority, in writing, of the date of the Completion of the works and/or Licensed Activity.

3.4.4 The Licensee must notify the UK Hydrographic Office to permit the promulgation of maritime safety information and updating of nautical charts and publications through the national Notice to Mariners system.

3.4.5 The Licensee must, no later than one calendar month following the Completion of the Licensed Activity submit a final audit report, in writing, to the Licensing Authority stating the date of completion and quantity of all materials used in construction under the authority of this licence.

3.4.6 The Licensee must ensure that at least three months prior to the expiry of the licence, the works must be altered by taking all temporary materials and structures to a place above Mean High Water Springs.

3.4.7 The Licensee must take all reasonable, appropriate and practicable steps at the end of the operational life of the Licensed Activity to restore the Site to its original pre-construction condition, or to as close to its original condition as is reasonably practicable, in accordance with the Project Environment Monitoring Plan and the Decommissioning Programme and to the satisfaction of the Licensing Authority.

3.4.8 The Licensee must notify the Licensing Authority, in writing, of the date of the Final Commissioning of the licensable marine activity, no more than one calendar month following the Final Commissioning of the licensable marine activity.

3.4.9 The Licensee must submit a written report to the Licensing Authority, within one calendar month following the completion of the works, outlining the locations of the works, the techniques involved and the conditions encountered during works, including sediment conditions and depth of the sediments above the rocks for the assessment of future impacts within the licensed area.

3.4.10 If a new licence is required, the Licensee must make an application at least 14 weeks before the expiry date of the licence. This licence shall not continue in force after the expiry date of 31 March 2023.

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.