

MARINE SCOTLAND ACT 2010, PART 4 MARINE LICENSING

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

Licence Number: **MS-00008793**

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

**North Yell Development Council
C/O Keldahoul
Cullivoe
Yell
Shetland ZE2 9DD**

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 **10 September, 2020** until **09 September, 2021**

Signed:

Fiona Munro

For and on behalf of the Licensing Authority

Date of issue 09 September, 2020

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 North Yell Development 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 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

Arch Henderson LLP
Stewart Building
Esplanade
Lerwick
Shetland ZE1 0LL

2.2 Location of the Licensed Activity

Cullivoe Pier, Shetland, within the area bounded by joining the points:

60° 41.761' N 001° 00.069' W
60° 41.756' N 000° 59.944' W
60° 41.794' N 000° 59.896' W
60° 41.822' N 000° 59.879' W
60° 41.839' N 001° 00.024' W

As shown in Annex One.

2.3 Description of the Licensed Activity

Construction of a new marina, slipway and breakwater arm

As described in application dated 21 November, 2019 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 maximum amounts as specified below:

Concrete - 100 tonnes
Terram 2000 Geotextile - 6,070 square metres
Cobbles - 46,000 tonnes
Boulders - 12,600 tonnes
uPVC Piping - 150 metres

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. 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.

3.1.4. 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 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.

3.1.5. 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 this 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.

3.1.6. 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 works.

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

3.1.8. 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.

3.1.9. The licensee must ensure that no vessel movements associated with the transport of materials or plant associated with the licensed activity occur between June and September inclusive.

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 notify the Licensing Authority in writing of the name and address of any contractor not already listed in Part 2 of the licence being used to carry out any Licensed Activity listed in Part 2 of the licence. Such notification must be received by the Licensing Authority no less than 24 hours before the commencement of the Licensed Activity.

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 this licence.

3.2.4. 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.

3.2.5. 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 ensure that all existing Nova Innovation cables in the vicinity of the works have been identified and are avoided during all phases of construction.

3.2.7. The Licensee must, no later than fourteen days prior to the commencement of the Works or as agreed with the Licensing Authority, submit an outline of measures to minimise the amount of fine sediment put into suspension in the water column to the Licensing Authority for its written approval. Commencement of the Works cannot take place until such approval is granted.

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. The Licensee must ensure that the breakwater is marked by means of a flashing red light character flash once every three seconds (Fl. R. 3s), with a nominal range of 2 nautical miles, should be established at least 2 metres above the breakwater surface at the furthest seaward extent.

3.3.3. The Licensee must ensure that the navigation marking and lighting given in condition 3.3.2. is installed at the same time as the licensed objects and continued unless and until the Licensing Authority rescind this direction.

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

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

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

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

3.3.8. The licensee must ensure that no construction work is undertaken below mean low water springs between June and August inclusive.

3.4 Upon Completion of the Licensed Activity

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

3.4.2. 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.

3.4.3. 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.

3.4.4. 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 2022.

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.