

MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

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

Licence Number: **MS-00009818**

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

**Forth Ports Limited
Carron House
Central Dock Road
Grangemouth
FK3 8TY**

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 **02 January, 2023** until **31 December, 2025**



Signed:

Neil MacLeod

For and on behalf of the Licensing Authority

Date of issue: 22 December, 2022

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 Forth Ports 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

Royal HaskoningDHV
Edmund Street
Liverpool
L3 9NG
UK

2.2 Location of the Licensed Activity

Port of Leith, Outer Berth, Within the area bounded by joining the following points:

Site boundary
55° 59.514 'N 03° 11.390 'W
55° 59.604 'N 03° 11.048 'W
55° 59.334 'N 03° 10.662 'W
55° 59.201 'N 03° 11.011 'W

As shown in Annex One.

2.3 Description of the Licensed Activity

Construction of new quay at Port of Leith Outer Berth

As described in the application dated 09 April, 2022 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:

Piles: 5150 tonnes
Geotextile: 9150 square metres
Rock fill: 144,000 tonnes
Rock Armour: 42,000 tonnes
Cathodic protection: 65 tonnes
Fenders: 230 tonnes

Materials to be permanently removed in the course of construction:

Existing piles: 800 tonnes
Existing fenders: 250 tonnes

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 the 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, 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.

3.1.6 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, 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.

3.1.10 Where any damage, destruction or decay is caused to the objects or 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 The Licensee must complete and submit a Close-out Report for the licensable marine activities that produced loud, low to medium frequency (10Hz-10kHz) impulsive noise in the online Marine Noise Registry at 6 month intervals during the validity of the licence and following the completion of the Licensed Activity.

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

3.1.14 The Licensee must ensure that the works are maintained at all times in good repair.

3.1.15 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.

3.1.16 The Licensee must ensure that the Licensed Activity is carried on in accordance with the mitigation detailed in table 14-1 of the Port of Leith – Outer Berth, Environmental Impact Assessment Report dated 11 April 2022 and section A5 of the Port of Leith – Outer Berth, Habitats Regulations Appraisal - Screening for LSE and Provision of Information to Inform Appropriate Assessment, dated 11 April 2022, but subject to the modifications or amendments made within this licence.

3.1.17 The Licensee must ensure that an Aid to Navigation exhibiting the same flash pattern as the one currently positioned on the outer lead in dolphin (ALL Ref: A2887), which is to be removed for the period of construction, be installed on the outer dolphin of the revised berth design when completed.

3.1.18 The Licensee must contact the Northern Lighthouse Board, via navigation@nlb.org.uk to secure the statutory sanction of the Commissioners of Northern Lighthouses prior to the removal and subsequent replacement of any Aids to Navigation.

3.1.19 The Licensee must ensure that every effort be made to prevent the East Breakwater Head Aid to Navigation (ALL Ref: A2884) being obscured during the construction process. In the event that this unavoidable, the Licensee must ensure that a Notice Mariners is promulgated informing of the obstruction and that Forth Navigation VTS inform local marine traffic.

3.1.20 The Licensee must ensure that all provisions of the 'Statutory nature conservation agency protocol for minimising the risk of injury to marine mammals from piling noise' (2010) ("the JNCC piling protocol") are adhered to insofar as it is in line with the other conditions of this licence.

3.1.21 The Licensee must avoid undertaking any piling works during the common tern breeding and post breeding seasons, 01 May to 30 September, inclusive. If piling is carried out between 01 May and 30 September, inclusive the Licensee must appoint a suitably qualified and experienced Environmental Clerk of works ("ECoW") prior to commencement of the piling activities. The ECoW must be on site during piling and is responsible for monitoring any disturbance to the common tern colony of the Imperial Dock Lock, Leith Special Area of Conservation. The ECoW must have authority to halt the piling activities if any disturbance of breeding common terns is observed and the Licensing Authority must be notified. The piling works can only re-commence with further written approval of the Licensing Authority. The ECoW must report to the Licensing Authority detailing monitoring and compliance with the Marine Licences on at least an annual basis.

3.1.22 A piling shroud must be used at all times when piling takes place during the common tern breeding and post-breeding and post-breeding periods from 1 May to 30 September, inclusive.

3.1.23 The Licensee must ensure that a 500 metre marine mammal mitigation zone is used during piling operations.

3.1.24 Prior to Completion of the Licensed Activity, the Licensee must implement enhancements to provide nesting, roosting and loafing areas for common terns. The Licensee must provide the Licensing Authority with written confirmation that the Royal Society for the Protection of Birds is content with the proposed enhancements prior to the implementation.

3.1.25 The Licensee must ensure that the Licensed Activity is carried on in accordance with Pollution Prevention Guidelines detailed in the correspondence to the Licensing Authority on 2 December 2022.

3.1.26 The Licensee must ensure that any sighting of dead, distressed or injured fish close in the vicinity of the Works must be immediately reported to the Licensing Authority.

3.2 Prior to the commencement of the Licensed Activity

3.2.1 The Licensee must ensure that a bird survey is carried out prior to commencement of the Licensed Activity to check for any breeding bird nests. If any birds are found nesting at the Location of the Licensed Activity, the Licensing Authority must be notified.

3.2.2 The Licensee must notify the Licensing Authority in writing of the name and address of any agent, contractor or sub-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 ensure that HM Coastguard National Maritime Operations Centre, in this case nmoccontroller@hmcg.gov.uk, is made aware of the Licensed Activity prior to commencement.

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 that best practice methods are followed to ensure that no contamination or pollution of the seabed occurs from the Licensed Activity.

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

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

3.3.9 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 2026

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

3.4.3 The Licensee must, on Completion of the Licensed Activity, carry out a post-construction bird survey of the Outer Berth area following the same methodology used during the bird surveys carried out to inform the Environmental Impact Assessment and Habitats Regulations Appraisal produced for the Licensed Activity. The results of the survey must be provided to the Licensing Authority and the Royal Society for the Protection of Birds as soon as possible following completion of the surveys.

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.