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03 May 2019

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

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

#### **DECISION NOTICE – MARINE LICENCE FOR THE CONSTRUCTION, LAND RECLAMATION, CAPITAL DREDGING AND DREDGE SPOIL DEPOSIT ACTIVITIES ASSOCIATED WITH THE NEWTON MARINA DEVELOPMENT AT GOAT ISLAND, STORNOWAY, ISLE OF LEWIS**

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

- 1.1 On 16 October 2018 Stornoway Port Authority (“the Applicant”), having its registered office at Amity House, Esplanade Quay, Stornoway, HS1 2XS, submitted to the Scottish Ministers applications under Part 4 of the Marine (Scotland) Act 2010 for the construction, land reclamation, capital dredging and dredge spoil deposit activities (“the Works”) associated with the proposed Newton Marina development at Goat Island, Stornoway, Isle of Lewis (“the Project”). The applications were accompanied by an Environmental Impact Assessment report (“EIA report”) as required under The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) (“the 2017 MW Regulations”). Revised applications and EIA report were received on 14 December 2018 following a request from Marine Scotland Licensing Operations Team (“MS-LOT”) for clarification on site coordinates, duration of works, Scottish National Marine Plan considerations and small inconsistencies in the marine mammal mitigation and cumulative impacts (hereinafter collectively referred to as “the Application”).

- 1.2 The Project is located on the north coast of Goat Island, situated within Stornoway Harbour at the southern end of Stornoway, Isle of Lewis (“the Site”). The Works cover an area of 79,700 square metres (“m<sup>2</sup>”). The location and boundary of the Site is shown in Appendix 1.
- 1.3 The Works involve reclamation of approximately 1.81 hectares (“ha”) of land along the north coast of Goat Island. The reclamation area will be formed through the construction of a reinforced concrete retaining wall to the north of the Site along with the formation of imported rock containment bunds to the east and west sides of the Site. An area of seabed to the north of the reclamation area along with an area on the seaward approach is to be dredged to a depth of 3 metres (“m”) Chart Datum (“CD”) producing up to 100,000 cubic metres (“m<sup>3</sup>”) of dredge spoil material. Some of this material will be used to infill the reclamation area, however, it is anticipated that up to 20,000m<sup>3</sup> (36,000 wet tonnes) of the material will be unsuitable for re-use. This remaining dredge material will be deposited (disposed of) at the Stornoway dredge spoil deposit area (HE035).
- 1.4 The marina will be formed from a 100m long floating pontoon access walkway (linked to the shore by a 24m long and 1.5m wide bridge) and three 60m long pontoon walkway legs with finger pier berths on either side. All walkways will be secured in place by vertical cantilevered steel tube piles, which will either been driven into place by hammer or installed into sockets drilled into rock below the seabed. Once constructed, the marina will provide approximately 75 berths for vessels up to 18m in length.
- 1.5 To the west of the marina, a new 75m long and 20m wide (at its base) rubble-mound breakwater, with rock armoured revetted slopes on its western and eastern perimeters, will be constructed to provide shelter for the marina.
- 1.6 A piled steel boat hoist support structure, protected on its east side by a pontoon fender, will be constructed adjacent to the breakwater.
- 1.7 To the east of the marina, a concrete-surfaced slipway with a useable area of 50m in length and 8m in width will be constructed. The overall width of the slipway structure, including the rock armour revetments, will vary between 10m and 25m. The maximum dredge depth at the slipway will remain at 3m below CD and taper to 1.5m below CD. The sides of the slipway will be rock armoured and revetted. To provide a temporary mooring for boats following launching, a line of pontoons will be secured (via steel stanchions fixed to the concrete) along the east side of the slipway.
- 1.8 A new rock armoured passing place, with a surfaced area of 0.01ha, will be constructed to the north-east of the Site.

**This decision notice contains the Scottish Ministers’ decision to grant regulatory approval for the Works as described above, in accordance with regulation 23 of the 2017 MW Regulations.**

## **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.

2.2 A summary of the environmental information provided in the EIA report is given below.

### *Landscape and Visual*

- 2.3 The effects of the Project on the landscape resources, coastal character and visual resources of the Site and the surrounding area, during construction and operation, were assessed as part of a Landscape and Visual Impact Assessment (“LVIA”). The LVIA was based on a worst-case scenario, with viewpoints selected to provide the most open views onto the Project. The assessment of visual effects takes account of both the sensitivity of the visual receptors (individuals or groups of people) and the magnitude of the change on their views and visual amenity. Landscape effects considered the fabric, character and quality of the site and surrounding landscape and are concerned with landscape elements (e.g. hedgerows, trees and woodlands), landscape character (local and regional distinctiveness) and special interests (e.g. designations, conservation areas and cultural associations). A focused coastal assessment was also provided.
- 2.4 During the construction & operational phases of the Project, the LVIA predicted significant visual impacts on the receptors at three viewpoint locations (Newton Street, harbour (offshore) and the ferry terminal). In relation to the landscape/coastal effects during the construction & operational phases, these are considered to be not significant on all receptors.
- 2.5 During the long term operational phase of the Project, significant cumulative effects are predicted on the receptors at two viewpoint locations (Newton Street and the ferry terminal).
- 2.6 Although some significant visual and cumulative effects are predicted during the construction and operational phases of the Project, these are very localised in extent. Taking into account the existing composition of industrial units located on Goat Island, the LVIA found that the Project could, in some instances, improve the overall visual appearance and associated visual amenity of the locality.
- 2.7 Where significant adverse visual effects have been identified, these are all within 300m of the Site. It is asserted that such effects are to be expected given the scale and nature of the Project.
- 2.8 No long term significant effects are predicted on any designated landscapes. Furthermore, it is anticipated that the Project will result in some positive changes to coastal character by introducing a recreational use to what is currently an industrial area.

### *Marine Ecology*

- 2.9 In order to identify and describe all potentially significant ecological effects associated with the Project, the Applicant commissioned an Ecological Impact Assessment (“EclA”) to be undertaken. The EclA assessed the possible impacts of noise, water body pollution and sedimentation arising from the Works (particularly in relation to dredging and piling activities) on marine mammal and fish receptors including the following species: Risso’s dolphin, short-beaked common dolphin, harbour porpoise, grey/harbour seal, orca whale, minke whale, Atlantic salmon, sea trout and European eel. The EclA concluded that most of the effects will be localised and confined to the duration of the construction phase.
- 2.10 The Works are located within 1.5 kilometers (“km”) of the Inner Hebrides and the Minches Special Area of Conservation (“SAC”), designated for harbour porpoise, and are also in the vicinity of the North East Lewis draft Marine Protected Areas (“draft MPA”), which has been identified for Risso’s dolphin. The EclA found that the Works would not have any significant impacts on the Inner Hebrides and the Minches SAC or on the North East Lewis draft MPA.
- 2.11 The EclA detailed the mitigation measures required to address potentially significant ecological effects. A Marine Mammal Protection Plan (“MMPP”) has also been prepared (in consultation with Scottish Natural Heritage (“SNH”) and in keeping with the Joint Nature Conservation Committee guidance) to avoid adverse impacts on marine mammals, particularly during piling activities. Subject to adherence to the MMPP and implementation of the mitigation measures detailed in the EclA, no significant impacts are predicted on marine mammals or their habitats and the effects on all ecological receptors are considered to be insignificant.

### *Cultural Heritage*

- 2.12 A Cultural Heritage Assessment (“CHA”) was undertaken to identify and mitigate any effects of the Works upon the historic and cultural environment of the CHA study area (comprising of the inner study area i.e. the Site and the outer study area extending to 1km from the Site boundary, which is taken as the maximum extent of potentially significant effects on the settings of heritage assets). The heritage assets accounted for within the CHA were scheduled monuments, listed buildings, world heritage sites, conservation areas, inventory gardens and designed landscapes, historic battlefields and historic marine protected areas.
- 2.13 Five known heritage assets were identified within the inner study area all of which are undesignated with a low to medium importance. Only one scheduled monument identified within the outer study area, Cnoc na Croich, was deemed to have high importance. The CHA in particular considered the impact of the Works on Lews Castle and Lady Lever Park, which are included in the Inventory of Gardens and Designed Landscapes and contain several listed buildings, due to their importance in the setting of Stornoway Harbour.

- 2.14 The CHA concluded that the cultural assets within the CHA study area will not be subject to construction or operational impacts of greater than negligible magnitude and therefore no mitigation is proposed.

#### *Noise*

- 2.15 A Noise Impact Assessment ("NIA") was undertaken to identify and describe any likely significant effects arising from airborne noise generated by the construction and dredging activities associated with the Project.
- 2.16 Construction works will generally take place during the day and early evening. Occasionally works will take place during the evening or night due to tide levels, but this is likely to only occur during the early phases of the Project.
- 2.17 The NIA found that most airborne noise during the daytime and evening would be generated by backhoe dredging, reclamation and breakwater construction activities, however no significant adverse effects during daytime or evening are predicted to occur. During the night, cutter suction dredging would generate most noise, but the impacts would be limited to a two month period.
- 2.18 The NIA concluded that the worst case daytime and evening significance of effect from construction activities (including cumulative impacts) is of slight significance. At night, the worst case impacts (including cumulative impacts) are of moderate significance at two receptors. Although impacts of moderate significance are undesirable, the NIA deemed they are of limited concern therefore no mitigation measures are proposed.

#### *Water Environment*

- 2.19 The EIA report considered the impacts of the Works on the water environment (encompassing hydrology, hydrogeology and water quality) and coastal processes (encompassing tides, waves and sediment transport processes). Dredging and construction activities as well as site surface water drainage and marina operations could affect the water environment within the Site. The coastal waters of Stornoway Harbour are classified under the Water Framework Directive ("WFD") monitoring programme as a coastal waterbody. The waterbody was classified as being of overall 'Good' status in 2016, with a hydromorphological status of 'High' and an overall chemistry status of 'Pass'.
- 2.20 The Applicant identified contamination of coastal water and sediments as a result of spillages, leakages and/or sediment transfer as having the potential to impact the water environment. Hydrology alterations identified include increased runoff, alteration of flow patterns and hydromorphology. The impacts of the Project on hydrology, sediment discharge and existing outfalls are considered to be low to negligible during construction and operational phases, with impacts of pollution incidences being low to high during both construction and operational phases. The Applicant proposes to include contamination mitigation measures within a Construction Environmental Management Plan ("CEMP"), with pollution risks associated with the operation of the Project being reduced by having monitoring procedures in place.

- 2.21 Potential impacts on coastal processes could occur as a result of changes in local wave climate and tidal and sediment transport regimes. The EIA report included a detailed hydraulic modelling study which concluded the impacts of the Project on tidal regimes, wave climate and sediment transport to be low to negligible during construction and operational phases.
- 2.22 The EIA report concluded that the Project will not result in any significant effects on the water environment or coastal processes.

#### *Traffic and transport*

- 2.23 Impacts on traffic and transport were identified and quantified within a Transport Assessment. The main impact on the local road network is predicted to occur during the first three months of the construction phase of the Project, which is mostly attributed to the transport of imported rock and materials to the Site. This traffic will have a significant impact on Newton Road and Goat Island causeway. A moderate impact on driver and pedestrian delay, pedestrian amenity and severance is also predicted on Newton Street and Matheson Road. The Works are predicted to have a major impact on driver delay on Goat Island causeway. The effect of these impacts are proposed to be mitigated through the development of a Construction Traffic Management Plan ("CTMP"). The mitigation proposed in the CTMP will reduce the impact of the Works on the severance, driver and pedestrian delay and amenity effects along Newton Street, Matheson Road and the causeway. Residual effects following the implementation of the CTMP are expected to be minor and not significant. No significant traffic impacts during the operational phase of the Project are anticipated.

#### *Population and human health*

- 2.24 The EIA report also considered effects on population and human health. The project is considered to have a positive effect on human health and recreation through increased access to marine recreational facilities by visitors and locals alike. The potential negative impact of noise is limited to only two months. Overall the impacts of the project on human health and recreation are considered positive.

#### *Potential for Cumulative Effects*

- 2.25 The EIA report identified the in-combination effects which could arise from the planned Arnish Deep Water Port Development, the Arnish Seaweed Processing Facility and the Scottish & Southern Energy Network HVDC cable project. The assessment concluded that there will not be any cumulative effects with the other planned projects on any other environmental receptors except for landscape and visual considerations, which will be localised to Newton Street and the ferry terminal.

### **3. Consultation**

- 3.1 In accordance with the 2017 MW Regulations, advertisement of the Application was made in the local and national press and the application 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 of the consultation exercises are given below. The regulatory requirements regarding consultation and public engagement have been met and the responses received taken into consideration. Where matters have not been fully resolved, conditions have been included to ensure appropriate action is taken post consent.

Document	Date received	Dates of consultation	Publication
Environmental Impact Assessment Report & Appendices	16 October 2018 (first versions)	22 December 2018 – 25 January 2019	Stornoway Port Authority website <a href="http://www.stornowayportauthority.com">www.stornowayportauthority.com</a> (20 December 2018)
Marine licence applications & supporting documentation	14 December 2018 (final versions)		Stornoway Gazette (20 December 2018) The Edinburgh Gazette (22 December 2018)
Construction Environmental Management Plan	19 February 2019	20 February 2019 – 20 March 2019	The Applicant emailed the documents to the consultees

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

#### **4. Summary of statutory consultee responses**

- 4.1 Western Isles Council (Comhairle nan Eilean Siar (“CnES”)) responded on 04 February 2019 stating no objections to the Project.

CnES was content with the cultural heritage and archaeology conclusions and recommendations of the EIA report and offered no additional comments on landscape and visual impacts. CnES stated that the noise and dust impacts of the Works could be mitigated by introducing restrictions to hours of operation. They also requested that the contractor pre-notify CnES of any late evening or night time work and produce a communication strategy for informing the potentially affected noise sensitive premises when these types of works are due to be carried out. CnES also proposed conditions regarding noise levels and monitoring and dust mitigation measures. CnES recommended that a Protocol for Archaeological Discoveries should be included within the CEMP prior to commencement of the Works. CnES considered that the landscape and visual impacts had been sufficiently addressed but expressed their wish to engage in dialogue with the Applicant regarding the design of the onshore elements for which Planning Permission will be applied for in the future.

CnES recommended that the traffic and transport mitigation measures stated in Volume 1 of the EIA report (9.8 Mitigation & Monitoring) be secured in the CTMP and that their Roads Department should be provided with the CTMP prior to commencement of the Works. The Council noted that if the roads infrastructure is damaged as a result of the Works, this must be repaired at the expense of the Applicant to the satisfaction of the Roads Authority and that the 40 car parking spaces and the new passing place on the western side of Battery Point should be designed to best practice standards in consultation with the Roads Authority and made available for use prior to the first use of the pontoon installation. Once the Site is operational, CnES advised that consideration should be given by the Applicant to monitoring traffic levels at the junction of the Goat Island road with Newton Street in order to ensure that if traffic congestion does arise at this junction a future plan is put in place by the Applicant to mitigate impacts and avoid adverse impact on safety on the public highway.

CnES supported the findings of the EIA report in regards to the predicted positive impact on the economic development of the area.

CnES provided comments on the CEMP on 11 March 2019. CnES welcomed the inclusion of driver break times in accordance with school times and have been in discussions with the contractor to develop a communication strategy to answer queries from members of public during the Works. CnES also confirmed they were content with the archaeological aspects and after discussions with the Applicant, agreed to construction hours of operation between 07.30 and 20.00 Monday to Saturday instead of the 08.00 am they previously requested.

On 12 April 2019 CnES confirmed that they were content that the conditions requested and advice provided previously by them have now been sufficiently addressed in the CEMP subsequently submitted by the Applicant. CnES is therefore content a licence condition requiring adherence to the CEMP will suffice in covering their interests.

- 4.2 Historic Environment Scotland (“HES”) responded on 21 January 2019 confirming no objection and concluding that the Project will not raise issues of concern on the cultural heritage and archaeological interests in the vicinity of the Site.

HES provided comments on the CEMP on 20 March 2019 and stated that they are content with the CEMP.

- 4.3 Scottish Environmental Protection Agency (“SEPA”) responded on 07 January 2019 stating no objections to the proposal. SEPA recommend that a condition to ensure compliance with the Schedule of Mitigation is included in the marine licence. SEPA also referred to their standing advice which states that they do not anticipate any adverse environmental impacts to occur in relation to dredging activities providing they are carried out in line with dredging best practice and that measures are put in place to minimise the release of sediment plumes. With regards to the construction works, they again emphasise the importance of good working practices to prevent water pollution and minimise disturbance to sensitive receptors.



SEPA replied to the CEMP consultation on 25 February 2019 and had no comments to make.

- 4.4 SNH responded on 25 January 2019 stating that it supports the assessments and conclusions of the EIA report as they pertain to its interests. SNH recommends that all mitigation as described in EIA report section 11 – Schedule of Mitigation (Marine Ecology) is secured in the marine licence. SNH supports the conclusions in the Habitats Regulations Appraisal (HRA) report (Appendix 5.3 of EIA report) with regard to ‘likely significant effect’ on harbour porpoise interests of The Inner Hebrides and the Minches SAC. An Appropriate Assessment should be carried out by Marine Scotland on the Inner Hebrides and the Minches SAC. SNH note that if the measures outlined in the Marine Mammal Protection Plan (Technical Appendix 5.2), are all secured then there will be no adverse effect on the integrity of the Inner Hebrides and the Minches SAC.

The Applicant’s HRA report concludes a likely significant effect on the red throated diver feature of the Lewis Peatlands Special Protection Area and the otter interest of the Lewis Peatlands SAC. SNH, however, concluded that no appropriate assessment would be required. Although there is a potential pathway for impact as identified in the EIA report, there is no likelihood of an impact on the conservation objectives of the site that warrants further consideration. SNH agrees with the conclusion that there will be no likely significant effect on any of the other features of the site.

SNH advised that if the MMPP is secured then this will minimise risk of injury or significant disturbance to seals.

SNH provided comments on the CEMP on 21 March 2019 and stated that they are content with the CEMP. SNH recommend the measures laid out in the CEMP are secured as marine licence conditions.

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

- 5.1 Royal Yachting Association Scotland (“RYA”) responded on 14 January 2019 stating no objections to the Project.

RYA replied to the CEMP consultation on 19 March 2019 and had no comments to make.

- 5.2 Visit Scotland responded on 30 January 2019 and provided an additional clarification on the response on 11 February 2019. Visit Scotland stated no objection to the proposal.

- 5.3 The Maritime and Coastguard Agency (“MCA”) responded on 07 January 2019 confirming no objection to consent being granted, subject to all maritime safety legislation being followed and the inclusion of marking and lighting along with standard conditions on the marine licences.

MCA replied to the CEMP consultation on 04 April 2019 and had no further comments to make.

- 5.4 The Northern Lighthouse Board (“NLB”) responded on 23 January 2019 stating no objections. Their recommendations with regards to navigational concerns associated with the Works will be included as conditions of the marine licences.

NLB commented on the navigational aspects of the CEMP on 05 March 2019 and requested conditions to be added regarding marker buoys and Marine Safety Information broadcasts.

- 5.5 West Coast Inshore Fishery Group responded on 18 February 2019 and had no comment to make on the Application.
- 5.6 Transport Scotland provided a response to the CEMP consultation on 29 March 2019. They stated that as the volume of construction materials transported to the Site would be small, any impact on the trunk road network would not be significant. Transport Scotland, however, noted that the Construction Traffic Management Plan should consider all traffic and transport impacts including those on the mainland if construction related vehicles are to utilise these roads. The Applicant responded to Transport Scotland on 02 April 2019 and confirmed that due to the volume of materials, it was envisaged that the material would be shipped directly to the Site from the port nearest to the manufacturing plant. This method of delivery would not have any impact on the trunk road network. Transport Scotland replied on 10 April 2019 to state that no further information is required.

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

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

## **7. Advice from 3<sup>rd</sup> Parties**

- 7.1 No advice was sought or received from 3<sup>rd</sup> parties.

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

- 8.1 The Scottish Ministers, having taken account of all relevant information, consider that the main determining issues are:
- the extent to which the Works accord with and are supported by Scottish Government policy and the terms of the national marine plan and relevant local development plans,
  - the significant effects of the Works on the environment, which are in summary:
    - *landscape and visual impacts;*
    - *marine ecology;*
    - *noise and;*

- *traffic and transport.*

#### *Policy Context*

- 8.2 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 2015 Scottish National Marine Plan (“NMP”) covering inshore waters is a requirement of the 2010 Act. The NMP lays out the Scottish Minister’s policies for the sustainable development of Scotland’s seas and provides General Planning Principles, and sector specific objectives and policies, which were considered as part of the EIA process.
- 8.3 The Scottish Ministers are satisfied that works accord with and are supported by Scottish Government policy and the terms of the NMP.

#### *Environmental Matters*

- 8.4 The Scottish Ministers are satisfied that an environmental impact assessment 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 Project have been assessed and the Scottish Ministers have taken the environmental information into account when reaching their decision.
- 8.5 The Scottish Ministers have considered fully and carefully the Application, supporting documentation and all relevant responses from consultees.

#### *Landscape and Visual Interests*

- 8.6 The Scottish Ministers are satisfied that landscape and visual impacts associated with the Project will be sufficiently mitigated on the basis that the Project has been designed and located to minimise landscape and visual impacts and the Applicant has committed to implementing good practice measures to reduce effects where possible. The Applicant is engaging in discussions with the Planning Authority on the visual aspects of potential land-based constructions.

#### *Marine Ecology*

- 8.7 The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) (“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 or European offshore marine site (either alone or in combination with other plans or projects), as defined in the 1994 Habitats Regulations.
- 8.8 Owing to the view of SNH that the Works are likely to have a significant effect on the harbour porpoise qualifying interests of the Inner Hebrides and the Minches SAC, MS-LOT, on behalf of the Scottish Ministers, as the “competent authority”, were required to carry out an Appropriate Assessment (“AA”). Having had regard to the representations made by SNH it can be ascertained that the Works will not adversely affect the integrity of the SAC providing the MMPP (EIA report Volume 3: Technical Appendices; Appendix 5.2) and the Schedule of Mitigation (EIA report Volume 1, Chapter 11 Schedule of Mitigation) are adhered to. Having determined that the Project

will not adversely affect the integrity of the site, and having regard to the reasons for which it was designated and the associated conservation objectives, MS-LOT concludes that the Works will not, on their own or in combination with other projects, adversely affect the integrity of the Inner Hebrides and the Minches SAC.

- 8.9 A full explanation of the issues and justification for decisions regarding site integrity is provided in the AA (available [here](#)).
- 8.10 The Scottish Ministers are content that significant marine ecology impacts will be appropriately mitigated providing the applicant adheres to the conditions set out in the AA and marine licences and to the mitigation measures detailed in the EIA report and CEMP.

#### *Noise*

- 8.11 The Scottish Ministers have reviewed the consultation responses and the evidence submitted by the Applicant and are satisfied that the noise impacts associated with the Project will be sufficiently mitigated through the implementation of the CEMP.

#### *Traffic and Transport*

- 8.12 The Scottish Ministers have reviewed the consultation responses and the evidence submitted by the Applicant and are confident that the impact of the Works on traffic and transport can be minimised through implementation of the traffic and transport mitigation measures stated in Volume 1 of the EIA report (9.8 Mitigation & Monitoring) and secured in the CTMP.

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

- 9.1 The Scottish Ministers are satisfied that an environmental impact assessment has been carried out, and that the applicable procedures regarding publicity and consultation in respect of the Application have been followed.
- 9.2 The Scottish Ministers have weighed the impacts of the Works, and the degree to which these can be mitigated, against the economic benefits which would be realised. The Scottish 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 Project accords with and is supported by Scottish Government policy, the terms of the NMP and the environmental impacts of the Project, in particular: the impact on the Inner Hebrides and the Minches SAC; marine ecology; traffic and transport and landscape and visual impacts.
- 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 Project and mitigation. In particular the Scottish Ministers are satisfied that the proposal will not adversely affect the integrity of the Inner Hebrides and the Minches SAC.

- 9.5 The Scottish Ministers have had regard to the requirements of Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds, and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

In their consideration of the environmental impacts of the Project, the Scottish Ministers have identified conditions to be attached to the licences to reduce environmental impacts. These include adherence to the Schedule of Mitigation and Marine Mammal Protection Plan submitted in support of the Application and the CEMP including a Protocol for Archaeological Discoveries, a Dust Management Plan, a Pollution Control Plan and a Construction Traffic Management Plan, which was subsequently submitted and approved by consultees.

- 9.6 The Scottish Ministers are satisfied, having regard to current knowledge and methods of assessment, that this reasoned conclusion is still up to date.
- 9.7 The Scottish Ministers **grant marine licences subject to conditions** under Part 4 of the Marine (Scotland) Act 2010 for the construction, land reclamation, capital dredging and dredge spoil deposit activities associated with the proposed Newton Marina development at Goat Island, Stornoway, Isle of Lewis. The marine licence conditions are attached at Appendix 2.
- 9.8 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 Application relates is situated.
- 9.9 Copies of this decision notice have been sent to the bodies consulted on the Application including the relevant planning authority, SNH, SEPA and HES. This decision notice has also been published on the Marine Scotland Information [website](#).
- 9.10 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.

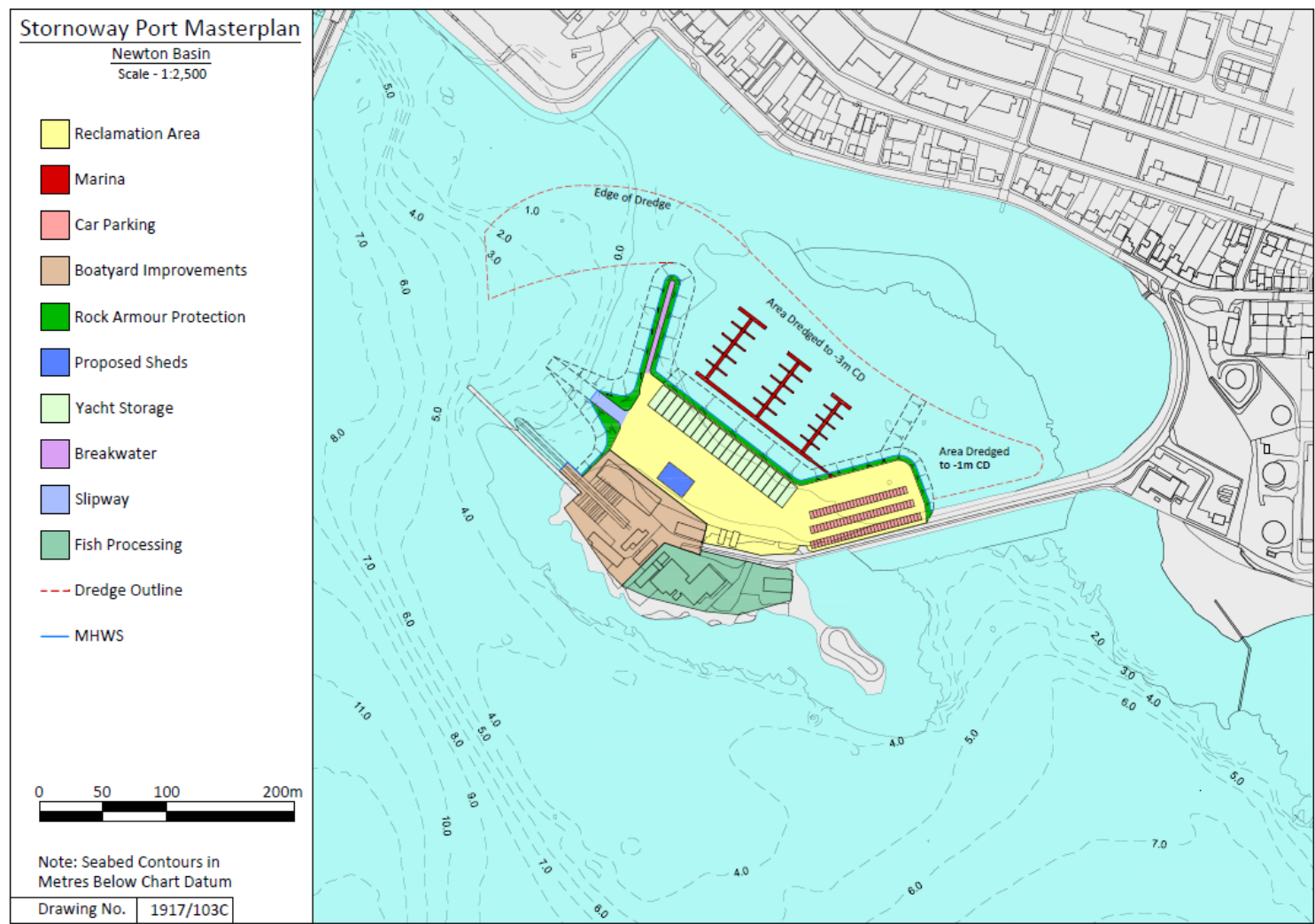
*Yours sincerely.*  
**Redacted**

*Marine Licensing Group Leader, Marine Scotland Licensing Operations Team*

*A member of the staff of the Scottish Ministers*

*03 May 2019*

Appendix 1. Location of the Newton Marina Development



**Conditions for marine licence number 06825/19/0**

**1.1. General conditions**

**1.1.1. 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.

**1.1.2. 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.

**1.1.3. 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.



#### **1.1.4. 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.

#### **1.1.5. 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.

#### **1.1.6. 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.

#### **1.1.7. Environmental protection**

The licensee must ensure that all measures listed in the Schedule of Mitigation submitted as part of the Environmental Impact Assessment ("EIA") Report 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 arising during the course of the works are removed from the site of the works for disposal at an approved location above the tidal level of Mean High Water Springs.

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.

#### **1.1.8. 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.

#### **1.1.9. Inspection of the works**

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

#### **1.1.10. 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.

### **1.2. Prior to commencement of the works**

- 1.2.1. 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.
- 1.2.2. The licensee must issue a Notice to Mariners or other local warnings clearly stating the nature and duration of the works prior to commencement. The position of the construction area and marker buoys should be included within this Notice to Mariners.
- 1.2.3. The licensee must ensure that HM Coastguard, in this case [nmoccontroller@hmcg.gov.uk](mailto:nmoccontroller@hmcg.gov.uk), The National Maritime Operations Centre, is made aware of the works prior to commencement.

### **1.3. During the works**

- 1.3.1. The licensee must ensure that only the materials listed in Part 2 of this licence are used during the construction of the works and that all substances or objects used during 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.
- 1.3.2. The licensee must ensure that all works are undertaken in accordance with the Construction Environmental Management Plan ("CEMP") (Revision 2, issued 14 February 2019). In the event that the licensee wishes to amend or update the CEMP, the licensee must submit, in writing, details of proposed updates or amendments to the licensing authority for their written approval, no later than two months, or at such time as agreed by 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.
- 1.3.3. The licensee must ensure that works are carried out in accordance with the Technical appendix 5.2: Marine Mammal Protection Plan ("MMPP") submitted as part of the EIA Report. In the event that the licensee wishes to amend or update the MMPP, the licensee must submit, in writing, details of proposed updates or amendments to the licensing authority for their written approval, no later than two months, or at such time as agreed by 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.
- 1.3.4. The licensee must liaise with the Northern Lighthouse Board with regard to the required characters for the proposed navigational lights and buoyage. The Statutory Sanction of the Northern Lighthouse Board must be sought prior to the installation of the aids to navigation; forms are available on request from: [navigation@nlb.org.uk](mailto:navigation@nlb.org.uk).
- 1.3.5. 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.

- 1.3.6. The licensee must ensure that the works are maintained at all times in good repair.
- 1.3.7. 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.
- 1.3.8. The licensee must ensure the best method of practice is used to minimise re-suspension of sediment during these works.
- 1.3.9. 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.
- 1.3.10. 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.

- 1.3.11. 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.

#### **1.4. On completion of the works**

- 1.4.1. The licensee must, within 7 days of completion of the works, notify the licensing authority of the date of completion of the works.
- 1.4.2. 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 2020. Where appropriate, nil returns must be provided.
- 1.4.3. 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](mailto:sdr@ukho.gov.uk); tel.: 01823 337900) with a copy of the 'as built plans', 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.

- 1.4.4.** The licensee must remove all temporary deposits listed in the marine licence application before the expiry date of this licence. This licence shall not continue in force after the expiry date of 02 October 2020.

### **Conditions for marine licence number 06826/19/0**

#### **1.1. General conditions**

##### **1.1.1. 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 the Master(s) of the vessel(s) employed to undertake the operations with a copy of the licence and any additional 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.

##### **1.1.2. 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.

### **1.1.3. 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.

### **1.1.4. 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.

### **1.1.5. 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.

### **1.1.6. Environmental protection**

The licensee must ensure that all measures listed in the Schedule of Mitigation submitted as part of the Environmental Impact Assessment (“EIA”) report 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 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.

#### **1.1.7. 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:

- e) the premises of the licensee;
- f) the premises of any agent, contractor or sub-contractor acting on behalf of the licensee;
- g) the site of the works;
- h) onboard any vessel carrying out works and
- i) any onshore premises directly associated with the licensed activities.

#### **1.1.8. Inspection of the works**

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

### **1.2. Prior to commencement of the works**

**1.2.1.** 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.

**1.2.2.** The licensee must issue Notice to Mariners or other local warnings clearly stating the nature and duration of the works prior to commencement.

1.2.3. The licensee must ensure that HM Coastguard, in this case [nmoccontroller@hmcg.gov.uk](mailto:nmoccontroller@hmcg.gov.uk), The National Maritime Operations Centre, is made aware of the works prior to commencement.

1.2.4. The licensee must transmit Marine Safety Information broadcasts when considered appropriate, both prior to and throughout, the dredging campaign.

### 1.3. During the works

1.3.1. The licensee must ensure that all works are undertaken in accordance with the Construction Environmental Management Plan ("CEMP") (Revision 2, issued 14 February 2019). In the event that the licensee wishes to amend or update the CEMP, the licensee must submit, in writing, details of proposed updates or amendments to the licensing authority for their written approval, no later than two months, or at such time as agreed by 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.

1.3.2. The licensee must ensure that works are carried out in accordance with the Technical appendix 5.2: Marine Mammal Protection Plan ("MMPP") submitted as part of the EIA Report. In the event that the licensee wishes to amend or update the MMPP, the licensee must submit, in writing, details of proposed updates or amendments to the licensing authority for their written approval, no later than two months, or at such time as agreed by 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.

1.3.3. The licensee must deposit all dredge spoil substances, other than material from the areas listed in condition 3.3.3 in the following areas:

Deposit Area Name and Code: STORNOWAY, HE035

Within the area bounded by joining the points:

58° 11.217' N 006° 22.133' W

58° 11.133' N 006° 22.000' W

58° 10.850' N 006° 22.667' W

58° 10.933' N 006° 22.783' W

Up to a maximum quantity of **36,000 wet tonnes / 20,000 m<sup>3</sup>** may be deposited within the area during the period of validity of this licence.

1.3.4. All tank/hopper washings must be deposited in the authorised dredge spoil deposit area: STORNOWAY (HE035)



**1.3.5.** The method of dredge spoil deposit for disposal purposes must be:

**BOTTOM DUMPING**

**1.3.6.** The licensee must ensure that a log of operations is maintained on each vessel employed to undertake the dredge spoil disposal operations. The log(s) must be kept onboard the vessel(s) throughout the disposal operations, and be available for inspection by any authorised Enforcement Officer. The log(s) must 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.

**1.3.7.** The log(s) must record in English the following information:

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

**1.3.8.** 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.

**1.3.9.** The licensee must liaise with the Northern Lighthouse Board with regard to the required characters for the proposed navigational lights and buoyage. The Statutory Sanction of the Northern Lighthouse Board must be sought prior to the installation of the aids to navigation; forms are available on request from: [navigation@nlb.org.uk](mailto:navigation@nlb.org.uk).

#### **1.4. On completion of the works**

- 1.4.1.** The licensee must, within 7 days of completion of the works, notify the licensing authority of the date of completion of the works.
- 1.4.2.** The licensee must submit written reports to the licensing authority stating the nature and total quantity, in wet tonnes, of all substances or objects disposed of 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.
- 1.4.3.** 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](mailto:sdr@ukho.gov.uk); tel.: 01823 337900) with the revised water depths, 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.