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MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

LICENCE TO CONSTRUCT, ALTER OR IMPROVE ANY WORKS WITHIN THE SCOTTISH MARINE AREA AND TO DEPOSIT OR USE ANY EXPLOSIVE SUBSTANCE OR ARTICLE WITHIN THE SCOTTISH MARINE AREA

Licence Number: 07161/20/0

Reference Number: 07161

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

**Aberdeen Harbour Board  
16 Regent Quay  
Aberdeen  
Scotland  
AB11 5SS**

to construct, alter or improve any works within the Scottish marine area and to deposit or use any explosive substance or article within the Scottish marine area as described in Part 2 of the attached Schedule. The licence is subject to the conditions of use set out, or referred to, in Part 3 of the said Schedule.

The licence shall be valid from 01 July 2020 until 31 December 2021.

Signed: \_\_\_\_\_

Malcolm Rose

For and on behalf of the licensing authority

Date: 01 July 2020

## **1. Part 1 – General**

### **1.1. Interpretation**

In this licence, unless otherwise stated, terms are as defined in sections 1, 64 and 157 of the Marine (Scotland) Act 2010:

- a) “the 2010 Act” means the Marine (Scotland) Act 2010
- b) “licensable marine activity” means any activity listed in section 21 of the 2010 Act
- c) “licensee” means the recipient of the licence
- d) “the licensing authority” means the Scottish Ministers
- e) “mean high water springs” (“MHWS”) means the average of high water heights occurring at the time of spring tides
- f) “seabed” means the ground under the sea

All geographical co-ordinates contained within this licence are in latitude and longitude format WGS84.

### **1.2. Contacts**

All correspondence or communications relating to this licence should be addressed to:

Marine Scotland  
Licensing Operations Team  
375 Victoria Road  
Aberdeen  
AB11 9DB

Tel: +44 (0) 300 244 5046  
Email: [ms.marinelicensing@gov.scot](mailto:ms.marinelicensing@gov.scot)

### **1.3. Other authorisations and consents**

The licensee is deemed to have satisfied themselves that there are no barriers or restrictions, legal or otherwise, to the carrying out of the licensed operations. The issuing of this licence does not absolve the licensee from obtaining such other authorisations and consents which may be required under statute.

### **1.4. Variation, suspension, revocation and transfer**

Under section 30 of the 2010 Act the licensing authority may by notice vary, suspend or revoke this licence granted by them if it appears to the licensing authority that there has been a breach of any of the provisions of this licence or for any such other reason that appears to be relevant to the authority under section 30(2) or (3) of the 2010 Act.

Under section 30 of the 2010 Act the licensing authority may on an application made by the licensee, vary this licence if satisfied that the variation being applied for is not material.

Under section 30 of the 2010 Act the licensing authority may on an application made by the licensee, transfer this licence from the licensee to another person.

### **1.5. Breach of requirement for, or conditions of, licence**

Under section 39 of the 2010 Act it is an offence to carry on a licensable marine activity without a marine licence and it is also an offence to fail to comply with any condition of a marine licence.

### **1.6. Defences: actions taken in an emergency**

Under section 40 of the 2010 Act it is a defence for a person charged with an offence under section 39(1) of the 2010 Act in relation to any activity to prove that the activity was carried out for the purpose of saving life or for the purpose of securing the safety of a vessel, aircraft or marine structure (*'force majeure'*) and that the person took steps within a reasonable time to provide full details of the matter to the licensing authority as set out in section 40(2) of the 2010 Act.

### **1.7. Offences relating to information**

Under section 42 of the 2010 Act it is an offence for a person to make a statement which is false or misleading in a material way, either knowing the statement to be false or misleading or being reckless as to whether the statement is false or misleading, or to intentionally fail to disclose any material information for the purpose of procuring the issue, variation or transfer of a marine licence or for the purpose of complying with, or purporting to comply with, any obligation imposed by either Part 4 of the 2010 Act or by this licence.

### **1.8. Appeals**

Under Regulation 3(1) of the Marine Licensing Appeals (Scotland) Regulations 2011 a person who has applied for a marine licence may by summary application appeal to the sheriff of any sheriffdom against a decision taken by the Scottish Ministers under section 29(1) of the 2010 Act.

## **2. Part 2 - Particulars**

### **2.1. Name(s) and address(es) of any other agents, contractors or sub-contractors acting on behalf of licensee**

As per Annex One.

See Condition 3.1.2.

### **2.2. Location of the licensed activities (hereinafter referred to as "the site"):**

Nigg Bay, Aberdeen, below MHWS within the area bounded by joining the points

57° 08.277' N 002° 02.840' W  
57° 07.991' N 002° 02.473' W  
57° 07.928' N 002° 02.374' W  
57° 07.707' N 002° 02.900' W

### **2.3. Description of the licensed activities:**

Licensed activities for Aberdeen Harbour Expansion Project ("AHEP"), Nigg Bay, Aberdeen including the following components located below the MHWS line:

- Construction of north and south breakwaters (each approximately 600 metres long) to form the harbour;
- Land reclamation and construction of closed and open quays to provide over 1400m of quayside and associated support infrastructure;
- Construction of revetment south of the west quay; and
- Use of explosives to blast localised areas of bedrock.

As described in application dated 31 October 2019, and correspondence submitted in support of the application.

### **2.4. Nature and indicative quantity of materials to be used in the construction, alteration or improvement of the works and explosive substances or articles to be deposited or used as described in Part 2.3 of the licence:**

Steel/Iron - 10,000 tonne  
Concrete - 261,000 m<sup>3</sup>  
Plastic/Synthetic - 60,000 m<sup>2</sup>  
Sand – 485,000 m<sup>3</sup>  
Pipe - 740 m  
Zinc sacrificial anodes, 70 tonne  
Explosives - 675 tonne

**Less any materials, substances or articles used under licence numbers 06965/16/0 and 05965/20/0.**

### **3. Part 3 - Conditions**

#### **3.1. General conditions**

##### **3.1.1. Licence conditions binding other parties**

All conditions attached to this licence bind any person who for the time being owns, occupies or enjoys any use of the works for which this licence has been granted in relation to those licensed activities authorised under item 5 in section 21(1) of the 2010 Act whether or not this licence has been transferred to that person.

##### **3.1.2. Agents, contractors and sub-contractors**

The licensee must provide, as soon as is reasonably practicable prior to the licensed activities commencing, the name and function of any agent, contractor or sub-contractor appointed to undertake the licensed activities.

Any changes to the supplied details must be notified to the licensing authority, in writing, prior to any agent, contractor or sub-contractor undertaking any licensed activity.

The licensee must ensure that only those agents, contractors or sub-contractors notified to the licensing authority are permitted to undertake the licensed activities.

The licensee must give a copy of this licence and any subsequent variations that have been made to this licence in accordance with section 30 of the 2010 Act to any agent, contractor or sub-contractor appointed to carry out any part, or all, of the licensed activities. The licensee must satisfy themselves that any such agent, contractor or sub-contractor is aware of the extent of the licensed activity for which this licence has been granted, the activity which is licensed and the terms of the conditions attached to this licence.

##### **3.1.3. Material alterations to the licence application**

The licensee must, where any information upon which the granting of this licence was based has, after the granting of the licence, altered in any material respect, notify the licensing authority of this fact, in writing, as soon as is practicable.

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

### **3.1.5. Environmental protection**

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 unauthorised debris or waste materials arising during the course of the licensed activities are removed from the site for disposal at an approved location above the tidal level of MHWS.

The licensee must ensure that all substances and materials used during the execution of the licensed activities 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 licensed activities.

The licensee must ensure that all mitigation detailed in the Construction Environmental Management Document ("CEMD") dated October 2019 is adhered to at all times. In the event that the licensee wishes to update or amend any of the protocols in the CEMD, the licensee must submit, in writing, details of proposed updates or amendments to the licensing authority for their written approval, no later than one month or at such a time as agreed with the licensing authority, prior to the planned implementation of the proposed updates or amendments. It is not permissible for any activities associated with the proposed updates or amendments to proceed prior to the granting of such approvals.

Prior to commencement of the licensed activities, the licensee must appoint an Environmental Clerk of works ("ECoW") who will be responsible for ensuring delivery of the CEMD. The ECoW must be on site during licensed activities, as determined by the CEMD, and must have authority to halt activities if necessary.

### **3.1.6. 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 licensed activities; and
- d) any onshore premises directly associated with the licensed activities.

### **3.1.7. Inspection of the licensed activities**

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

### **3.1.8. Safety of Navigation**

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

Prior to commencement of the licensed activities, the licensee must notify the UK Hydrographic Office to permit the promulgation of maritime safety information.

The licensee must remove the works from below the level of MHWS, or such alterations made, within one month of notice being given by the licensing authority at any time it is considered necessary or advisable for the safety of navigation, and not replaced without further consent by the licensing authority. The licensee shall be liable for any expense incurred.

### **3.2. Prior to commencement of the licensed activity**

**3.2.1.** The licensee must, as soon as practicable, notify the licensing authority of the date of commencement of all licensed activities relating to the licence.

**3.2.2.** 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 licensed activities prior to commencement.

**3.2.3.** The licensee must complete and submit a Proposed Activity Form in the online Marine Noise Registry for all licensable marine activities that will produce loud, low to medium frequency (10Hz-10kHz) impulsive noise as soon as is reasonably practicable prior to commencement of the licensable marine activity. If any aspects of the licensable marine activities differ 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 7 days prior to commencement of the licensable marine activity.

**3.2.4.** The licensee must submit an Adaptive Blasting Management Plan ("ABMP") to the licensing authority for its written approval at least two months prior to deposit and use of any explosives, or less if agreed by the licensing authority. The ABMP must be consistent with the marine licence application and supporting documents and must contain, but not be limited to, the following:

- a) Limitation of the incremental charge weight increase to 5 kg at all times.
- b) A programme of incremental charge weight increase, including details of number of blasts per charge weight and the process for when underwater noise levels approach or exceed the agreed noise thresholds.
- c) A reporting strategy, including timelines to inform the licensing authority of any blasting events and subsequent underwater noise monitoring results, including both raw and calibrated peak and Sound Exposure Level ("SEL") metrics, and number of detonations used.
- d) A Precautionary Control Limit ("PCL") and noise threshold using peak noise metric.

- e) A plan for recording and calculating the SEL metric to inform both PCL and threshold based on latest available guidance. The maximum duration of each blast should be used for these calculations.
- f) Details of the underwater noise monitoring techniques, protocols and equipment to be used and their proposed locations in Nigg Bay.
- g) Details of the proposed use of Marine Mammal Observers (“MMO”), passive acoustic monitoring (“PAM”) and fish scarers.
- h) Details of all monitoring, recording and reporting of the use of Nigg Bay by marine mammals.

All licensed activities must proceed in accordance with the approved ABMP. Any updates or amendments made to the ABMP must be submitted, in writing, to the licensing authority for its written approval no later than two months or at such a time as agreed with the licensing authority, prior to the planned implementation of the proposed amendments. It is not permissible for any use of explosives to commence prior to approval of the ABMP. In granting such approval, the licensing authority may consult any such other advisors, organisations or stakeholders as may be required at their discretion.

### **3.3. During the licensed activities**

- 3.3.1.** The licensee must ensure appropriate steps are taken to minimise damage to the foreshore and seabed by the licensed activities.
- 3.3.2.** The licensee must ensure the best method of practice is used to minimise re-suspension of sediment during the licensed activities.
- 3.3.3.** The licensee must ensure that the works are maintained at all times in good repair.
- 3.3.4.** The licensee must ensure that no deviation from the schedule specified in the licence is made without the further written approval of the licensing authority.
- 3.3.5.** 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.
  - c) The drifting or wreck of the works.

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

- 3.3.6.** In the event of the licensed activities being discontinued the works must be removed and the site cleared to the satisfaction of the licensing authority.
- 3.3.7.** In the event of the licensee becoming aware that any of the information on which the issue of the licence was based has changed, the licensing authority must be immediately notified of the details.



- 3.3.8.** The licensee must ensure that the MMO and PAM operators check for the presence of seals inside the double bubble curtain before it is switched on prior to blasting. The double bubble curtain must not be switched on until no seals are present inside the double bubble curtain.
- 3.3.9.** The licensee must ensure that prior to any blasting event no eider ducks are diving within the bubble curtain. Blasting must be delayed until the ducks have surfaced.
- 3.3.10.** Should any foul connection associated with shipping or off-shore wastes be required, the licensee must liaise with Scottish Water prior to commencement of the licensed activities.
- 3.3.11.** The licensee must, once all water and wastewater requirements for the development are understood, liaise with Scottish Water to discuss the required connections prior to commencement of the licensed activities.
- 3.3.12.** The licensee must review where potential asset conflicts exist and contact Scottish Water's Asset Impact Team ("AIT") ([service.relocation@scottishwater.co.uk](mailto:service.relocation@scottishwater.co.uk)) as soon as practicable to discuss any potential issues identified prior to commencement of the licensed activities.
- 3.3.13.** Prior to commencement of the licensed activities, the licensee must ensure that existing abstractions and discharges in the vicinity of the site are protected, diverted or relocated to ensure functionality is maintained during the construction and operation of AHEP, with particular reference to the outfalls (United Fish Industries, Scottish Water and East Tullos Burn) and intake (Marine Scotland Science aquarium) currently located in Nigg Bay.
- 3.3.14.** 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 no later than 12 weeks from the completion of the licensable marine activities.
- 3.3.15.** The licensee must ensure the cliff face and associated sediments of the Nigg Bay Site of Special Scientific Interest are not modified during the licensed activities.
- 3.3.16.** The licensee must ensure no temporary stockpiles remain on site after the expiry of the licence

**3.4. On completion of the licensed activity**

- 3.4.1.** The licensee must notify the licensing authority of the date of completion of all licensed activities relating to the licence.
- 3.4.2.** 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.
- 3.4.3.** The licensee must ensure the foreshore and seabed are returned to the original profile, or as close as reasonably practicable, following the completion of the licensed activities.

## 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.
3. Under Section 30 of the Marine (Scotland) Act 2010, the licensing authority may vary, suspend or revoke the licence, if it appears to the licensing authority that there has been a breach of any of the provisions of the licence or for any other reason that appears to be relevant to the licensing authority.
4. Under Section 39 of the Marine (Scotland) Act 2010, it is an offence to carry on a licensable marine activity or cause or permit any other person to carry on such an activity without a marine licence or fails to comply with any condition of a marine licence. It is a defence for a person charged with an offence under Section 40 in relation to any activity to prove that the activity was carried out for the purpose of saving life, or for the purposes of securing the safety of a vessel, aircraft or marine structure (*'force majeure'*), and that the person took steps within a reasonable time to provide full details of the incident to the licensing authority. (Under Annex II, Article 7 of the Convention for the Protection of the Marine Environment of the North-East Atlantic, the licensing authority is obliged to immediately report *'force majeure'* incidents to the Convention Commission).
5. All correspondence or communications relating to the licence should be addressed to:

Licensing Operations Team  
Marine Scotland  
Marine Laboratory  
375 Victoria Road  
Aberdeen  
AB11 9DB

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