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MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

THE MARINE WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND) 2017 REGULATIONS

DECISION NOTICE – MARINE LICENCES TO CONSTRUCT, ALTER OR IMPROVE WORKS, DREDGE AND DEPOSIT DREDGED SUBSTANCES OR OBJECTS ASSOCIATED WITH THE PORT OF LEITH OUTER BERTH HARBOUR DEVELOPMENT

1 Application and description of the works

- 1.1 On 19 April 2022, Forth Ports Limited (“the Applicant”) having its registered office at Carron House Limited, Central Dock Road, Grangemouth, FK3 8TY submitted to the Scottish Ministers applications under Part 4 of the Marine (Scotland) Act 2010 (“the 2010 Act”) for the construction, alteration or improvement works, dredging and deposit of dredged substances or objects associated with the development of the harbour at Port of Leith Outer Berth (hereinafter collectively referred to as “the Works”). The applications were accompanied by an Environmental Impact Assessment Report (“EIA Report”) in accordance with The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 MW Regulations”). Additional information was submitted by the Applicant to the Scottish Ministers on 8 September 2022 (“Additional Information”) related to ornithology, construction methodology and vessel traffic.

- 1.2 The Works will involve redeveloping an existing berth on the inner edge of the eastern breakwater and capital dredging and sea deposit of dredged material in order to accommodate windfarm construction and service vessels. The location and boundary of the site in Leith is shown in Appendix 1.
- 1.3 The Works include the following components located below the Mean High Water Springs:
- Removal of existing infrastructure and construction of a 125 metre (“m”) section of existing berth (Area 1);
 - Provision of an area of hardstanding to be used for loading/unloading vessels (Area 2);
 - Capital dredging to enlarge the existing berth pocket (Area 4); and
 - Deposit of dredged material at the Narrow Deep B designated sea deposit site (“Narrow Deep B deposit site”).
- 1.4 The Works will be carried out as one continuous delivery programme. The expected time to complete the Works is approximately 15 months with various elements of the project potentially being completed concurrently.

Redevelopment of berth and construction of the hardstanding area

- 1.5 The redeveloped berth will be approximately 125 m long and 35 m wide with a further 10 m run off apron. It will be comprised of piles and a suspended concrete deck and be constructed adjoining the western face of the existing concrete lead-in jetty. In the area to be expanded into there is currently a row of dolphins connected by walkways. These structures will be removed by cutting off at bed level and loading on to a barge prior to the berth redevelopment works.
- 1.6 Following the removal of the existing dolphin piles and walkways, dredging will be required to remove overburden from the area next to the existing berth. Once the overburden has been removed, excavators will be used to place a rock armour protection around the base of the existing breakwater prior to the piling works starting. The rock will be stored in the inner harbour and moved out to the excavators in 300 tonne loads.
- 1.7 To facilitate the berth redevelopment works, piling platforms will be created going out from the breakwater, using stone fill to enable a crane to operate from there holding the piling hammer. Up to 168 tubular piles will be installed in 6 rows of 28 piles. These piles will be approximately 1.2 m in diameter. A row of 39 piles of approximately 0.8 m diameter will then be installed in front of the group of larger piles and connected with sheet piles. It is estimated that piling will take approximately 160 days. This will involve vibro-piling and impact

piling. A sheet pile wall is to be installed next to the existing jetty to support the tubular piles and landward development. It is thought that around 50% of the piles in the outer 3 rows may require to be drilled. Secondary rock armour will be placed around the base of the piles following installation.

- 1.8 Precast beams will then be installed onto the piles using a crane. Omni planks will be installed and the concrete deck of the new expansion to the quay, forming the berth section, will be poured. Once the concrete on the deck of the quay has set, all deck furniture including fenders, bollards and ladders will be installed.
- 1.9 An area of hardstanding will be created at the rear of the existing jetty at the landward side. This area is to be infilled, if possible, with dredged material extracted in the initial clearance of overburden or if this is not suitable, imported material from local quarries. This area will have lighting and drainage infrastructure installed, including new storm water drainage outfalls that will discharge surface water run-off into the sea following suitable treatment.
- 1.10 The majority of materials required for construction will be delivered to the site by sea. Material required for raising levels and the wearing course will be imported from local quarries and enter the port via the road network. Deliveries are programmed to occur over approximately 50 days.

Capital dredging and sea deposit of dredged material

- 1.11 The dredging and sea deposit operations will be carried out in two phases. The initial dredge involves the dredging of approximately 100,000 wet tonnes of material following the removal of the existing dolphin piles and walkways. The material will be removed by excavator and if suitable, re-used on site. Failing which, the material will be taken for disposal on land or loaded onto barges and taken to the Narrow Deep B deposit site.
- 1.12 The second phase of dredging will involve enlarging the berth pocket adjacent to the quay. The area of the berth pocket is to be approximately 300 m by 60 m and will be dredged to -9.3 m chart datum. Dredging will be undertaken using a backhoe dredger supported by a barge which will take the dredge material to the Narrow Deep B deposit site. Approximately 115,000 wet tonnes of material will be dredged and deposited during the expansion of the berth pocket.
- 1.13 This decision notice contains the Scottish Ministers decision to grant regulatory approval for the Works as described above, in accordance with the 2017 MW Regulations.

2 Summary of environmental information

2.1 The environmental information provided by the Applicant was:

- An EIA Report providing an assessment of the impact of the Works on a range of receptors;
- Additional Information pertaining to ornithology, construction methodology and vessel traffic; and
- Habitats Regulations Appraisal – Provision of information by Applicant to inform appropriate assessment.

2.2 A summary of the environmental information provided in the EIA Report and Additional Information is given below.

Coastal Processes

2.3 To assess the potential effects on coastal processes resulting from the Works, the Applicant undertook a desk based study to formulate an understanding of the baseline environment and carried out numerical modelling to predict tidal current and suspended sediment transport changes associated with the construction and operation of the Works.

2.4 During the construction phase, the assessment identified potential changes in sea-bed levels in the vicinity of the Works and the Narrow Deep B deposit site due to increased suspended sediment concentrations associated with capital dredging of the outer berth pocket and the disposal of dredge arisings at the sea deposit site. The effects of the sea-bed level changes were assessed in the EIA Report to be negligible or no impact.

2.5 During the operational phase, due to the presence of the outer berth and enlarged berth pocket, the assessment identified potential changes to the tidal current regime and to sediment transport and erosion/accretion patterns.

2.6 No significant impacts on coastal processes were identified in the EIA Report and therefore no mitigation measures were proposed.

Marine Water and Sediment Quality

2.7 The Applicant identified that during the construction phase of the Works, impacts to marine water and sediment quality could arise due to increases in suspended sediment concentrations (“SSC”) and the potential release of contaminants during dredging and deposit activities.

- 2.8 To assess the potential effects of dredging on SSC, sediment dispersion modelling was carried out at both the dredging and disposal locations. The results predicted that the impact on SSC at the dredging area would be low, reversible and short term. At the Narrow Deep B deposit site, whilst the plume extent is predicted to be larger than at the dredging area, the impact on SSC is still expected to be reversible and short term. In respect of both dredging and deposit activities the predicted peak SSC outside of the dredge and deposit areas are within background levels recorded within the Forth.
- 2.9 Sediment sampling conducted by the Applicant showed concentrations of seven metals, cadmium, chromium, copper, mercury, nickel, lead and zinc within the sediment at the dredge site, as well as heavy concentrations of cadmium and mercury found at two of the sample sites. The material to be dredged for the Works is glacial till and mudstone which does not contain anthropogenic derived contaminants. Sediment sample analysis indicates that the remaining soft material component when averaged, does not contain significantly elevated concentrations of contaminants. The contamination levels are noted to be in line with historic data (collected between 1993 - 2020) from the Narrow Deep B deposit site. Based on the contaminants being restricted to certain sediment types within the dredge area and the short dispersal times of the sediment plume, the Applicant concludes that potential impacts to marine water and sediment quality from the potential release of contaminants, at the dredging site and at the Narrow Deep B deposit site, will be low and reversible.
- 2.10 Overall, the Applicant assesses potential impacts to water quality during the construction phase of the Works to be of minor adverse significance, due to the localised extent of the impacted area, the rapid rate of dispersion and the non-continuous nature of the activities. The Applicant considers no mitigation to be required and assessed the residual impact to be of minor adverse significance, which is not significant in environmental impact assessment ("EIA") terms.
- 2.11 The Applicant does not predict any impacts on marine water and sediment quality to occur during the operational phase.

Marine and Coastal Ecology

- 2.12 To assess the impact of the Works on marine and coastal ecology the Applicant undertook a desktop study using a range of published datasets. The Applicant identified the potential impacts on marine and coastal ecology during the construction phase as:- direct loss of benthic habitats within the footprint of the Works; smothering of benthic habitats as a result of dredging and

deposit of dredged material; release of contaminants through dredging and deposit; and disturbance and reduced availability of prey to otters.

- 2.13 The study showed that the dredge area of the Works is inhabited by locally common benthic species such as white furrow shell, common mussel, limpet and periwinkle. There are no Priority Marine Features (“PMF”) recorded within the immediate vicinity of the Works and very few instances recorded within the wider Firth of Forth. Given the localised area, low level of sediment deposition and that the benthic communities surrounding the Works and the Narrow Deep B deposit site will be tolerant to sediment deposition, smothering of benthic habitats as a result of dredging and deposit activities is considered to be of negligible significance. Similarly given the above factors and the low value of the benthic habitats present the potential impact from the release of contaminants during dredge and deposit activities is considered to be of minor adverse significance.
- 2.14 The area of the Works is heavily constructed with limited natural coastal habitat. Otters are known to regularly use the Waters of Leith in and around urban Edinburgh. The Applicant stated, however that there is no evidence to suggest significant habitual use of the impounded dock system or the coastline immediately adjacent to the Works by otters. The Applicant stated that it appears that the otters favour areas more than 2 km upstream from the Port of Leith. The Applicant therefore predicted that otters are unlikely to be affected by direct contact with the Works. The Applicant also predicted no significant impact from the Works on the prey species of the otters, due to the presence of the lock gates and the dam separating the marine environment from the Water of Leith. The Applicant highlighted that the noise from piling would last approximately 5.5 months and sediment disturbance during dredging approximately 4 months. The Applicant concluded therefore any impact on either the otters themselves or on their prey species would be temporary and short term. Overall, the Applicant considered the potential impact from the Works to be of minor adverse significance, which is not significant in EIA terms.
- 2.15 The Applicant identified that during the operational phase, changes in erosion and accretion patterns as a result of the presence of the Works have the potential to impact benthic habitats. The Applicant concluded however that given the predicted negligible changes in tidal currents no impact on benthic habitats is predicted.

Fish and Shellfish Ecology

- 2.16 The Applicant identified the potential impacts on fish and shellfish ecology during the construction phase of the Works as:- injury or disturbance due to

underwater noise on migratory fish; physiological changes in water quality on all fish; and changes in habitat availability either directly or due to smothering, on all fish and shellfish.

- 2.17 With regard to underwater noise, the Applicant identified the potential for the Works to affect the following migratory species, known to be present in the Firth of Forth: sea and river lamprey; Atlantic salmon; sea trout; smelts; and European eels. The Applicant undertook underwater noise modelling on these migratory species to predict the potential impact from the underwater noise generated by the proposed piling and dredging elements of the Works. This modelling took account of soft start piling, as per the Joint Nature Conservation Committee (“JNCC”), ‘Statutory nature conservation agency protocol for minimising the risk of injury to marine mammals from piling noise’ (2010) (“the JNCC Piling Protocol”). The Applicant stated that with this mitigation in place, even if the Works coincide with the migration season for one or more of the species considered, the potential impacts were of minor adverse significance for salmon, sea trout, smelt and European eel, and negligible for the lamprey species. The Applicant proposed no further mitigation and concluded the residual impacts remain of minor adverse and negligible significance, which are not significant in EIA terms.
- 2.18 With regard to changes in water quality, the Applicant identified that the dredging elements of the Works would result in a temporary increase in SSC. This increase in SSC could affect finfish both in terms of direct exposure to the increased SSC and in terms of a barrier forming. In the case of direct exposure, the Applicant states that the species present in estuarine environments have the ability to detect changes in SSC and move into more suitable conditions. The Applicant’s SSC modelling showed that any sediment plume will be short-lived, and the fish will be able to avoid the potential impacts of increased SSC. In terms of potential ‘barrier effect’, the Applicant concluded that the location of the Works within an estuary which is 8 km wide at the point of the Works, means the finfish will avoid the area and be unimpeded in their migration. The Applicant considered no mitigation to be required and assessed the residual impact from increased SSC to be of minor adverse significance, which is not significant in EIA terms.
- 2.19 The Applicant also considered impacts of changes in fish and shellfish habitat availability due to dredging and deposit operations. The Applicant considered that the total footprint of the Works which could result in direct loss of subtidal habitat is approximately 1.8 hectares. The Applicant concluded that as a proportion of the total subtidal habitat available in the Firth of Forth this area is infinitesimal, and the loss will have no measurable impact on fish and shellfish ecology.

- 2.20 As well as direct habitat loss there is also a risk of loss due to smothering by deposition of sediment. The modelling carried out by the Applicant showed that the maximum sediment deposition depth in the enlarged berth pocket and existing Approach Channel would be between 0.01 and 0.03 m. The Applicant considered the impact to benthic habitats to be negligible. As such, the Applicant assessed the significant of the effect on fish and shellfish would be, at worst, of minor adverse significance, which is not significant in EIA terms.
- 2.21 The Applicant has not identified any potential impacts of the Works on fish and shellfish during the operational phase.
- 2.22 The Additional Information submitted by the Applicant provided greater detail on the methodology for the initial, preparatory works but confirmed no additional impacts or changes in significance to those already identified.

Ornithology

- 2.23 To inform the assessment on ornithology the Applicant undertook project specific baseline surveys and gathered publicly available information including details of the designated sites in or adjacent to the area. In particular, information regarding the Imperial Dock Lock, Leith Special Protection Area ("SPA"), located within the area of Works and designated for its breeding colony of common terns, was utilised. The Applicant identified the potential impacts on ornithology during the construction phase of the Works as: noise from impact piling; changes in prey availability due to changes in water quality; and changes to prey availability due to underwater noise.
- 2.24 With regard to noise, the Applicant identified that airborne noise from the piling works have the potential to impact breeding and foraging common tern, seabirds and non-breeding waterbirds. The Applicant considered the potential impact to be of minor adverse significance. The Applicant however stated that the use of the JNCC Piling Protocol will support birds becoming habituated to this noise disturbance. The Applicant concluded that with this mitigation measure in place, the residual impact is of minor adverse significance, which is not significant in EIA terms.
- 2.25 The Applicant however stated that the potential impact of airborne noise from the piling works on post-breeding common tern, should piling be taking place during this period, is considered to be of moderate adverse significance. In addition to soft start piling, the Applicant proposed the use of a piling shroud to reduce the noise of the piling. Within the Additional Information submitted by the Applicant, further detail was provided on the piling shroud and its effectiveness together with confirmation that an Ecological Clerk of Works ("ECoW") would be employed to monitor construction works during the bird

breeding season. The Applicant concluded that with this mitigation in place, the residual impact is considered to be of minor adverse significance, which is not significant in EIA terms.

- 2.26 With regard to changes in prey availability due to underwater noise and changes in water quality, due to increases in SSC or disturbance of contaminants during dredging and deposit activities on piscivorous/partly piscivorous bird species, the Applicant assessed these to be of minor adverse and negligible significance, respectively. The Applicant proposed no mitigation and concluded the residual impacts are not significant in EIA terms.
- 2.27 The Applicant identified the potential impact on ornithology during the operational phase of the Works was to breeding common tern flying across the port estate when entering or leaving the port due to the change of use within the proposed laydown area. The Applicant acknowledged that items to be stored in this area may be large and during loading onto vessels may be up to 90 m tall, well within the range of flight height of the terns. It is the Applicant's view however that the terns are habituated to the presence of tall structures such as gantry cranes and therefore considered this potential impact to be of minor adverse significance. The Applicant proposed no mitigation and concluded the residual impacts are not significant in EIA terms.
- 2.28 Within the Additional Information submitted, the Applicant also provided further detail on the artificial lighting to be used during the operational phase of the Works. The Applicant noted however that they did not expect any impact from these to be significant or materially different from the existing baseline. The Applicant also provided further detail regarding the predicted increase in vessel traffic during both the construction and operation phases of the Works. It was the Applicant's view however that this would still not be considered significant compared to the baseline conditions, and there would be no greater impact on bird species as a result of the Works. The Additional Information submitted by the Applicant also provided greater detail on the methodology for the initial, preparatory works but confirmed no additional impacts or changes in significance to those already identified.

Marine Mammals

- 2.29 The Applicant identified the most common species within the Firth of Forth as; harbour porpoise, white-beaked dolphin, grey seal and harbour seal. Other species include minke whale and bottlenose dolphin, and less common species such as sei whale, humpback whale, killer whale, Atlantic white-sided dolphin, Risso's dolphin and long-finned pilot whales. The Applicant considered the potential for marine mammals to be impacted during the construction phase of the Works by underwater noise from impact piling, vibro-

piling and dredging. The potential impacts from these activities were identified as permanent auditory threshold shift (“PTS”), temporary threshold shift (“TTS”), and disturbance. In addition, the Applicant identified the potential for marine mammals to be indirectly impacted by changes to prey availability due to underwater noise or changes to water quality.

- 2.30 The Applicant considered the potential impact of PTS or TTS to marine mammals from underwater noise during impact piling to be of minor adverse significance. The Applicant considered that with the adoption of the best practice guidance for minimising the risk of injury to marine mammals from piling noise, the residual impact would be of negligible significance, which is not significant in EIA terms.
- 2.31 The Applicant considered the potential impact of PTS or TTS to marine mammals from underwater noise during vibro-piling to be of minor adverse significance. The Applicant proposed mitigation measures including the establishment of a mitigation zone; to only commence piling operations during the hours of daylight and good visibility; and a pre-piling search for marine mammals of mitigation zone by a Marine Mammal Observer. The Applicant considered however that the pre-piling search area could be reduced from the JNCC recommended minimum of 500 m to 200 m. The Applicant considered that with this mitigation in place, the residual impact would be of negligible significance, which is not significant in EIA terms.
- 2.32 With regard to the potential impact to marine mammals from disturbance during the piling works the Applicant considered this to be of minor adverse significance. No mitigation is proposed and the Applicant concluded the residual impacts are not significant in EIA terms.
- 2.33 The Applicant considered the potential for marine mammals to be impacted by changes to prey availability due to either underwater noise impacts or a changes in water quality to be of minor adverse significance. No mitigation is proposed and the Applicant concluded the residual impacts are not significant in EIA terms.
- 2.34 Within the Additional Information submitted, the Applicant also provided further detail on vessel traffic during both the construction phase and the operational phase. The Applicant stated however that this increase would still not be considered significant compared to the baseline conditions, and there would be no greater impact on marine mammal species as a result of the Works. The Additional Information submitted by the Applicant also provided greater detail on the methodology for the initial, preparatory works but confirmed no additional impacts or changes in significance to those already identified.

Cumulative Impacts

- 2.35 The Applicant identified 8 projects which may, in combination with the Works, result in cumulative impacts. The Applicant stated that due to the distances between these developments the only potential source of cumulative impacts would be underwater noise and the only receptors of this impact would be marine mammals due to their wide ranging habits.
- 2.36 The Applicant concluded no significant cumulative impacts from the Works with any of the identified projects.

3 Consultation

- 3.1 In accordance with the 2017 MW Regulations, advertisement of the Application and EIA Report and subsequent Additional Information was made available in the Edinburgh Gazette, local press and on 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 for the consultation exercises are given below. The regulatory requirements regarding consultation and public engagement have been met and the responses received taken into consideration.

Document	Date received	Consultation Period	Publication
EIA Report & Appendices	19 April 2022	30 May 2022 - 30 June 2022	Marine Scotland Information website (27 May 2022)
Marine licence application & supporting documentation			Edinburgh Gazette (27 May 2022) Edinburgh Evening News (27 May 2022)
Additional Information	8 September 2022	30 September 2022 - 30 October 2022	Marine Scotland Information website (30 September 2022) Edinburgh Gazette (30 September 2022)

3.3 A summary of the responses is set out at sections 4, 5 and 6. The responses are available to review in full here: <https://marine.gov.scot/node/23339>

4 Summary of statutory consultee responses

4.1 Scottish Environmental Protection Agency (“SEPA”) responded to the initial consultation on 30 May 2022 and referred to its standing advice which states that it does not anticipate any significant environmental concerns provided that best practice measures are followed.

4.2 In response to the Additional Information, SEPA confirmed on 5 October 2022 its position remained the same.

4.3 Historic Environment Scotland (“HES”) responded to the initial consultation on 27 June 2022 and advised it had no comments.

4.4 In response to the Additional Information, HES confirmed on 5 October 2022 its position remained the same.

4.5 NatureScot (“NS”) (operating name of Scottish Natural Heritage) responded to the initial consultation on 15 July 2022. In this response it stated that the Works are likely to have a significant effect on the qualifying interests of several European sites SPA and Special Areas of Conservation (“SAC”)) as follows:

European Site	Feature	Pathway of significant effect
Firth of Forth SPA	various bird species	Disturbance, habitat loss, water quality effects and prey availability
Imperial Dock Lock, Leith SPA	common tern	Disturbance, habitat loss, water quality effects and prey availability
Forth Islands SPA	various bird species	Disturbance, habitat loss, water quality effects and prey availability
Outer Firth of Forth and St Andrews Bay Complex SPA	various bird species	Disturbance, habitat loss, water quality effects
River Teith SAC	sea lamprey, river lamprey and salmon	Underwater noise disturbance, water quality changes, habitat quality changes
Isle of May SAC	grey seal	Underwater noise impacts, water quality changes, prey availability changes

Firth of Tay and Eden Estuary SAC	harbour seal	Underwater noise impacts, water quality changes, prey availability changes
Berwickshire and North Northumberland SAC	grey seal	Underwater noise impacts, water quality changes, prey availability changes
Moray Firth SAC	bottlenose dolphin	Underwater noise impacts, water quality changes, prey availability changes

4.6 NS stated that it was largely content with the information presented in the applicant’s Habitats Regulations Assessment (“HRA”) report and agreed that there will not be adverse effects on site integrity provided that the mitigation outlined by the Applicant in the report is followed subject to the following changes:

- Employment of soft start piling procedure whereby the piling power is gradually ramped up, incrementally over a set time period, until full operational power is achieved. The soft-start duration should be a period of not less than 20 minutes;
- JNCC piling guidance is followed including pre-piling search area of 500 m around the area of piling activity;
- Use of a piling shroud at all times through the tern breeding season (1 May to 31 July) not just during the post breeding phase (August); and
- Piling works are to be undertaken outwith the tern breeding season (1 May to 31 July) but if this is not possible, then an Ecological Clerk of Works will be required to monitor disturbance at the colony.

4.7 To inform its consideration of the impact of the Works on the Outer Firth of Forth and St Andrews Bay Complex SPA, NS requested further detail on the number of vessel movements to the Narrow Deep B deposit site and how often that route will be used against baseline be provided. Further, NS requested further detail on the initial, preparatory works required, expanding upon what this work would include, the likely impacts and any mitigation in addition to that already included in the EIA Report.

4.8 NS agreed with the Applicant’s assessment and conclusions on coastal processes, benthic habitat and species. NS also confirmed they were content with the Applicant’s assessment that the operational vessel movements associated with the Works are unlikely to have significant impacts, providing that existing routes through the Forth are followed.

- 4.9 NS advised that a licence to disturb European Protected Species (“EPS”) will be required for the Works although it advised they will not have a detrimental effect on the favourable conservation status of the EPS providing the mitigation advised by NS is followed.
- 4.10 In response to the Additional Information, NS confirmed on 28 October 2022 that the Applicant had provided sufficient detail on the initial, preparatory works for it to conclude that they would not raise any significant impacts requiring additional mitigation. NS confirmed that the detail provided on additional vessel movements to the Narrow Deep B Deposit Site compared to the existing movements is unlikely to cause significant disturbance to the qualifying species of the Outer Firth of Forth and St Andrews Bay Complex SPA. NS further advised that the additional mitigation outlined in the Additional Information was sufficient and noted the use of the piling shroud throughout the tern breeding season and the appointment of an ECoW. NS advised that based the uncertainties within the noise modelling provided by the Applicant and that piling is likely to take 5.5 months, the mitigation zone should remain as per the JNCC Piling Protocol minimum recommendation, namely 500 m.
- 4.11 Edinburgh City Council (“ECC”) responded to the initial consultation on 29 June 2022 stating it had no comment to make on the Works.
- 4.12 ECC was consulted on the additional information but declined to comment

5 Summary of non-statutory consultee responses

- 5.1 Marine Coastguard Agency (“MCA”) responded to the initial consultation on 27 June 2022. The MCA noted that the Works fall within the jurisdiction of a Statutory Harbour Authority (“SHA”), Forth Ports Limited, and that the deposit of the material is within a designated deposit site. The Applicant is therefore responsible for the safety of navigation within the SHA area. The MCA has no objection to the Works provided that all maritime safety legislation is adhered to.
- 5.2 In response to the Additional Information, the MCA confirmed on 24 October 2022 its position remained the same.
- 5.3 Northern Lighthouse Board (“NLB”) responded to the initial consultation on 31 May 2022 stating it had no objection to the capital dredge and deposit campaign. In relation to the construction aspects of the Works, NLB recommended a number of standard conditions and provided advice in relation to the Aids to Navigation associated with the Works.

- 5.4 In response to the Additional Information, the NLB confirmed on 3 October 2022 its position remained the same.
- 5.5 UK Chamber of Shipping provided a response to the initial consultation on 8 June 2022 and to the Additional Information on 17 October 2022 confirming it had no comments on the Works.
- 5.6 The Ministry of Defence responded to the initial consultation on 10 June 2022 confirming no objection to the Works. It was consulted on the Additional Information but declined to comment.
- 5.7 Whale and Dolphin Conservation responded to the initial consultation on 30 May 2022 stating that it would not be submitting a response. It was also consulted on the Additional Information but no response was received.
- 5.8 Royal Yachting Association Scotland provided a response to the initial consultation on 30 May 2022 and to the Additional Information on 5 October 2022 confirming it had no comment to make on the Works.
- 5.9 Scottish Water ("SW") provided a response to the initial consultation on 7 June 2022 stating no objection to the Works. SW advised that the Applicant should be aware that should the Works require service from SW, for example, access to the combined sewer system, the Applicant should contact SW at the earliest opportunity to discuss making a connection request.
- 5.10 SW was consulted on the additional information but declined to provide comment.
- 5.11 The Royal Society for the Protection of Birds Scotland ("RSPB Scotland") provided a response to the initial consultation on 15 July 2022. RSPB Scotland advised that whilst it did to a large extent, agree with the assessment and impacts identified by the Applicant it had concerns related to the assessment of the changes to activity levels across the site and to the extent to which construction impacts on post-breeding terns can be mitigated.
- 5.12 RSPB Scotland stated that the Applicant had based its assessment of operational impacts on birds using baseline conditions which suggest current disturbance levels are uniform across the site and the birds using the area of the Works are likely to be habituated to this level of disturbance and therefore will be unaffected. RSPB Scotland indicated that currently the eastern breakwater (site of the Works) may have relatively lower levels of disturbance and may act as a quieter refuge site for some species. RSPB Scotland highlighted that this appeared to be supported by survey records. RSPB Scotland advised that if the Works leads to a significant increase in the

operational usage of the area then this could lead to an increase in disturbance and a reduction in value of this area to the birds during the operational phase of the Works and not just the construction phase.

- 5.13 RSPB Scotland also raised concerns regarding the efficacy of the suggested mitigation for the Works. RSPB Scotland raised doubts that the proposed use of a piling shroud would reduce the level of impact to the point that it is not significant. Survey records suggest that the post-breeding groups of common terns currently utilise the eastern breakwater area in preference to most other areas of the dock. RSPB Scotland advised that even with the proposed piling shroud it could not conclude that the common terns would relocate to another suitable site within the port without detrimental impacts.
- 5.14 RSPB Scotland therefore objected due to the underestimation of the impacts from the operational phase of the Works to SPA qualifying species (kittiwake, ringed plover and common tern) and the doubt regarding the effectiveness of the proposed mitigation measures for common terns during the construction phase. RSPB Scotland advised that it may reconsider its objection if the Applicant provided further mitigation measures for common tern during construction and a reassessment of how potential changes from the current usage in specific parts of the port, namely the Outer Berth – end of the Port, will affect qualifying species.
- 5.15 In response to the Additional Information, RSPB Scotland responded on 31 October 2022 confirming it was content with the further details provided by the Applicant in relation to the impacts from the operational phase of the Works. RSPB Scotland advised that whilst it did still have concerns regarding the potential impact of the Works on loafing or roosting terns, it was content with the mitigation measures proposed. With regard to the use of an ECoW, RSPB Scotland advised they should be an independent environmental professional with direct responsibility for monitoring and reporting on compliance with planning consents, environmental permits, legislation and mitigation. RSPB Scotland also advised that the ECoW should provide feedback as to compliance against the plans and mitigation via a written report (made publicly available by the licensing authority) within a specified timescale. In addition, it was subsequently agreed between the Applicant and RSPB Scotland that some improvements to the area of Works to provide nesting, roosting and loafing areas for common terns would be carried out by the Applicant. The Scottish Ministers do not however consider these improvements to be necessary to avoid adverse effect the integrity of the Imperial Dock Lock, Leith SPA.

6 Summary of representations from other organisations and members of the public

6.1 No representations were received in relation to the Works from other organisations or members of the public.

7 Summary of third party advice

7.1 Transport Scotland (“TS”) provided a response to the initial consultation on 29 June 2022 stating that it was satisfied that the Works will not give rise to any significant environmental impacts on the trunk road network. TS is also satisfied that as there is no mention in the application documents of the need to transport abnormal indivisible loads, no further detail is required in this regard.

7.2 In response to the Additional Information, TS confirmed on 28 October 2022 its position remained the same.

7.3 Marine Scotland Science (“MSS”) provided advice on 5 July 2022 and further clarification on 25 July 2022. The initial advice considered all receptors included in the Applicant’s EIA Report and the points of clarification were provided in response to questions regarding marine mammals, birds, marine fish and diadromous fish.

7.4 With reference to marine mammals MSS, was content with the impact pathways identified (underwater noise, changes to water quality and changes to prey availability) by the Applicant and the modelling carried out. MSS advised that the key sensitive period with respect for these Works is the grey seal breeding season (October to December) and noted the lack of timings for construction provided in the EIA report.

7.5 MSS advised that further detail was required describing the nature and noise profile of the initial, preparatory works, detailing the source level noise expected from this work. MSS also requested further detail on the use of a piling shroud and whether it had the potential to mitigate underwater noise. In addition, MSS advised it agreed with NS that the recommended minimum of a 500 m pre-piling search area is appropriate rather than the proposed 200 m by the Applicant, unless it can be demonstrated that this is unfeasible due to operational reasons or if the piling shroud can provided effective mitigation for underwater noise.

7.6 MSS advised that given the proximity of the Narrow Deep B deposit site to Inchkeith island, a designated grey seal haul-out site vessel operators involved in the dredge and deposit activities adhere to best practice guidelines as

detailed in the Scottish Marine Wildlife Watching Code and ensure there are no marine mammals near the vessel prior to deposit activities.

- 7.7 In relation to birds, MSS was content that the baseline surveys were sufficient to inform the EIA. MSS noted that the construction works were anticipated to last 5.5 months but details were not provided confirming when this would occur. MS advised that the key period for disturbance of the identified populations is likely to be during the spring and early summer months, when birds are breeding. MSS raised particular concerns in respect of common tern breeding at the Imperial Dock Lock, Leith SPA. MSS recommended that activities likely to cause the greatest disturbance are undertaken outwith the tern breeding season (May to mid-September) and that an ECoW be employed to monitor disturbance to birds, should it be essential to carry out works during the breeding season.
- 7.8 MSS requested more detailed data be provided on the noise generated by piling and the effect that the piling shroud will have on in air noise. MSS also requested further information regarding increased vessel activity during the construction phase of the Works.
- 7.9 MSS stated that some consideration should be given to changes to impacts from any new proposed lighting specifically with respect to illuminating the area used by breeding terns (during the breeding season) within the Imperial Dock Lock SPA. MSS advised that artificial lighting could lead to disturbance.
- 7.10 MSS advised that consideration should be given to the potential disturbance caused by increased vessel movements during both the construction and operation phases of the Works. MSS agreed with NS however that vessel movements during the operation phase are unlikely to be significant.
- 7.11 MSS noted that the Applicant has focussed mainly on the impacts on diadromous fish rather than other marine fish species in the EIA but clarified it was happy with the content and assessment provided.
- 7.12 MSS were generally content with the conclusions of the EIA in relation to diadromous fish but noted the lack of consideration given to the impact of reduced oxygen levels in the water column due to dredging and deposit activities. As the salmon populations of a number of the rivers discharging into the Firth of Forth are categorised as 3 meaning that there is no resilience in the population for additional loss of fish. MSS advised that a condition should be included in the licences that any sightings of dead, distressed or injured fish which could be connected to the Works must be immediately reported to the Licensing Authority. A condition to this effect will be included in the construction marine licence.

- 7.13 Overall, MSS advised that they were content with the information provided in relation to physical/coastal processes, commercial fisheries and benthic ecology.
- 7.14 MSS provided advice on 28 October 2022 in response to the Additional Information and confirmed it was content with the more detailed description of the initial, preparatory work and that this activity would have limited impacts on birds. MSS confirmed it was content with the information provided regarding vessel movements and noted the limited increase to vessel traffic was not likely to have significant impacts on ornithological receptors. MSS was also content based on the Additional Information provided that visual and noise disturbance during the construction and operation phases would be generally similar to current baseline conditions. MSS reiterated its recommendation for the pre-piling search area to remain at 500 m as per the JNCC guidelines, rather than the 200 m suggested by the Applicant.

8 The Scottish Ministers' Considerations and Main Determinative Issues

8.1 Determination of Marine Licence Applications

8.1.1 In determining the applications for a marine licences (including the terms on which they are granted and what conditions, if any, are to be attached to them) the Scottish Ministers have had regard to:

- the need to protect the environment, protect human health, prevent interference with legitimate uses of the sea and such other matters as the Scottish Ministers consider relevant;
- the effects of any use intended to be made of the works when constructed; and
- representations received from persons with an interest in the outcome of the applications.

8.2 Environmental Matters

8.2.1 The Scottish Ministers are satisfied that an EIA has been carried out. Environmental information including the EIA Report and Additional Information has been produced and the applicable procedures regarding publicity and consultation laid down in regulations has been followed. The environmental impacts of the Works have been assessed and the Scottish Ministers have taken the environmental information into account when reaching their decision.

The Scottish Ministers have considered fully and carefully the applications, the EIA Report, the Additional Information and all relevant representations from consultees and third party advice.

8.3 Main Determinative Issues

8.3.1 The Scottish Ministers, having taken account of all relevant information and regulatory requirements, consider that the main determining issues are:

- The extent to which the Works accord with and are supported by the Scottish Government policy and the terms of Scotland’s National Marine Plan (“NMP”); and
- The main effects of the Works on protecting the environment and human health and preventing interference with the legitimate use of the sea are in summary impacts on:
 - marine mammals;
 - diadromous fish; and
 - birds.

Each of these include impacts on European sites.

8.4 Policy Context

8.4.1 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 NMP covering inshore waters is a requirement of the 2010 Act. The NMP lays out the Scottish Ministers’ policies for the sustainable development of Scotland’s seas and provides General Planning Principles, and sector specific objectives and policies, specifically to develop offshore wind and marine renewable energy. The relevant policies were considered, with the Works being deemed to meet the requirements of the NMP and to be contributing towards achieving relevant sector specific policies and objectives.

8.5 Impacts of the Works on the environment

Impacts on European sites and Bird, Diadromous Fish and Marine Mammal Impacts

8.5.1 The Conservation (Natural Habitats, &c.) Regulations 1994 (“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 (either alone or in combination with other plans or projects), as defined in the 1994 Habitat Regulations.

- 8.5.2 In line with the view of NS that the Works are likely to have a significant effect on the qualifying interests of Firth of Forth SPA, Imperial Dock Lock, Leith SPA, Forth Islands SPA, Outer Firth of Forth and St Andrews Bay Complex SPA, River Teith SAC, Isle of May SAC, Firth of Tay and Eden Estuary SAC, Berwickshire and North Northumberland SAC or Moray Firth SAC, Marine Scotland Licensing Operations Team (“MS-LOT”) on behalf of the Scottish Ministers, as the “competent authority”, was required to carry out an Appropriate Assessment (“AA”).
- 8.5.3 Having regard to the representations made by NS, it can be ascertained that the Works will not adversely affect the integrity of any SAC or SPA providing the Applicant adheres to the conditions set out in the AA and the marine licences are adhered to . Further considering the reasons for which the sites were designated and the associated conservation objectives, MS-LOT are content that the Works will not on its own or in combination with other projects, adversely affect the integrity of the Firth of Forth SPA, Imperial Dock Lock, Leith SPA, Forth Islands SPA, Outer Firth of Forth and St Andrews Bay Complex SPA, River Teith SAC, Isle of May SAC, Firth of Tay and Eden Estuary SAC, Berwickshire and North Northumberland SAC or Moray Firth SAC.
- 8.5.4 A full explanation of the issues and justification for decisions regarding site integrity is provided in the AA found here: <https://marine.gov.scot/node/23338>
- 8.5.5 The Scottish Ministers consider that, having taken into account the information provided by the Applicant, the representations of the consultative bodies, and having regard to the conditions attached, there are no outstanding concerns in relation to the impact of the Works on marine mammals, birds, diadromous fish or European sites which would require a marine licence to be withheld.

9 The Scottish Ministers’ Determination and Reasoned Conclusion

- 9.1 The Scottish Ministers are satisfied that an EIA has been carried out, and that the applicable procedures regarding publicity and consultation in respect of the applications have been followed.
- 9.2 The Scottish Ministers have weighed the impacts of the Works, and the degree to which these can be mitigated. The 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 Works accord with and are supported by Scottish Government policy, the terms of the NMP and the environmental impacts of the Works. In particular the Scottish

Ministers have considered the impacts on various species of birds, marine mammals and diadromous fish.

- 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 Works and mitigation measures. In particular, the Scottish Ministers are satisfied that the Works will not adversely affect the integrity of the Firth of Forth SPA, Imperial Dock Lock, Leith SPA, Forth Islands SPA, Outer Firth of Forth and St Andrews Bay Complex SPA, River Teith SAC, Isle of May SAC, Firth of Tay and Eden Estuary SAC, Berwickshire and North Northumberland Coast SAC or the Moray Firth SAC.
- 9.5 The Scottish Ministers consider that the licensing tests in respect of an EPS disturbance application for cetaceans will likely be met and an EPS licence will likely be granted.
- 9.6 In their consideration of the environmental impacts of the Works, the Scottish Ministers have identified conditions to be attached to the licences to reduce environmental impacts. These include adherence to the mitigation measures outlined in the Schedule of Mitigation in the Applicant's EIA Report, Additional Information together with the mitigation measures identified by NatureScot during consultation. Specifically the Licensee must adhere to the JNCC Piling Protocol including the standard 500 m pre-piling search area and use a piling shroud during both the breeding and post-breeding seasons for common terns.
- 9.7 A condition requiring the appointment of an ECoW and defining the terms of the appointment, if piling is undertaken during the common tern breeding and post breeding seasons 1 May to 30 September (inclusive), has been included in the construction marine licence. 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 Licence on at least an annual basis.
- 9.8 In addition, a condition requiring the Applicant to implement improvements to the area of the Works so to provide nesting, roosting and loafing areas for common terns prior to the completion of the Works has been included in the construction licence.

- 9.9 A condition requiring the Applicant to ensure that the relevant sections of the Scottish Marine Wildlife Watching Code are adhered to during dredge and deposit operations has been included in the dredging marine licence.
- 9.10 The Scottish Ministers are satisfied, having regard to current knowledge and methods of assessment, that this reasoned conclusion, as required under the 2017 MW Regulations, is valid.
- 9.11 The Scottish Ministers are satisfied that regard has been given to protecting the environment, protecting human health, and preventing interference with legitimate uses of the sea, as well as other factors considered to be relevant.
- 9.12 The Scottish Ministers **grant marine licences subject to conditions** under Part 4 of the 2010 Act for the construction, dredging and deposit of dredged substances or objects associated with the construction of the Port of Leith, Outer Berth, Leith. The marine licences are attached at Appendix 2.
- 9.13 The embedded mitigation and any additional mitigation identified in the EIA Report has been incorporated into the conditions of the Marine Licences.
- 9.14 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 applications relate. The Applicant must provide copies of the public notices to the Scottish Ministers.
- 9.15 Copies of this decision notice have been sent to the bodies consulted on the applications including the relevant planning authority, NS, SEPA and HES. This decision notice has also been published on the Marine Scotland Information website.
- 9.16 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,

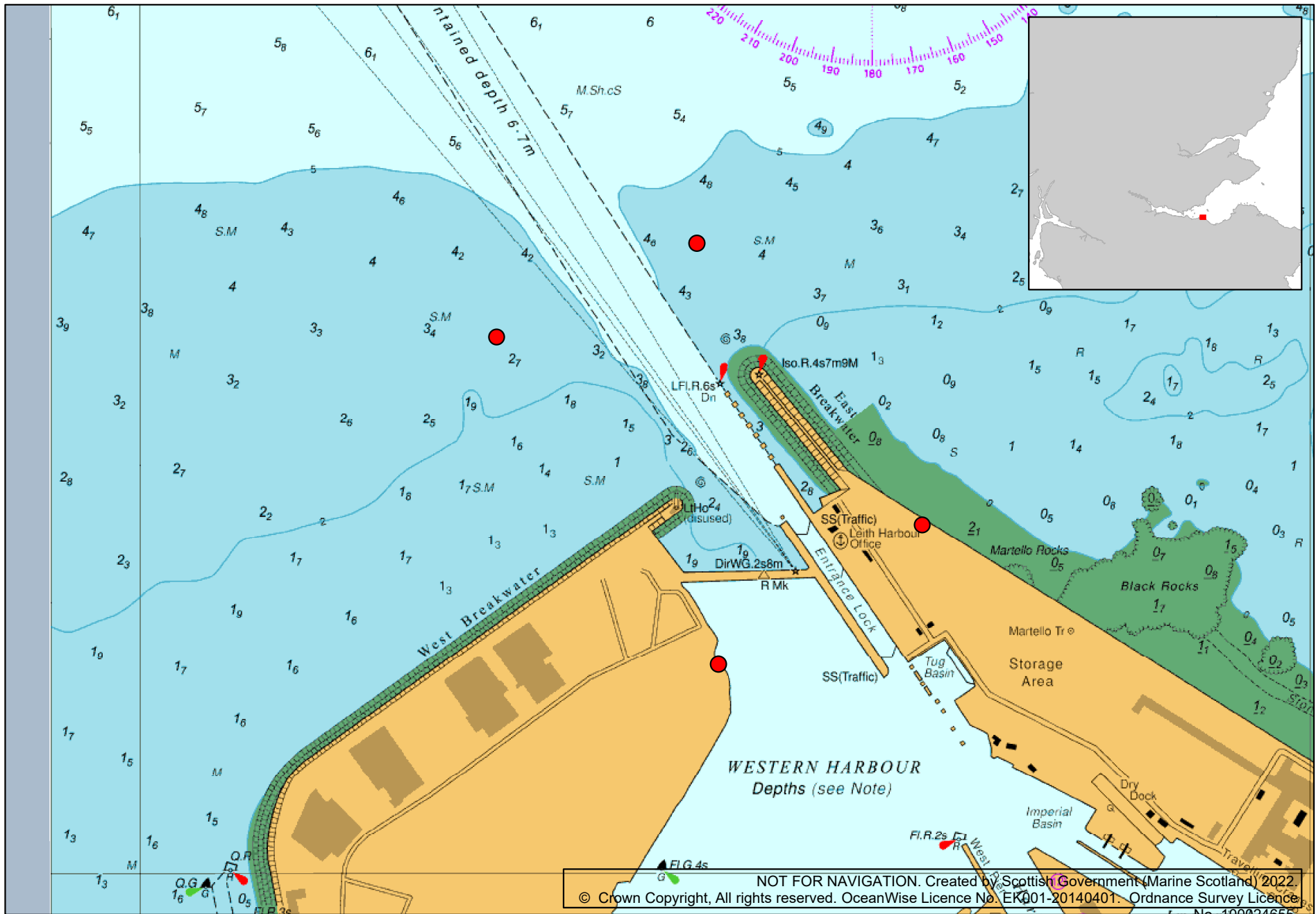
Anni Mäkelä

Marine Licensing Group Leader, Marine Scotland – Licensing Operations
Team

A member of the staff of the Scottish Ministers

22 December 2022

Appendix 1 - Location and Boundary of the Works



NOT FOR NAVIGATION. Created by Scottish Government (Marine Scotland) 2022.
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Appendix 2 - Marine Licences

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.

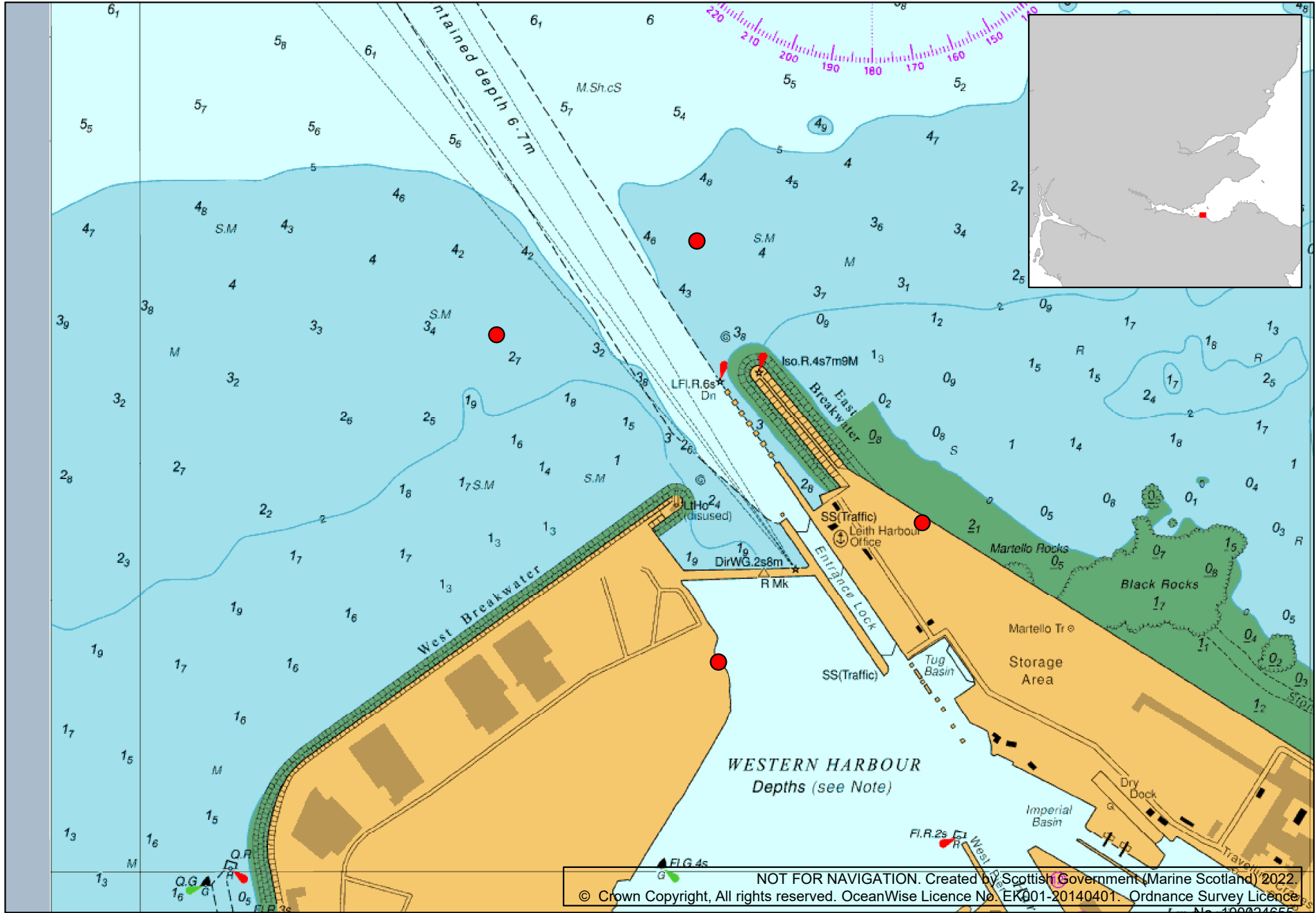
3.4.3 The Licensee must, on Completion of the Licensed Activity, carry out a post-construction bird survey of the Outer Berth area following the same methodology used during the bird surveys carried out to inform the Environmental Impact Assessment and Habitats Regulations Appraisal produced for the 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.

Annex One to Marine Licence MS-00009818

Chart showing the location of the Licensed Activity



MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

LICENCE TO CARRY OUT ANY FORM OF DREDGING AND DEPOSIT ANY SUBSTANCE OR OBJECT IN THE SCOTTISH MARINE AREA

Licence Number: **MS-00009819**

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 carry out any form of dredging and deposit any substance or object 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

2.2.1 Location of production of the dredge material

Port of Leith Outer Berth Dredge Area, Within the areas bounded by joining the following points:

Dredge Area A

55° 59.366 'N 03° 10.823 'W
55° 59.462 'N 03° 10.959 'W
55° 59.450 'N 03° 10.988 'W
55° 59.353 'N 03° 10.856 'W

Dredge Area B

55° 59.474 'N 03° 11.089 'W
55° 59.502 'N 03° 11.016 'W
55° 59.329 'N 03° 10.914 'W
55° 59.462 'N 03° 10.959 'W
55° 59.450 'N 03° 10.988 'W
55° 59.353 'N 03° 10.856 'W

As shown in Annex One

2.2.2 Location of deposit of the substances or objects

NARROW DEEP B authorised sea deposit site FO038 within the area bounded by joining the following points:

56°00.566' N 003°07.484' W
56°01.298' N 003°06.038' W
56°01.106' N 003°05.739' W
56°00.374' N 003°07.184' W

2.3 Description of the Licensed Activity

Capital dredging and sea deposit of dredged material.

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 dredged and substances or objects to be deposited

The licence authorises the dredging and deposit of the undernoted substances and objects required in connection with the licensed activity, subject to the maximum amounts as specified below:

215,000 wet tonnes of dredge material to be deposited between 2 January 2023 and 31 December 2025

2.5 Contractor and Vessel Details

As shown in Annex 2

3. PART 3 – CONDITIONS

3.1 General Conditions

3.1.1 The Licensee must only deposit the Substances or objects listed in Part 2 of the licence in accordance with the licence, the application and any plans or programmes approved by the Licensing Authority unless otherwise authorised by the Licensing Authority. Only those substances or objects described in Part 2 of the Schedule shall be deposited under authority of the licence. Any unauthorised materials associated with the substances or objects scheduled for deposit, including debris such as demolition waste, wood, scrap metal, tyres and synthetic materials, shall be disposed of on land at an approved location above the tidal level of Mean High Water Springs. All tank/hopper washings shall be deposited in the authorised sea deposit area.

3.1.2 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.

3.1.3 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.

3.1.4 The Licensee must notify Source Data Receipt, The Hydrographic Office, Admiralty Way, Taunton, Somerset, TA1 2DN (e-mail: sdr@ukho.gov.uk; tel.: 01823 484444) of 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.

3.1.5 The Licensee must deposit the substances or objects described in Part 2 of the marine licence in the following authorised sea deposit area: Narrow Deep B (FO038) Up to a maximum quantity of 215,000 wet tonnes may be deposited during the period of validity of the licence, within the area bounded by joining the points:

56°00.566' N 003°07.484' W
56°01.298' N 003°06.038' W
56°01.106' N 003°05.739' W
56°00.374' N 003°07.184' W

3.1.8 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.

3.1.9 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.

3.1.10 The Licensee must ensure that the relevant provisions of The Scottish Marine Wildlife Watching Code (2017) are adhered to at all times.

3.2 Prior to the commencement of the Licensed Activity

3.2.1 The Licensee must provide the name and function of any agent, contractor or sub-contractor appointed to undertake the Licensed Activities, as soon as is reasonably practicable prior to the Licensed Activities commencing.

3.2.2 The Licensee must issue local notification to marine users – including fisherman's organisations, neighbouring port authorities and other local stakeholders – to ensure that they are made fully aware of the Licensed Activity.

3.2.3 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 shall ensure that a log of activities is maintained on each vessel employed to undertake the Licensed Activity. The log(s) shall be kept onboard the vessel(s) throughout the Licensed Activity, and be available for inspection by any authorised Marine Enforcement Officer. The log(s) shall 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. The log(s) shall record in English the following information:

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

3.3.3 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.

3.3.4 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 appropriate steps are taken to minimise damage to the seabed by the Licensed Activity.

3.3.7 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

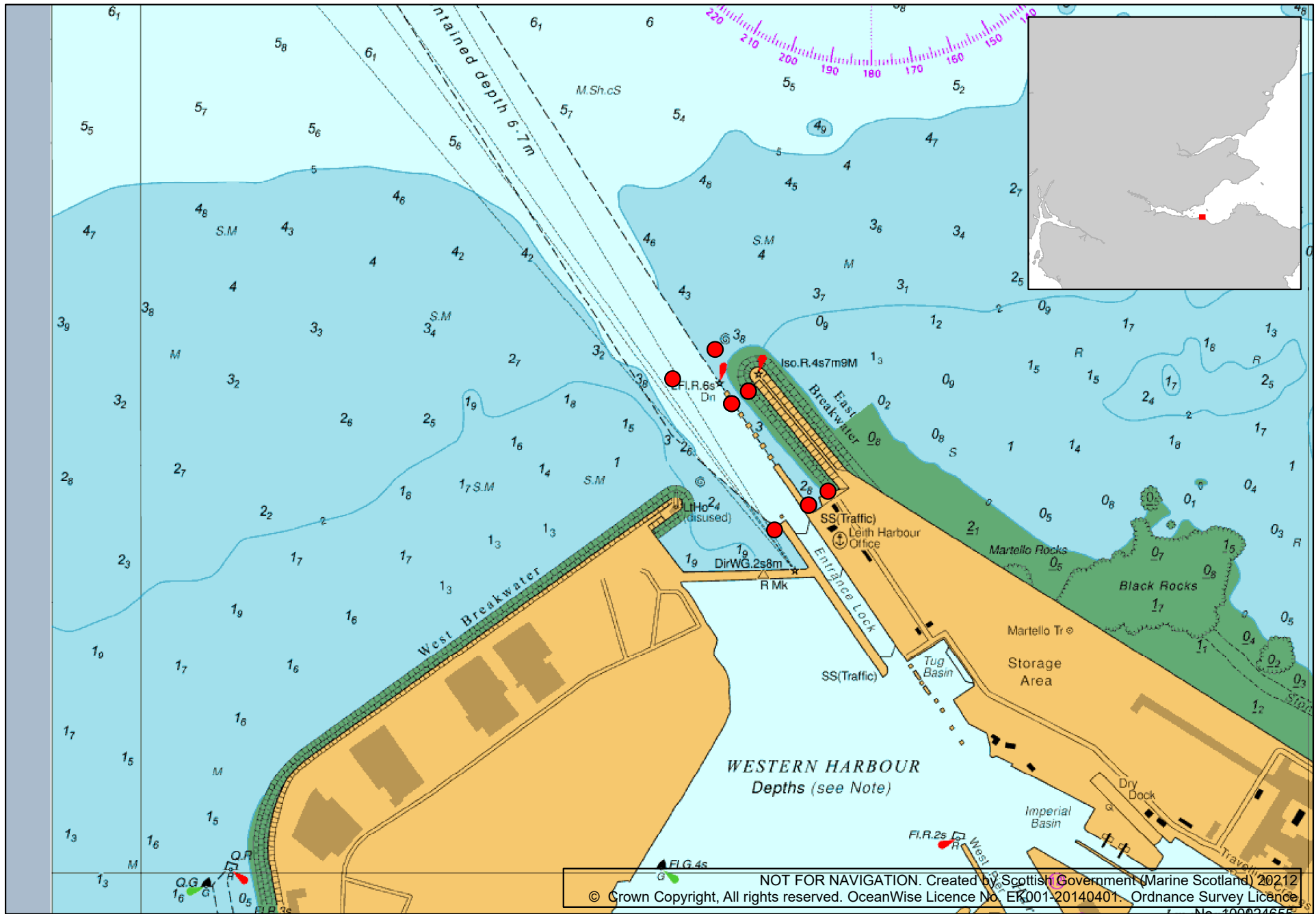
3.4.1 The Licensee must submit written reports to the Licensing Authority stating the nature and total quantity, in wet tonnes, of all substances or objects deposited under authority of the licence. The written reports must be submitted to the Licensing Authority annually and on the forms provided by the Licensing Authority.

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.

Annex One to Marine Licence MS-00009819

Chart showing the location of the Dredge Area



ANNEX TWO

Vessels and contractors authorised to be used for dredge and deposit at licensed **Forth Ports locations**.

Licence Number:

MS-00009020
MS-00008987
MS-00009072
MS-00009210
MS-00009166
MS-00009409
MS-00009759
MS-00009819

Expiry Date:

31 January 2023
11 March 2024
02 December 2023
25 June 2024
02 December 2024
21 December 2024
01 December 2025
31 December 2025

Contractors:

Peter Madsen Rederi A/S
Godthabsvej 89
DK – 8600 Skanderborg
Denmark

UK Dredging
Queen Alexandra House
Cargo Road
Cardiff
CF10 4LY

Bridlington Harbour
Gummers Wharf
West End
Bridlington,
East Yorks, YO15 3AN

Moray Council
13 Cluny Square
Buckie
Moray
AB56 1AJ

Shearwater Dredging Ltd
Unit 12B
Barham Road
Forties Estate
Rosyth, Fife KY11 2XB

MR D Brown
Moray Council
PO Box 6760
Elgin
Moray, IV30 9BX

Wasa Dredging Ltd
Raastuvankatu 21 B
FIN-65100 Vasa
Finland

Briggs Marine & Environmental Services
Seaforth House
Seaforth Place
Burntisland
Fife
KY3 9AX

Mr D Greenwood
Wyre Marine Services Ltd
PO BOX 555
Fleetwood
Lancashire
FY7 6GE

Vessel Name	IMO/MMSI	Flag
Margarete Fighter	8705620	Denmark
Grete Fighter	7944762	Denmark
Cherry Sand	6811059	UK
Aase Madsen	7731751	Denmark
Peter Madsen	6825581	Denmark
Gypsey Race	232007074	UK

UKD Marlin	9064176	UK
UKD Orca	9491355	UK
UKD Sealion	9267314	UK
UKD Bluefin	9143427	UK
UKD Seahorse	9066655	UK
Selkie	9772369	UK
Shearwater	6822216	UK
Forth Sentinel	9031040	UK
John Madsen	7236347	Denmark
Merete Chris	6616904	Denmark
Boulder	230028680	Finland
Miika II	Non-Self Propelled	Finland
Admiral Day	7110555	UK
Doonhammer	235067101	UK
Forth Fighter	235004244	UK
Wyre Sands	232012021	UK
Wyre River	235114448	UK
Forth Trojan	9126948	UK
Forth Drummer	9676917	UK
Forth Constructor	8890592	UK

The agent or licensee must notify the licensing authority immediately if a vessel not listed on the annex two is to be used for dredge and deposit. The information required by the licensing authority regarding the additional vessel(s) will be the same as the information already provided for the vessels on the annex two. **Discharge operations using any additional vessel(s) may only commence if a revised annex two, including details of the additional vessel(s), is issued by the licensing authority.**

Signed: _____

Neil Macleod

For and on behalf of the licensing authority

Date: 22 December 2022