



Department of

# Agriculture, Environment and Rural Affairs

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## Department of Agriculture, Environment & Rural Affairs Marine & Fisheries Division

### LICENCE ISSUED UNDER THE MARINE AND COASTAL ACCESS ACT 2009, PART 4, MARINE LICENSING

## MARINE CONSTRUCTION LICENCE

**Licence Number:** ML98/14 - Variation Two

#### **Part 1 - Particulars**

##### **1. Licensee(s) Name & Address:**

Mr. S. Johnston  
C/o Department for Regional Development  
Clarence Court  
Adelaide Street  
Belfast BT2 8GB

BSG Civil Engineering Ltd  
6 Bank Square  
Maghera  
Co. Londonderry  
BT46 5AZ

##### **2. Description of works and nature and quantity of all deposits below Mean High Water Springs:**

The licence is for the construction of a new reinforced concrete ferry ramp to include the installation of sheet piles, sheet pile wall hardcore backfill, rock armour revetments and reinforced concrete retaining walls.

##### **3. Location of works:**

The site works are located adjacent to the existing breakwater in Rathlin Harbour, Church Bay, Rathlin, Co. Antrim. Co-ordinates are as follows:

- 314523, 451056
- 314578, 451058
- 314570, 451002
- 314561, 450998
- 314576, 450961
- 314565, 450957

##### **4. Valid:**

From: 18 April 2016  
Until: 30 November 2016

## **PART 2: CONDITIONS**

The Department of Environment (referred to as the licensing authority) authorise **Department for Regional Development and BSG Civil Engineering Ltd.** to deposit in the sea the substances or articles (except for dredge spoil) used in the execution of works described in Part 1 of this licence and provided in the licence application and supporting documentation. This licence is subject to the under mentioned condition(s):

### **Licence Condition(s):**

#### **NOTE: FAILURE TO COMPLY WITH THE LICENCE CONDITIONS BELOW MAY RESULT IN ENFORCEMENT ACTION BEING TAKEN**

##### **▪ Execution of construction works**

1. The licensee(s) shall inform the licensing authority of the finishing date of the work within **1 week** of completion.
2. The licensee(s) shall not deposit any material other than that detailed in the Marine Licence application form and drawings Numbers 504293NI/PL01, 504293N/PLO2, 504293N/PL04 and 504293N/PL05 received by the licensing authority, dated 21 December 2015.
3. The licensee(s) shall contact the licensing authority if it is proposed to vary the materials or methods to be used from those described in the documentation supplied in connection with the Marine Licence application.
4. The licensee(s) shall ensure that a copy of this licence is given to each contractor appointed to carry out part or all of the works. The extent of the works for which the licence has been given and the conditions that are attached to the licence should be made clear to the contractors.
5. The licensee must provide the licensing authority with the names and operators of the vessels to be employed to undertake or support the deposit, relocation or removal operations before any works take place.
6. The licensee(s) must provide a final construction method statement including an environmental management plan to the licensing authority before any works begin below the Mean High Water Spring Tide. In granting approval for the construction method statement and the environmental management plan, the licensing authority may consult any such other advisors, stakeholders or organizations as may be required.
7. The licensee(s) shall confirm in writing with the licensing authority, if material dredged from the seabed is to be used in this project and how it shall be used before this takes place.
8. The licensee(s) shall, within **eight weeks** after the completion of the licensed works, make a written report to the licensing authority stating the quantity and description of all articles and substances deposited under the authority of this licence.
9. The licensee(s) shall ensure that copies of the licence are available for inspection by any authorised Enforcement Officer at:
  - a. The premises of the Licensee(s)
  - b. The premises of the operating facility
  - c. The site of the works (including on board vessels)

##### **▪ Navigational Safety**

10. The licensee(s) must notify The Source Data Receipt team, UK Hydrographic Office, Taunton, Somerset, TA1 2DN (Email: [sdr@ukho.gov.uk](mailto:sdr@ukho.gov.uk); Tel: 01823 337900) at least 4 weeks before commencement of the works, to allow

for any necessary amendments to nautical charts. The UK Hydrographic Office must also be notified upon completion of the works. **This office must be copied into all notifications.**

11. The licensee(s) shall ensure that details of the works are promulgated to stakeholders through Notice(s) to Mariners and/or radio navigational warnings and publication in appropriate bulletins. This should take place prior to the commencement of operations, as stated within the Notice(s) to Mariners guidance notes, which is usually ten days. The notices should state the nature and timescale of any works carried out in the marine environment relating to the operations. Updates should then be issued as required, to ensure that stakeholders are kept up to date of timings and locations etc. **This office must be copied into all notifications.**
12. The licensee(s) shall ensure that any lights and/or marks to be displayed, in the carrying out of any works in accordance with this licence, must be in line with any requirements of the Commissioner of Irish Lights. The displaying of unauthorized marks or lights is prohibited.
13. The licensee(s) should ensure Harbour Master re-assesses the aids to navigation requirements during and on completion of the works
14. The licensee(s) must ensure any establishment, disestablishment or alteration to an aid to navigation is brought to the attention of the Local Lighthouse Authority who in turn must seek statutory sanction for the changes from Commissioner of Irish Lights

- **Environmental Management**

15. A noise risk impact assessment must be produced and submitted to the licensing authority for approval before impact piling/significant noise disturbance activity can begin, to prevent disturbance to sensitive receptors.
16. The licensee(s) must notify the licensing authority **one week** in advance of commencement of piling or any other significant noise disturbance activity.
17. The licensee(s) shall aim to avoid carrying out any piling or significant noise disturbance works June to July or September to November, to avoid disturbance to the main seal pupping season, as described in Section 3.3 of the project Habitat Regulation Assessment.
18. If there are significant noise disturbance activities to be carried out, the licensee(s) shall appoint an approved and experienced MMO to ensure there is no disturbance or injury/harm to marine mammals, basking sharks, or marine turtles wherever they are present. The licensee(s) should ensure that no piling or significant noisy activities take place when the approved and experienced MMO is not on site.
19. The mitigation zone for the seals entering the harbour has been reduced from the recommended 500 m to the limit of the breakwater, and is shown on the attached map in Annex A. The ADD can be deployed in this area under the guidance of the experienced MMO to deter seals from entering this zone and to gently coax seals out of this zone. The licensee(s) must ensure the amendments to the approved JNCC guidelines for management of this reduced mitigation zone, attached as Annex B to this licence, is carried out under the guidance of the experienced and approved MMO. An assistant MMO may also be appointed by the contractors to provide support to the experienced MMO.
20. The licensee(s) will ensure that the approved JNCC guidelines are followed for cetaceans, basking sharks and marine turtles that may enter the harbour and the mitigation zone will therefore remain at 500 m, as recommended by JNCC. The 500 m mitigation zone radius should be measured from the location of the noise. The MMO should carry out a pre-works survey before any piling or significant noise disturbance works begin. If cetaceans, basking sharks or marine turtles are detected within the 500 m mitigation zone, the MMO will issue a delay in the commencement of piling or other significant noise disturbance activity, until they are satisfied that the animals have left the mitigation zone.
21. If impact piling or other significant noise disturbance activity is required during construction the licensee(s) shall ensure that a soft start is used at the beginning of the noisy activity e.g. piling. This requires a gradual ramping up of the activity until full power is achieved. The soft start duration should be a period not less than 20 minutes. The soft start protocol may also vary depending on the activity and this should be set out in the Construction Environmental Management Plan and directed by the experienced MMO. Any variation in the 20 minutes soft start duration period must be agreed with the Department beforehand.

22. If any cetaceans, basking sharks or marine turtles enter the 500 m mitigation zone while the soft start is taking place, then all works must cease until the animal(s) have left the mitigation zone. If animals enter the mitigation zone voluntarily while works are taking place at full power, then there is no requirement to stop works, as the animal has 'voluntarily' entered into the mitigation zone while noisy works are taking place. If there is a break in works greater than 10 minutes, then a pre-works search should again be conducted and a soft start utilised. This condition, however, must be conducted under the guidance of the experienced MMO, and the licensee(s) must take direction from the MMO in application of this condition. Further information can be found here: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/50006/jncc-pprotocol.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/50006/jncc-pprotocol.pdf)
23. If impact piling or other significant noise disturbance activity is required during construction the licensee(s) shall maintain a record of the beginning and end times and duration, e.g. hammer energy blow or explosive charges. Final records must be submitted to the licensing authority within **eight weeks** of completion of the licensed works.
24. Any large boulders to be removed as part of the works should be re-located eastwards of the area of development and re-located at a similar tidal depth within the harbour area.
25. Biosecurity measures should be implemented by the licensee as part of the work procedures to prevent the spread of non-native and invasive species. Machinery should be cleaned, checked and disinfected before transport to Rathlin and again before leaving.
26. The licensee(s) shall ensure that a suitably qualified ornithologist is present on site during the construction works. This ornithologist should carry out a nesting bird survey before works begin and should have the ability to stop works if disturbance to birds occurs.
27. The licensee(s) must ensure that in the event works are partially halted due to disturbance to breeding/nesting birds, the licensing authority are notified in writing within 24 hours, informing them of the reasons why works have been suspended and the severity of the event. The ornithologist should have the authority to re-start the works, and the reason for recommencing works must be provided to the licensing authority (in writing) within 24 hours of the decision.
28. In the event that works are to be partially halted for more than 24 hours, then work may not recommence until the licensing authority and NIEA agree that recommencement of works will not impact upon the breeding/nesting birds. The licensing authority may also consult with any such other advisors as may be required in this decision.
29. During the construction phase, mitigation measures should ensure that disturbance of silt into the water column is minimised and where possible mostly kept within the breakwaters. There are sensitive marine habitats of maerl and *Zostera marina* approximately 1 km to the south and west of the breakwaters. These are part of the Rathlin SAC feature 'Sandbanks which are slightly covered by seawater all the time' and their condition has the potential to be impacted by excessive siltation.
30. No works shall be undertaken until arrangements have been made, and agreed with the licensing authority, for archaeological surveillance and for the reporting and recording of archaeological remains, which may be identified. These arrangements may be included in a wider programme of archaeological works to be agreed with Historic Environment Division.
31. The licensee(s) attention is drawn to Article 42 of the **Historic Monuments and Archaeological Objects (NI) Order 1995**, which requires finders of archaeological objects, to report the find within 14 days, to a relevant authority. In the event of a discovery of an archaeological object and/or remains during works you should:
1. Record the position and details of the site;
  2. Not disturb the site further and
  3. Report your discovery to and seek further advice from the licensing authority immediately.
32. The licensee(s) must report any recovered wreck material to the Receiver of Wreck (Maritime and Coastguard Agency) in accordance with the **Merchant Shipping Act 1995**.
33. The licensee(s) should ensure that measures are in place to prevent pollution of surface or ground water as a result of the activities on site, both during construction and thereafter. The licensee(s) should adhere to the following:
- Works in, near or over watercourses, PPG5 and
  - Prevent Pollution, & Construction and Demolition sites: PPG6: Prevent Pollution

Signed on behalf of the Department:

*[Handwritten Signature]*

Dated: 23/08/16



**NOTE:**

(1) The licensing authority would advise that this licence does not negate the licensees' responsibility to gain any other environmental or access permissions that may be required to progress the works.

(2) Under Part 4, Chapter 1, paragraph 72 of the **Marine and Coastal Access Act 2009** the licensing authority may revoke, vary or suspend this licence if it appears to the authority that the holder is in breach of a condition included in it, or if it appears to the authority that the licence ought to be varied, suspended or revoked because of a change of circumstances relating to the marine environment or human health, including a change in scientific knowledge. A revocation, variation or suspension may also be enforced in the interests of safety of navigation.

(3) A person who deposits material in contravention of the terms of a licence is guilty of an offence under Section 85 of the Act. It is a defence under paragraph 86 (1) for a person charged with such an offence to prove 'force majeure'. However they are also required to prove that they took steps within a reasonable time to inform the licensing authority of all details pertaining to the incident contained in paragraph 86 (2). The licensing authority shall be obliged to report force majeure cases immediately to the OSPAR Commission.

(4) Attention is drawn to the necessity of complying where appropriate with the **Radioactive Substances Act 1960**, the **Prevention of Oil Pollution Act 1971** and to the **Merchant Shipping (Dangerous Goods) (Amendment) Rules 1968**.

(5) If within 28 days of the issue of a licence the person to whom it was issued requests the licensing authority to give him notice in writing of the reasons for the inclusion of any provision in it, the Authority shall comply with his request within 28 days of receiving it.

(6) Anyone who fails to comply with a condition on a Marine Licence commits an offence under Section 85 of the **Marine and Coastal Access Act 2009**, and may be subject to enforcement action. Possible enforcement actions are compliance notices, remediation notices, fixed monetary penalties and variable monetary penalties. In the worst cases, a person found guilty of an offence on summary conviction may be subject to a fine not exceeding £50,000. In addition, a person found guilty of an offence on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both. Further details can be found at our guidance note

<https://www.daera-ni.gov.uk/sites/default/files/publications/doe/marine-licensing-guidance-enforcement-under-part-4-marine-and-coastal-access-act%2C-2009-may-2016.pdf>

**Further information from consultation:**

**1. Northern Ireland Environment Agency – Water Management Unit**

You should be aware that is an offence under the **Water (Northern Ireland) Order 1999** to discharge or deposit whether knowingly or otherwise, any poisonous, noxious or polluting matter so that it enters a waterway or water in any underground strata. Conviction of such an offence may incur a fine of up to £20,000 and /or three months imprisonment.

Where appropriate, Water Management Unit would encourage the use of SuDS (Sustainable Drainage System) techniques, particularly during the construction phase, to deal with site drainage.

If it is not possible to adequately manage construction phase site drainage using SuDS features, consent to discharge under the terms of the Water (Northern Ireland) Order 1999 will then be required. Water Management Unit would just like to highlight that applications for discharge consent take a minimum of four months to determine.

Any proposed discharges not directly related to the construction of the development, such as from septic tanks or wash facilities, will also require separate discharge consent applications. The applicant should refer to DOE Standing Advice Note No. 11 – Discharges to the Water Environment (April 2015), please see below.

In accordance with the Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006 (as amended) it is a mandatory requirement that upon the abstraction and/or diversion and/or impoundment of water from the natural river channel/lake, coastal or groundwater sources, an abstraction/impoundment licence should be obtained unless the operations specified are Permitted Controlled Activities.

The applicant will be required to adhere to the advice detailed in:

DOE Standing Advice Note No.4 – Pollution Prevention Guidance (April 2015)

[http://www.planningni.gov.uk/index/advice/northern\\_ireland\\_environment\\_agency\\_guidance/standing\\_advice\\_4\\_pollution\\_prevention\\_guidance.pdf](http://www.planningni.gov.uk/index/advice/northern_ireland_environment_agency_guidance/standing_advice_4_pollution_prevention_guidance.pdf)

DOE Standing Advice Note No.5 – Sustainable Drainage Systems (April 2015)

[http://www.planningni.gov.uk/index/advice/northern\\_ireland\\_environment\\_agency\\_guidance/standing\\_advice\\_5\\_sustainable\\_drainage\\_systems.pdf](http://www.planningni.gov.uk/index/advice/northern_ireland_environment_agency_guidance/standing_advice_5_sustainable_drainage_systems.pdf)

DOE Standing Advice Note No. 11 – Discharges to the Water Environment (April 2015)

[http://www.planningni.gov.uk/index/advice/northern\\_ireland\\_environment\\_agency\\_guidance/standing\\_advice\\_11\\_discharges\\_to\\_the\\_water\\_environment.pdf](http://www.planningni.gov.uk/index/advice/northern_ireland_environment_agency_guidance/standing_advice_11_discharges_to_the_water_environment.pdf)

DOE Standing Advice Note No. 18 – Abstraction and Impoundment (May 2015)

[http://www.planningni.gov.uk/index/advice/northern\\_ireland\\_environment\\_agency\\_guidance/standing\\_advice\\_18\\_abstractions\\_and\\_impoundments\\_issue\\_01\\_may\\_2015-2.pdf](http://www.planningni.gov.uk/index/advice/northern_ireland_environment_agency_guidance/standing_advice_18_abstractions_and_impoundments_issue_01_may_2015-2.pdf)

Standing Advice Notes are available on the NI Planning Portal under Advice / NIEA Guidance / Standing Advice.

Alternately the web address can be copied and pasted to a web browser.

Effective mitigation measures must be in place to protect the water environment and surrounding water bodies from any discharge into them that may damage ecological status and to ensure that the Water Framework Directive (WFD) objectives for the water body are not compromised nor the WFD objectives in other downstream water bodies in the same and other catchments.

**2. DAERA Sea Fisheries**

DAERA fisheries have no issues or concerns to raise from an aquaculture aspect with this project. However, we would like to inform the applicant that there is an active pot fisheries around Rathlin Island and any disturbance or increased sedimentation in the area of pot fishery may have an adverse impact. It is an offence under Article 47 of the Fisheries Act (NI) 1966 to cause pollution which is subsequently shown to have a deleterious effect on fish stocks.

**3. DAERA - Marine Conservation and Reporting**

**Marine National Protected Species:**



The applicant's attention is drawn to Article 10 of the Wildlife (Northern Ireland) Order 1985 (as amended), under which it is an offence to intentionally or recklessly kill, injury or take any wild animal included in Schedule 5 to the Order. This includes the common seal (*Phoca vitulina*), grey seal (*Halichoerus grypus*), basking shark (*Cetorhinus maximus*), angel shark (*Squatina squatina*), common skate (*Dipturus batis*) short snouted seahorse (*Hippocampus hippocampus*), spiny seahorse (*Hippocampus guttulatus*), spiny lobster (*Palinurus elaphus*) and fan mussel (*Atrina fragilis*).

Article 11 of the Wildlife (Northern Ireland) Order 1985 (as amended) provides that a person shall not be guilty of an offence under Article 10 (killing or injuring a species listed in Schedule 5 (as amended)) if the act was incidental to a lawful operation (i.e. activity permitted by a Marine Licence or Planning Permission) and could not reasonably be avoided. A separate marine Wildlife Licence is therefore not required for national marine protected species if a Marine Licence/Planning Permission has been granted, since adherence to the conditions of the Marine Licence should reduce the likelihood of harm to national marine protected species.

Under Article 10 it is an offence to intentionally or recklessly disturb; common seals, grey seals or basking sharks. It is also an offence under Article 10 to intentionally or recklessly damage or destroy, or obstruct access to, any structure or place which these animals (Schedule 5<sup>1</sup>) use for shelter or protection; damage or destroy anything which conceals or protects any such structure; or disturb any such animal while it is occupying a structure or place which it uses for shelter or protection.

Under Article 13 it is an offence to sell or transport any Schedule 7 animal dead or alive at any time<sup>2</sup>.

Any person who knowingly causes or permits an act which is made unlawful under Article 10 or Article 13 shall also be guilty of an offence.

If there is evidence of Schedule 5 animals listed above at the site, all works must cease immediately and further advice must be sought from DAERA Klondyke Building, Cromac Avenue, Belfast BT7 2JA.

Under the Wildlife (Northern Ireland) Order 1985 (as amended) a licence may be required for any operations which might impact on protected species.

<sup>1</sup> Common skate and angel sharks in respect to Article 10 (1) only and within 6 nautical miles of coastal water only.

<sup>2</sup> Schedule 7 species includes all Schedule 5 species listed in Appendix A, with the exception of the common skate and angel shark. Sea urchin is protected under Schedule 7 only.

### **Marine European Protected Species:**

The applicant's attention is drawn to regulation 34 of The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended), which states that it is an offence to deliberately capture, injure or kill a wild animal of a European Protected Species included in Schedule 2 to these Regulations. This includes all species of dolphins, porpoises and whales and the marine turtle species.

(1) It is also an offence to;

- (a) deliberately disturb such an animal while it is occupying a structure or place which it uses for shelter or protection;
- (b) deliberately to disturb such an animal in such a way as to be likely to;
  - (i) affect the local distribution or abundance of the species to which it belongs;
  - (ii) impair its ability to survive, breed or reproduce, or rear or care for its young; or
  - (iii) impair its ability to hibernate or migrate;
- (c) deliberately take or destroy the eggs of such an animal;
- (d) deliberately obstruct access to a breeding site or resting place of such an animal; or
- (e) damage or destroy a breeding site or resting place of such an animal.

(2) It is an offence for any person;

- (a) to have in his possession or control,
- (b) to transport,
- (c) to sell or exchange, or
- (d) to offer for sale or exchange,

any live or dead animal which is taken from the wild and is of a species listed in Annex IV(a) to the Habitats Directive, or any part of, or anything derived from, such an animal.

If there is evidence of Schedule 2 animals listed above at the site, all works must cease immediately and further advice must be sought from DAERA Klondyke Building, Cromac Avenue, Belfast, BT7 2JA.

Under this legislation a licence may be required for any operations which might impact on European Protected Species.

<sup>1</sup> Following two European Court of Justice cases (C-103/00 and C-221/04) "deliberate actions are to be understood as actions by a person who knows, in the light of the relevant legislation that applies to the species involved, and the general information delivered to the public, that his action will most likely lead to an offence against a species, but intends this offence or, if not, consciously accepts the foreseeable results of his action"

[http://jncc.defra.gov.uk/PDF/consultation\\_epsGuidanceDisturbance\\_all.pdf](http://jncc.defra.gov.uk/PDF/consultation_epsGuidanceDisturbance_all.pdf)

#### **4. Rivers Agency**

Within the terms of the Drainage (Northern Ireland) Order 1973, Marine Construction Licence applicants are advised of the following legal requirements for ALL sites as follows:

1. If during the course of developing a site a watercourse is uncovered which was not previously evident, the appropriate Rivers Agency Office should be advised immediately in order that arrangements may be made for the investigation and direction in respect of any possible action necessary to deal with the watercourse. Piped storm drains, culverts, open channels etc. may be considered to be watercourses.
2. Any proposals either temporary or permanent, in connection with the development, which involve interference with any watercourse at the site such as culverting, bridging, diversion, building adjacent or discharge of storm water etc require the written consent (known as "Schedule 6 Consent") from Rivers Agency.
3. Failure to obtain Schedule 6 Consent is an offence under the provisions of the above Order, which may lead to prosecution or other statutory action as provided for.

In this instance the appropriate Rivers Agency office to contact in respect of Schedule 6 applications and any other general enquiries is:

**Coleraine Area Office,  
37 Castleroe Road, Castleroe,  
COLERAINE, BT51 3RL  
Tel: 028 7034 2357**

#### **5. Northern Ireland Water**

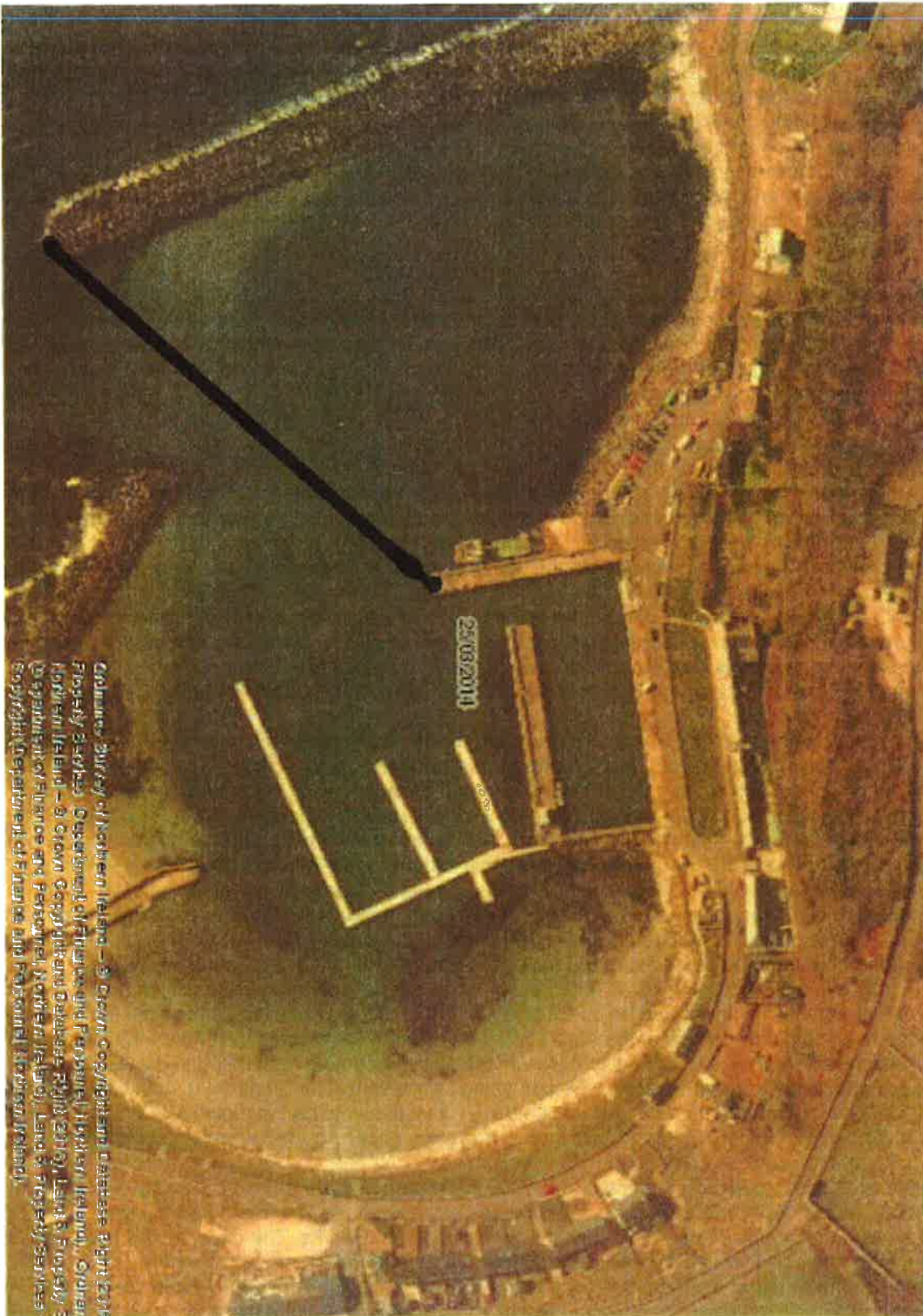
The proposed development will have no major impact on existing NI Water infrastructure. Please note the following:

- *An existing public combined sewer crosses this site. The applicant will be required to contact NIW at an early design stage to discuss the location of the proposed development in order that it does not conflict with existing NIW infrastructure.*



**Annex A**

**Map of adjusted mitigation zone for seals entering the harbour area**



## Annex B

### Amended methodology for seals entering the harbour area

1. The mitigation zone for the management of seals in the harbour shall be reduced to the area between the edge of the breakwater and the edge of the pier where the ferries currently dock (see attached map above with black line demarking the new zone). This area will be referred to as the 'zone of potential injury'.
2. The experienced MMO should use the ADD, and/or the boat, to encourage animals to leave this zone, to ensure they do not come to harm from the noisy activities. The experienced MMO must ensure the seals are monitored for signs of stress/annoyance in the wider harbour area. The MMO should check that they are able to leave the harbour freely and look for signs of stress due noise levels e.g. keeping their heads out of the water and hesitating in swimming to the harbour exit. In addition, the MMO should pay special attention to the mothers and pups.
3. When the MMO is clearing the area of seals, there should be good communications between the MMO and the operators on site, so operators are ready to begin works and there is no delay between the clearing of this zone and works starting. If a seal comes in of its' own accord once the work has started, then works can continue and if the animal appears stressed, then it will be up to the discretion of the MMO if works stop. If young pups (this year's pups) enter the area then work must cease. The experienced MMO will be able to advise the licensee(s) on identifying pups.
4. If seals are hauled out within the zone of potential injury before works begin, the animals can be gently 'coaxed' into the water if carried out, or supervised by, the experienced MMO. Again if the MMO has to clear them from the 'zone of potential injury' the operators must be ready to start works and there should be no delays otherwise the animals will simply return straight away. If the MMO is clearing seals from the shallower water, and while it is preferential to avoid overuse of the ADD due to potential habituation, it is also at the discretion of the MMO if they want to use the ADD in this case.
5. In terms of the break of 10 minutes, it is possible the MMO will be able to monitor these breaks in works, and if no animal appears then utilise the soft start and/or switch the ADD on briefly in case something is under water. The MMO and the operators will need to be communicating well in this case. For breaks of longer than 10 minutes duration, the MMO must be notified, so the MMO can start a 20 minutes watch before works start up again to make sure the area is clear/no animals are present. If breaks are of very short duration e.g. changing from 1 pile to another, then the gap in breaks can be covered by operating machinery to generate noise or the ADD may be used.
5. If a seal has swum through the area when works are taking place, then hauled out, it is essentially safer out of the water than in. If the same animal decided to enter the water again, then it will be up to the MMO to be able to say it is the same animal and as long as the animal is not stressed/showing signs of distress, work can continue, but the animal should not be trapped in the zone or stressed. If it is not the same animal that has hauled out and enters the water, then works must stop, and the zone will need cleared again as per the pre-works search methods. The MMO can also coax the animal into the water in both scenarios.
6. One of the trained operators/contractors can act as an assistant in the continuous watch/allow the experienced MMO to take breaks etc. but the use of the ADD and understanding the behavioural responses of the animals i.e. all key operations, will be dependent on the experienced MMO. The flexibility on reducing the mitigation zone is dependent the presence of the experienced/qualified MMO.
7. There is no upper limit for use of the ADD as long as it is within normal operations e.g. not left on all night. The zone of potential injury should be checked to ensure that it is clear of seals for a minimum of 20 minutes. So the maximum time for use of the ADD should be down to the discretions of the MMO and the plant operators/contractors. There is a fine line between the seals becoming habituated to the ADD and the ADD being used effectively to clear the zone when an animal is present. The licensee(s) should be aware that if the animals become habituated then the device is effectively useless but as long as this ADD is working/effective then it should be used. An alternative make/model may be required to restore effectiveness of ADD use if habituation occurs.
8. All of the above are based on the experience of the MMO understanding the animal behaviour and signs of stress etc. At any point if an animal shows signs of distress etc, even if they have entered the area voluntarily when works are taking place, then the MMO has the discretion to stop works. The experienced MMO will be critical in managing the situation and deciding on the appropriate method to use.
9. In terms of physical harm rather than injury from noise, a continuous watch is required when dredging is taking place and if the MMO is concerned re potential injury to a seal operations must stop and the ADD used to discourage the seal from straying to close if they have come in while works are taking place.
10. A full precautionary approach should be applied for mothers and their pups and the weaned pups from this year. They are very inexperienced and could potentially put themselves into a lot of danger so the MMO must be able to be more stringent in the application of the above when pups enter the zone.



