



Department of
**Agriculture, Environment
and Rural Affairs**

www.daera-ni.gov.uk

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c/o Agent
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Elmwood House
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Belfast
BT12 6 RZ

Marine Strategy and Licensing Team
Marine and Fisheries Division
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Cromac Avenue
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BELFAST
BT7 2JA

Telephone: (028) 9056 9238

Email: trevor.mcquoid@daera-ni.gov.uk

Our reference: ML 124_15 V2

12 April 2021

Dear Mr Sweeney

**MARINE AND COASTAL ACCESS ACT 2009, PART 4 (MARINE LICENSING) –
VARIATION 2 TO MARINE CONSTRUCTION LICENCE FOR CONSTRUCTION WORK
TO REPAIR LESLIE’S PIER, SEAPORT JETTY PORTBALLINTRAE**

Following your request on 11th March 2021 for a 6 month extension to the current Marine Licence to finalise construction works and annual maintenance of Leslie’s Pier, Portballintrae please find enclosed a Marine Licence containing variations to, and superseding, the licence you received on 28th April 2016 ML124_15 V1.

If you wish to continue with your rolling maintenance programme for the Harbour at Portballintrae, a new application to the Department will be required.

Appeals on this marine licensing decision should be made to the Water Appeals Commission and further information on the appeals process is available online at <https://www.pacni.gov.uk/content/water-appeals>.

The steps in the appeal process are set out in The Marine Licensing (Appeals) Regulations (Northern Ireland) 2011. If you wish to appeal the decision, you should note that this should take place within 6 months of the decision being made.



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Please note:

Compliance with licence conditions will be monitored. 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 may be subject to a fine of up to £50,000 or to imprisonment for a term not exceeding two years or to both. Further details can be found our guidance note

<https://www.daera-ni.gov.uk/publications/northern-ireland-guidance-enforcement-under-part-4-marine-and-coastal-access-act-2009>

If you are unclear about any aspect of this letter please do not hesitate to contact me.

Yours sincerely



Claire Vincent
DAERA - Marine and Fisheries Division

ENC - Licence Variation 2



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**Department of Agriculture, Environment and Rural Affairs
Marine & Fisheries Division**

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

MARINE LICENCE

Licence for: Repair Leslie's Pier, Seaport Jetty, Portballintrae Variation 2

Licence Number: ML124 15 V2

The Licensing Authority for Northern Ireland as described within the Marine & Coastal Access Act 2009 hereby grants a marine licence authorising the Licensee(s) as detailed below.

Part 1 - Particulars

Interpretation

In this licence, unless otherwise stated, terms are as defined in the Marine and Coastal Access Act 2009 (The Act).

Licensing Authority Contact Details

Marine & Fisheries Division
Marine Strategy and Licensing
Klondyke Building
Cromac Avenue
Belfast
BT7 2JA.

E-mail: marinelicensingteam@daera-ni.gov.uk
Telephone: 028 905 69238

1. Licensee(s) Name & Address:

Ross Sweeney
C/o Agent
RPS
Elmwood House
74 Boucher Road
BELFAST
BT12 6RZ

2. Names, and operators, of the vessels to be employed to undertake or support the deposit, relocation or removal operations:

McFall Construction
Building Contractors
196 Whitepark Road
BUSHMILLS
BT57 8SR
Tel - 02820732335



3. Description of works and nature and quantity of all materials to be deposited below Mean High Water Springs.

Construction Works

Removal of the rock armour to obtain access to the outer pier wall.
Shuttering of the works area to ensure no pollution occurs.
Reinstatement of outer pier wall and resurfacing of the piers operational platform.
Reinstatement of the site and rock armour using the original boulders.

Maintenance Works

Repositioning of sand to allow boat access.

4. Location of works:

Seaport Jetty, Portballintrae as shown in application drawing IBM0597-001.
The works are required to improve the safety and increase the longevity of the existing structure.

5. Valid:

From: 12/04/2021.

Until: 31/10/2021.

PART 2: CONDITIONS

The Department of Agriculture, Environment and Rural Affairs (referred to as the licensing authority) authorises **the Licensee(s)** to deposit in the sea, the substances or articles (except for dredged material) used in the execution of works described in Part 1 of this licence. 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

1. The licensee(s) shall inform the licensing authority of the starting date of the construction work at least 1 week prior to commencement of the construction works, and finishing date of the construction work, 1 week before its termination.

Reason: To allow the licensing authority to monitor the works as deemed fit.

2. The licensee(s) shall not deposit any other material than that detailed in the Marine Licence application form received by the licensing authority, dated 12 June 2015. The licensee(s) shall contact the Department 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.

Reason: To ensure no additional works are conducted without the knowledge of the licensing authority.

3. 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.

Reason: To ensure no breaches of the licence conditions occurs.



4. The licensee(s) shall, within eight weeks after the completion of the construction 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.

Reason: To allow the licensing authority to maintain a record of works carried out within the licensable area.

5. The licensee(s) shall ensure that copies of the licence are available for inspection by any authorised Enforcement Officer at:
- The premises of the Licensee(s)
 - The premises of the operating facility
 - The site of the works (including on board vessels)

Reason: To ensure any enforcement officer can check the works against the licence.

6. The licensee(s) must notify The Source Data Receipt team, UK Hydrographic Office, Taunton, Somerset, TA1 2DN (Email: 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.

Reason: To ensure the UK Hydrographical Office can maintain accurate records.

7. The licensee shall appoint a Marine Mammal Observer (MMO) at the time the rock breaker or any other similar breaking machinery is in use to ensure there is no injury/harm to marine mammals and to minimise disturbance wherever they are present, as detailed in the Marine Licence application and HRA dated 12 June 2015. If marine mammals are detected in the area, the MMO will issue a delay in the commencement of rock breaking, until they are satisfied that the animals have left the mitigation zone, which should be no less than 500 metres, measured from the rock breaking location. Refer to JNCC protocols for minimising the risk of injury to marine mammals.

Reason: At close range noise travelling through water as shock waves can cause injury to marine mammals.

8. If impact/vibro piling or blasting is required during construction, the licensing authority must be notified. A noise risk impact assessment must be produced and submitted to the licensing authority for approval before such works can begin. The MMO should apply relevant JNCC protocols for minimising the risk of injury to marine mammals.

Reason: Noise travels through water with much greater ease than air. A shock wave from blasting or piling can travel through water for many kilometres, causing injury and/or disturbance. As the noise will be directly impacting a Special Area of Conservation with Harbour Porpoise as a feature, the noise footprint will need to be assessed.

9. If impact piling or blasting is required during construction, the licensee shall maintain a record of the beginning and end times and duration, e.g. hammer energy blow or explosive charges. Records must be submitted to the licensing authority within **eight weeks** of completion of the licensed works.

Reason: The Licensing Authority is required to maintain a noise register for high energy noise input to the marine environment.



10. The licensee(s) shall ensure that if any archaeological or cultural material is uncovered by the construction works it should be reported to the Marine and Fisheries Division archaeologist (colin.dunlop@daera-ni.gov.uk), as required under Article 42 of the Historic Monuments and Archaeological Objects (NI) Order 1995.

Reason: To ensure a record is maintained of Northern Ireland's maritime cultural heritage.

11. The licensee(s) shall not store any site supplies of fuel or oils within 10m of the shore and 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.

Reason: To reduce the potential for the works to cause pollution to the environment.

12. 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.

Reason: To reduce the potential for the works to cause pollution to the environment

13. The construction works permitted under this licence are restricted to repairs and reinstatement within original footprints. The works shall not extend the harbour in length, width or height.

Reason: There is concern that any increase in size of the pier could cause a change to the localised wave regime and sediment dynamics, potentially causing damage to Portballintrae ASSI or the local beach.

14. The removal of sand within the harbour to deepen the berth below its normal operational depth is not permitted by this licence.

Reason: A Capital Dredge Licence and associated sediment quantity testing are required either to deepen a harbour beyond its normal depth or if it has not be dredged to its operational depth within ten years.

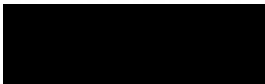
15. The Licensee(s) must ensure that the works are finished in a manner which does not cause any detriment to the health and safety functionality of the pier.

Reason: The pier is operational and used by a licensed pot fishery. It is important that the works do not cause an increase in risks to users of the pier.

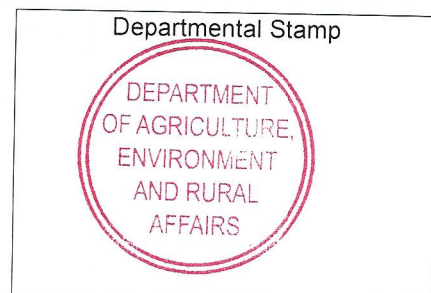
16. The Licensee(s) shall not remove or use any sand from the Portballintrae beach or bay. The removal of sand from the Portballintrae sediment system is a licensable activity not permitted by this licence. Any sand moved during the course of the works, or through annual maintenance of the harbour covered by this licence, should be relocated within Portballintrae beach or bay.

Reason: Portballintrae beach exists in sediment starved state and has undergone significant sand loss and erosion. The removal of sand from the area can cause further damage to the beach and Portballintrae ASSI.

Signed on behalf of the Department:



Dated: 12 April 2021





NOTE:

- 1) 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**.
- 2) 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.
- 3) 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 may be subject to a fine of up to £50,000 or to imprisonment for a term not exceeding two years or to both.
- 4) The Licensee(s) are deemed to have satisfied themselves that there are no barriers or restrictions, legal or otherwise, to the carrying out of the licensed operations. The issuing of the licence does not absolve the Licensee(s) from obtaining such other authorizations and consents etc. which may be required under statute.
- 5) **Variation, Suspension, Revocation and Transfer:** Under section 72 of the 2009 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 the provisions of the licence or for any such other reason that appears to be relevant to the authority under section 72(2) or (3) of that Act.
- 6) **Breach of requirement for, or conditions of, the licence:** Under section 65 of the Act it is an offence to carry on a licensable activity without a marine licence or to fail to comply with any condition of a marine licence.
- 7) **Defences: actions taken in an emergency:** Under section 86 of the 2009 Act, it is a defence for a person charged with an offence under section 85 in relation to any activity, to prove that the activity was carried out for the purpose of saving life or for the purposes of securing the safety of a vessel, aircraft or marine structure and that person took steps within a reasonable time to provide full details of the matter to the licensing authority as set out in section 86 1(b) of the 2009 Act.
- 8) **Offences relating to information:** Under section 89 of the 2009 Act it is an offence for a person to make a statement which is false or misleading in a material way, either knowing the statement to be false or misleading, or 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 2009 Act or this licence.



Further information from consultation:

1. DAERA MARINE CONSERVATION AND REPORTING (HISTORIC ENVIRONMENT)

There is a legal obligation to report archaeological objects within 14 days under the provisions of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995 and to report historic wreck material to the Receiver of Wreck under the Merchant Shipping Act 1995. In the event of a discovery of an archaeological object and/or remains during works the Department would ask that you: (1) record the position and details of the site; (2) do not disturb the site further and (3) contact DAERA Marine and Fisheries Division, Klondyke Building, Cromac Avenue, Belfast BT7 2JA for further advice.

Colin Dunlop colin.dunlop@daera-ni.gov.uk
Marine Historic Environment Adviser
Historic Environment Division | Department for Communities

2. Northern Ireland Environment Agency – Water Management Unit

You should be aware that it 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.

Water Management Unit is content, subject to the applicant adhering to DAERA's Standing Advice on Pollution Prevention Guidance and Discharges to the Water Environment, which are available at:

www.daera-ni.gov.uk/water-environment-standingadvice

3. DAERA - Sea Fisheries

It is an offence under Article 47 of the Fisheries Act (Northern Ireland) 1966 to cause pollution which is subsequently shown to have a deleterious effect on fish stocks.

4. DAERA – Marine & Fisheries Division - Conservation and Reporting

Designated Sites

The applicant's attention is drawn to the fact that the proposal has the potential to have a significant impact on national, international and European Marine Protected Areas and precautions should be taken to ensure their integrity will not be damaged by construction vehicles, deposited materials, contaminated run-off, or any other activity during the construction period or thereafter. Any works occurring within the designated site but outside the marine licence application boundary are subject to the following Regulations;

- The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended)
- Environment (Northern Ireland) Order 2002 (as amended)

European Marine Protected Species

The applicant's attention is drawn to regulation 34 of The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended), which details offences relevant to all species of dolphins, porpoises and whales and the marine turtle species. It is the applicant's responsibility to ensure that an offence is not committed as a result of operations carried out as part of this proposal.

For further information please see <https://www.daera-ni.gov.uk/articles/marine-wildlife-licensing#toc-2>



National Marine Protected Species

The applicant's attention is drawn to Article 10 of the Wildlife (Northern Ireland) Order 1985 (as amended) which details offences relevant to marine protected species. It is the applicant responsibility to ensure that an offence is not committed as a result of operations carried out as part of this proposal.

For further information please see <https://www.daera-ni.gov.uk/articles/marine-wildlife-licensing#toc-2>

Guidance on noise management in Harbour Porpoise SACs

<https://hub.jncc.gov.uk/assets/2e60a9a0-4366-4971-9327-2bc409e09784>

Please contact Stephen Foster, Marine Species Advisor, if you require any advice on this guidance stephen.foster@daera-ni.gov.uk

Invasive Species

The applicant's attention is drawn to Article 15 of the Wildlife (Northern Ireland) Order 1985 (as amended) under which it is an offence if any person releases or allows to escape into the wild any animal which—

a) is of a kind which is not ordinarily resident in and is not a regular visitor to Northern Ireland in a wild (or is a hybrid of any animal of that kind), or

b) is included in Part I of Schedule 9 (or is a hybrid of any animal included in that Part),
he shall be guilty of an offence.

List of Part I, Schedule 9 species

<https://www.legislation.gov.uk/nisi/1985/171/schedule/9>

Article 15 of the Wildlife (Northern Ireland) Order 1985

<https://www.legislation.gov.uk/nisi/1985/171/article/15>

DATE RECEIVED	LETTER ISSUED TO	SITE LOCATION
15/04/2021	Ross Sweeney	Leslie's Pier, Seaport Jetty, Portballintrae