

Environment, Marine & Fisheries Group
Marine & Fisheries Division



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

www.daera-ni.gov.uk

Mr R McLean
NI Water
Westland House
40 Old Westland Road
Belfast
BT14 6TE

1st Floor, Klondyke Building
Cromac Avenue
Belfast BT7 2JA
Telephone: 02890 524300
Email: [REDACTED]

Date: 16 May 2023
Ref: ML2022018

Dear Mr McClean,

**MARINE AND COASTAL ACCESS ACT 2009, PART 4 (MARINE LICENSING) –
DRAFT MARINE CONSTRUCTION LICENCE CONDITIONS FOR REPLACEMENT OF APPROX.
10-15M OF EXISTING 150MM DIAMETER CLAY PIPE WITH 150MM DIAMETER PVC AT THE
CRESCENT, PORTSTEWART**

I refer to your Marine Licence application received on 04th November 2022 for the above works.

This application has now been considered and a copy of the draft licence conditions the Department proposes to issue is enclosed.

Please note that the enclosed draft conditions are not a formal licence, and as such it does not authorise the commencement of the proposed works.

Please complete and return the enclosed Form 8 (Draft Licence Conditions Acknowledgement). By responding you are confirming that you understand the draft licence conditions in the attached document. If for any reason you are unclear with



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the conditions set down in the licence, you should contact this Department within 14 days, after which the Department will proceed to grant or revoke the marine licence in accordance with section 71 of the Marine and Coastal Access Act 2009.

Please note:

Anyone who fails to comply with any condition of a Marine Licence commits an offence under Section 85 of the Marine and Coastal Access Act 2009, and may be subject to enforcement action. Enforcement action can range from the issuing of compliance notices, remediation notices, fixed monetary penalties and variable monetary penalties, as detailed within the Northern Ireland Guidance, Enforcement under Part 4, of the Marine and Coastal Access Act, 2009.

Additionally, a person who fails to comply with a compliance notice or remediation notice, commits an offence, and is liable on summary conviction to a fine not exceeding £50,000; on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

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

Yours sincerely,

Chris Moore

DAERA Marine & Fisheries Division



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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 for the replacement of approx. 10-15m of existing 150mm diameter clay
pipe with 150mm diameter uPVC**

Licence Number: ML2022018

Part 1 - Particulars

1. Licensee(s) Name & Address:

Mr R McClean
NI Water
Westland House
40 Old Westland Road
Belfast
BT14 6TE

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

To be supplied

3. Description of works and nature and quantity of all deposits below Mean High Water Springs:

**Replacement of approx. 10-15m of existing 150mm diameter clay pipe with 150mm
diameter uPVC**, from existing NI Water Combined Storm Overflow: CARID
CO002853022; Name The Crescent CSO, Portstewart; Site CARID S05255; Consent Status
Consented NIEA Consent ID 0453/2009 to existing overflow from The Crescent
Portstewart WwPS CARID S01041 The Crescent, Tullaghmurry West, Portstewart, County
Londonderry, BT55 7AB.

4. Location of works:

The Crescent, Portstewart (As denoted by the AECOM location map KI710 submitted with application)



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Latitude: 281,424.369
Longitude: 438,044.277

5. Valid:

From: 16 May 2023
Until: 16 May 2026

PART 2: CONDITIONS

The Department of Agriculture, Environment & Rural Affairs (referred to as the licensing authority) **NI Water** to replace approx. 10-15m of existing 150mm diameter clay pipe with 150mm diameter uPVC 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. All conditions of this licence bind any persons whom, for the time being, owns, occupies or enjoys any use of the works for which this licence has been granted, in relation to those licensed activities authorised under section 66 of the 2009 Act, whether or not the licence has been transferred to that person.
2. The Licensee must receive written authorisation from the licensing authority to assign or transfer the consent. The licensing authority must confirm in writing to both the original Licensee and any proposed new Licensee that the licence has been transferred/assigned before any works may commence under the new Licensee.
3. The licensee shall inform the licensing authority of the finishing date of the licensed work within **28 days** of completion.
4. The licensee shall not carry out any licensable activity other than that detailed in the Marine Licence application form received by the licensing authority, dated 04th November 2022. The licensee 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.
5. The licensee shall ensure that the Department is informed of any contractor appointed to carry out part or all of the works and a copy of this licence is given to each contractor.
6. The licensee shall ensure that all works adhere to the conditions set out in the GEDA Method Statement submitted with the application.
7. The licensee must commence works within **12 months** of the date of this licence.

8. The licensee 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 shall 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 the operating facility
 - c. The site of the works (including on board vessels)
10. The licensee shall 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.
11. The licensee shall adhere to the following:
 - Works in, near or over watercourses, PPG5 and
 - Prevent Pollution, & Construction and Demolition sites: PPG6: Prevent Pollution.
12. The licensee shall inform the licensing authority **7 days** prior to the work commencing, in writing to marinelicensingteam@daera-ni.gov.uk
13. The Licensee must notify the Source Data Receipt team at the UK Hydrographic Office (sdr@ukho.gov.uk) of commencement of the licensed activities, **at least 10 days before commencement of the works**. The information supplied must include the start date and end date, a description of the works, positions of the work area (WGS84), and details of any marking arrangements. The UK Hydrographic Office must also be notified upon completion of the works. The licensing authority must be copied into all notifications by email to marinelicensingteam@daera-ni.gov.uk
14. Local mariners and fishermen's organisations must be made fully aware of the activity through a local notification. This must be issued at least **5 days** before the commencement of the works.
15. Zone34@hmcg.gov.uk must be notified prior to commencement of activities.
16. The licensee(s) attention is drawn to Article 42 of the **Historic Monuments and Archaeological Objects (NI) Order 1995** that requires finders of archaeological objects to report within 14 days to a relevant authority. In the event of a discovery of an archaeological object and/or remains during the works the licensee(s) must: (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 Department immediately.

Reason: To ensure recovered archaeological material is recorded with the appropriate authority

17. 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**.

Reason: To ensure recovered wreck material is recorded with the appropriate authority

Signed on behalf of the Department:



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16 May 2023

Dated:

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 – Biodiversity Unit

BDU, Ornithology finds that there are unlikely to be significant ornithological issues associated with this proposal. We therefore do not require any bird surveys. We do, however, recommend that the following additional measures are taken to maintain the availability of nest sites and minimise threats to breeding birds:

- Removal of hedgerows and other peripheral vegetation should be minimised and unavoidable vegetation removal or management should be undertaken outside the bird breeding season, which runs from 1st March to 31st August.
- Landscape features such as earth banks and ditches should be retained wherever possible.
- All works should be carried out within the project boundary, as shown in the original drawings.
- Mitigation measures to control pollution and sediment release as identified within the 'Statement to inform to inform Habitats Regulations Assessment NIW Sea Outfall: The Crescent, Portstewart' and the GEDA Method Statement should be established and adhered to during the construction works.



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2. Maritime & Coastguard Agency – Navigational Safety Branch

“The licensee should consider adopting the Port Marine Safety Code (PMSC), which sets out a national standard for every aspect of port marine safety. The Code is not mandatory, however it is endorsed by the UK Government, devolved administrations and representatives from across the marine industry sector. It is applicable to both Statutory Harbour Authorities (SHA) and non-SHAs including marinas, terminals, marine berths and jetties. The Department for Transport also publishes the PMSC Guide to Good Practice which provides useful information and detailed guidance on the safe management of these facilities, and is intended to supplement the Code. This can be found here: <https://www.gov.uk/government/publications/a-guide-to-good-practice-on-port-marine-operations>”

Bunding and/or storage facilities must be installed to contain and prevent the release of fuel, oils, and chemicals associated with plant, refueling and construction equipment, into the marine environment.

3. DAERA Marine & Fisheries Division – Fisheries Inspectorate

Section 47 of the Fisheries Act (NI) 1966, which covers the applicant’s responsibilities relating to Penalties for Pollution and the consequences of causing or permitting the release of any Deleterious material into any waters.

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

Further Information and Informatives

Marine Litter

Marine litter is defined as items arising from human activity, deliberately discarded or unintentionally lost, that end up in the sea and on beaches and coastlines. Marine litter is any persistent, manufactured or processed solid material discarded, disposed of or abandoned in the marine and coastal environment. Marine litter can cause significant impacts to marine ecosystems, including direct damage to wildlife through entanglement, entrapment and/or ingestion and can also destroy coastal habitats, by interfering with biological production and smothering of the seabed.

Policy Requirement – Marine litter considerations

The Marine Strategy Regulations 2010, as amended, impose a general duty on government departments to take measures to achieve good environmental status in marine waters. They also place a duty on public authorities to have regard to the UK Marine Strategy which has been developed in accordance with the Regulations when exercising their functions. The objective of the UK Marine Strategy is to achieve good environmental status in marine waters. In respect of marine litter, this is ensuring that the properties and quantities of marine litter do not cause harm to the coastal and marine environments.

Seascape



The application site lies within the North Coast Strands and Dunes Regional Seascape Character Area. In accordance with the UK Marine Policy Statement 2.6.5.3 and 4, in considering the impact of an activity or development on seascape, the public authority should take into account existing character and quality, how highly it is valued and its capacity to accommodate change specific to any development. Landscape Character Assessment methodology may be an aid to this process. For any development proposed within or relatively close to nationally designated areas the public authority should have regard to the specific statutory purposes of the designated areas. The design of a development should be taken into account as an aid to mitigation.

European and National Marine Protected Areas

The applicant's attention is drawn to the fact that the proposal is hydrologically linked to several Marine Protected Areas and precautions should be taken to ensure the integrity of these areas will not be damaged by the proposal's activities. Any activity occurring within the designated site but outside the proposed red line boundary are subject to The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) and the Environment (Northern Ireland) Order 2002 (as amended) and require consent from the Northern Ireland Environment Agency, Conservation, Designations and Protection Unit, Klondyke Building, Gasworks Business Park, Belfast BT7 2JA.

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, disturb, injure or kill a wild animal of a European Protected Species included in Schedule 2 to these Regulations. This includes all species of dolphin, porpoise and whale and the marine turtle species.

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

Marine National Protected Species – Seals

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 disturb, capture, injure a Harbour seal (*Phoca vitulina*) or Grey seal (*Halichoerus grypus*).

It is also an offence to intentionally or recklessly;

- disturb any such animal while it is occupying a structure or place which it uses for shelter or protection,
- damage or destroy, or obstruct access to, any structure or place which any such animal uses for shelter or protection,

- damages or destroys anything which conceals or protects any such structure; or
- to have in possession or control any live or dead wild animal included in Schedule 5 or any part of, or anything derived from, such an animal.

Where impact cannot be avoided or mitigated, a licence may be required for operations and DAERA Marine Wildlife Team should be consulted.

The Wildlife (Northern Ireland) Order 1985:

<http://www.legislation.gov.uk/nisi/1985/171/part/III/crossheading/protection-of-other-animals>

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 to release or allow to escape into the wild any plant or 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 state (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 plant or animal included in that Part).

Article 15 of the Wildlife (Northern Ireland) Order 1985

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