



**Shetland
Islands Council**

WORKS LICENCE POLICY

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SHETLAND ISLANDS COUNCIL WORKS LICENCE POLICY

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SHETLAND ISLANDS COUNCIL WORKS LICENCE POLICY

PART I: POLICY FRAMEWORK AND LEGISLATION

1. Introduction

- 1.1 Under the Zetland County Council Act 1974 (the Act of 1974) Shetland Islands Council has a duty to promote the conservancy of, and control of development in, the coastal area of Shetland, with the exception of those areas under the jurisdiction of Lerwick Port Authority or Broonies Taing Pier Trust.
- 1.2 The purpose of the attached works licence policy is to provide guidance to all involved in the process of considering proposals that fall within the scope of the Act of 1974. In general terms, that means the placing of 'works' as defined by the Act of 1974 in the sea (other than that for the purposes of marine fish farm developments), on the seabed or on the foreshore below Mean High Water Springs (MHWS).
- 1.3 The Council will apply this policy to all applications for works licences for which the Council has authority to issue works licences in terms of the Zetland County Council Act 1974 determined on, or after, the date it is approved by Shetland Islands Council. Applications that are out with policy, or attract objections will be determined by the Planning and Marine Development Board of the Council. As part of the decision making process both applicants and objectors are offered the opportunity of addressing the Board in the interests of open, fair and transparent governance. A final decision of the Council will continue to be required where an application out with this policy is recommended for approval by the Board.
- 1.4 This policy has been drawn up in recognition of the Council's commitment to sustainable development of which the key aims in relation to development in the coastal area are to:
 - Encourage appropriate development that maintains and improves life chances for local people.
 - Involve local communities in the decision making process.
 - Protect and enhance Shetland's environment.

At all times the Council will endeavour to balance these aims to ensure its policies and decisions are equally promoted.

- 1.5 The Council has certain powers and duties in respect of environmental protection, as do other statutory bodies and agencies (see section 3, Regulatory Framework). In respect of works in the coastal area, there may be circumstances where it would be more appropriate for another body to exercise its powers to achieve the particular objective rather than for the Council to seek to secure that objective through the imposition of conditions attached to works licences. However, this does not prohibit the Council from attaching conditions to works licences that may have the effect of securing other objectives as well.

- 1.6 Shetland Islands Council is developing Marine Management Framework Plans that will seek to optimise in a balanced manner the variety of activities that occur in the Shetland's marine coastal environment to both safeguard its assets and allow appropriate sustainable development. As such this Works Licence policy will be an integral component of any Plan and will reflect the overall aims of the Plan.
- 1.7 This document comprises background information or general advice to developers and prospective licensees and informs the statements contained within the Works Licence policy.

2. Background

- 2.1 The Act of 1974 was passed primarily to regulate the activities of the oil industry in the coastal area of Shetland. However, this policy is also primarily concerned with, but is not confined to, the following activities:
 - Piers, Breakwaters, Marinas, Sea Defences and other constructions ("constructions").
 - Moorings, Pontoons, Moored Barges and Pipelines.

3. Regulatory Framework

- 3.1 Works licence applications are required for works in the coastal area (MHWS to the limit of territorial sea). Applications will be considered in terms of this policy; the Council's Structure and Local Plans (where relevant); and National Planning Policy Guidance, Memoranda and Advice. That advice is, for example, set out in NPPG 13 'Coastal Planning' and NPPG 14 'Natural Heritage'. In addition, applications will be considered in terms of the existing legislative framework currently applying to the development envisaged.
- 3.2 Development for which a works licence is required may also require other permissions from the Council, most notably planning permission (for development above MLWS) or consent from the Council as Coast Protection Authority (for coast protection works). In respect of such developments, existing land-use planning policies (as set out in National Planning Policy Guidance, Memoranda and Advice, the Council's Structure and Local Plans and the Council's Coast Protection Policy) provide the primary policy guidance.
- 3.3 Works below Mean Low Water Springs (MLWS) will generally require a seabed lease from the Crown Estate.
- 3.4 Works may require a discharge consent from Scottish Environment Protection Agency (SEPA) under the Control of Pollution Act (1974); consent under the Food and Environment Protection Act 1985; or consent under the Coast Protection Act 1949 (both from the Scottish Executive). Works licences do not control aspects of an operation that are specifically controlled by powers granted to these other regulatory bodies.

3.5 The Conservation (Natural Habitats &c) Regulations 1994 (the Habitats Regulations) place a statutory duty on the Council to meet the requirements of the EC Council Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora (92/43/EC) (the Habitats Directive). The Directive contributes to the conservation of biodiversity by requiring Member States to take measures to maintain or restore the conservation status of natural habitats or species across the territory of the Community and includes the designation of Special Areas of Conservation. Similarly the Council has obligations under the Birds Directive (79/409/EEC) that covers the conservation of wild birds and includes provision for designation of Special Protected Areas. Detailed advice on the requirements of these Directives is contained in the Scottish Office Circular 6/1995 (updated 2000) on the Habitats and Birds Directives. The Council will also take account of the requirements of the Wildlife and Countryside Act 1981, the Water Environment and Water Services (Scotland) Act 2003 and the Nature Conservation (Scotland) Act 2004.

4. General Policies

- 4.1 In respect of developments for which a licence under the Act of 1974 is required the Council aims to carry out its duty in such a manner as to avoid significant adverse impact on other interests.
- 4.2 Where no works are present on a site for a continuous period of 3 years, the licensee will be required to inform the Council of their intentions with respect to development of the site. This may involve a request for more time to develop the site or an indication that development is about to commence. Where no intent to develop is indicated, the Council may take steps to initiate revocation proceedings. However, if works were removed to comply with notices or orders served under other legislation, any such period would be discounted. Licensees are advised to notify the Council, through the Marine Management Department (NAFC Marine Centre) if a licensed site is to be cleared of works in any of these circumstances.
- 4.3 Annex 2 indicates the location of various designations affecting the coastal area of Shetland.

5. Piers, Breakwaters, Marinas and other constructions ("constructions")

- 8.1 In determining works licence applications for constructions the Council will take into account relevant local policies, as set out in the Council's Structure and Local Plans and elsewhere, national policies and guidance and any representations received.
- 8.2 In formulating proposals, prospective licensees should be aware that the use of shared facilities carries a potential to contribute to the spread of disease and would not normally be encouraged. In all cases management regimes should be devised with the aim of eliminating any such risk.

SHETLAND ISLANDS COUNCIL WORKS LICENCE POLICY

PART II: POLICY STATEMENTS

1. GENERAL POLICIES

These policies apply to all structures and developments requiring a works licence under the Act of 1974.

- G1 In determining applications for works licences, the Council will take account of, *inter alia*, the following factors:
- The need to ensure that safe navigation is maintained.
 - Potential effects, including cumulative, on the environment and natural heritage interests.
 - The implications for fishing interests.
 - Existing marine fish farms in the locality.
 - The implications for recreational and other interests.
 - The availability of any necessary infrastructure and potential impact on existing infrastructure, when relevant.
- G2 The Council will take account of the views of all interested parties, including competent and relevant bodies and local communities, in its determination of works licence applications.
- G3 Works licences will be determined with due regard to relevant national and local policies and guidance in place at the time of the application.
- G4 It shall be a condition of all works licences granted that licensees must comply with all relevant statutory controls currently in force or which come into force during the period in which their works licence remains valid. A failure to comply with any relevant statutory control, or a breach of any condition of the works licence which is brought to the Council's attention will be investigated and may, if circumstances warrant it and the Council consider it appropriate, result in the works licence being revoked.
- G5 In respect of all works licences approved pursuant to this policy, if no works are present during any continuous period of 3 years on a site for which a works licence has been granted the relevant works licence would cease to have effect. In that case, the licensee will take appropriate steps in correspondence with the Council to seek either an extension of time or approval to commence development. The Council will not be unreasonable in dealing with either of these requests but where neither scenario happens or there continues to be no development on site, the Council may initiate revocation proceedings.
- G6 In calculating the 3 year period, no account will be taken of any period where works were removed to comply with notices or orders served under other legislation.
- G7 Works licences may only be transferred to a new licensee with the Council's prior written consent. A written application to transfer the licence must be made to the Council who will not unreasonably withhold any such request. Failure to obtain the Council's consent may result in the Council revoking the licence.

- G8 Works licence applications will be dealt with by the Council on a first come, first served basis. Where the Council has a pre-existing application, any subsequent applications that are made in the area of the initial application will be recommended for refusal on the basis that the application process is in train for a previous applicant.
- G9 Appropriate lights, buoys or beacons that comply with the International Association of Lighthouse Authorities' guidelines must mark any installations close to navigation channels, or which may otherwise be a danger to navigation. Such markings must be specified in the works licence following consultation between the Council's Ports and Harbours Operations and the Northern Lighthouse Board.
- G10 Where a works licence application is made to the Council for development adjacent to or within a Natura 2000 site (Special Area of Conservation or Special Protection Area) designated under either the Habitats or Birds Directives, the Council, as competent licensing authority, will undertake an appropriate assessment of the development as required under Regulation 48(1) of the Conservation regulations 1994. Should such an assessment indicate that the development will have an adverse effect on the integrity of any Natura 2000 site, the Council will be minded to refuse the application as required by the 1994 Regulations. Additionally the Council will take proper account of Articles 12, 13 and 16 of the Habitats Directive in respect of European protected species when considering works licence applications.

2. CONSTRUCTIONS (Piers, Breakwaters, Marinas and Other Constructions)

- C1 Works licence applications for other marine constructions will be determined with regard to relevant local and national policies, local and national guidelines and any representations received. For the avoidance of doubt, constructions include those lengths of piped septic tanks outfalls that cross the foreshore below MHWS.
- C2 All applications for works licences for floating pipes connecting shore feeding bases to floating cages will be considered on a case by case basis with due consideration being given to their specific merits such as location, navigation aspects, impact on other users, etc.

Other relevant designations

East Mires and Lumbister Special Area of Conservation;
Fairisle Special Area of Conservation;
Hascosay Special Area of Conservation;
Keen of Hamar Special Area of Conservation;
Mousa Special Area of Conservation;
North Fetlar Special Area of Conservation;
Papa Stour Special Area of Conservation;
Ronas Hill – North Roe Special Area of Conservation;
The Vadills Special Area of Conservation;
Tingon Special Area of Conservation;
Sullom Voe Special Area of Conservation;
Yell Sound Coast Special Area of Conservation.

Brindister Voe and The Vadills Marine Consultation Area;
The Houb, Fugla Ness Marine Consultation Area;
Swinister Voe and the Houb of Fora Ness Marine Consultation Area;
Whiteness Voe Marine Consultation Area.

Special Protection Areas or Sites of Special Scientific Interest, though not listed here, will be relevant in respect of individual applications.

Shetland National Scenic Area.

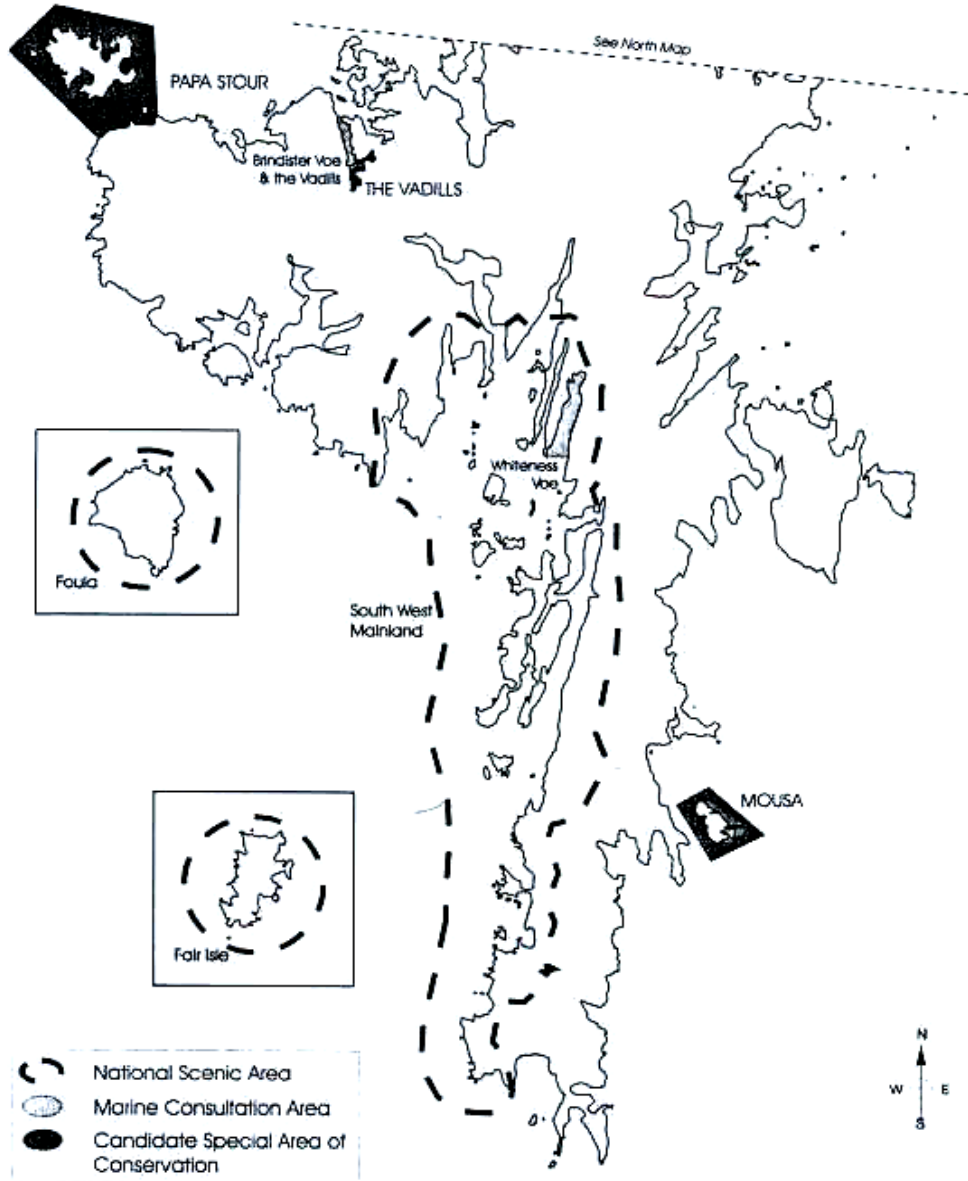
Designations in Shetland

Shetland Islands Council Works Licence Policy
Designations in North Shetland



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Shetland Islands Council Works Licence Policy
Designations in South Shetland



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Bodies consulted on works licence applications

Community Council within which the application lies;
The Crown Estate;
Royal Society for the Protection of Birds (RSPB);
Scottish Environment Protection Agency (SEPA);
Scottish Executive Environment and Rural Affairs Department (SEERAD);
Scottish Natural Heritage (SNH);
Shetland Islands Council:
 Environmental Health;
 Infrastructure Services;
 Ports and Harbours Operations;
Shetland Fishermen's Association (SFA).

Other bodies may be consulted on specific matters, if appropriate.